

FERRAIUOLI LLC

Litigation Department – Bankruptcy & Creditors’ Rights

June 9, 2014

NOTICE TO CLIENTS AND FRIENDS

Legislative Development: Proposed amendments to Puerto Rico Homestead Act (also known as “*Ley de Hogar Seguro*”)

On May 9, 2014, Senator Jorge I. Suárez Cáceres filed Senate Bill 1112 (“S.B. 1112”) with the aim of amending articles 4, 7, 9, and 11 of Act 195 of September 13, 2011, better known as the Homestead Right and Family Home Protection Act (“Act 195”). The changes purport to correct and clarify the interpretation of Act 195, specifically after the Puerto Rico Supreme Court’s (the “PRSC”) recent opinion in *Rivera García v. Registradora*, 2013 TSPR 107 (2013). Below are the most significant changes proposed by S.B. 1112:

Article 7: Homestead protection in case of leasing

- As long as the person invoking the Homestead protection occupies the property, said protection applies to the entirety of the property. This amendment aims to correct a recent Bankruptcy Court interpretation in which the protection was deemed to apply only to the portion of the property being used exclusively for residential purposes.

Article 9: Claim of homestead protection in purchase deed; record in the Property Registry and cancellation of the homestead right in the Property Registry

- In cases where a property is part of an inheritance, the surviving spouse or co-heir of the property who has an ownership interest in, and is occupying the said property, can claim and register a Homestead protection through a notarized Act. The amendment clarifies that the individual proponent does not require the presence or consent of other co-owners of the property. The protection, however, will extend only to the person’s interest in the property. This amendment supersedes the PRSC’s decision in *Rivera García v. Registrador*.
- In the case of a property being owned by both spouses and the conjugal partnership, one of them can invoke the Homestead protection without the presence of the other through a notarized Act, it being understood that the protection will benefit both spouses. If only one of the spouses invokes the protection because he/she is the only one occupying the property by reason of separation or abandonment, such reason must be included in the notarized Act.
- The amendment recognizes as valid the inscription of a Homestead protection in the Registry of Property if it has been declared and recognized through a judgment or judicial resolution by a court with proper venue.

Article 11: Registration of a parcel and filing of a declaration of homestead with the Registry

- The previous provision requiring for compatibility with Act 195's article 12 is stricken out and replaced with the condition that the occupant be entitled to Homestead protection by virtue of its *ex proprio vigore* application. However, in cases where the protection is invoked against an administrative agency or proceeding, it must be done through a notarized Act. In proceedings involving a sale by judicial decree, the invocation must be done according to article 12 of the law.

In conclusion, S.B. 1112 intends to expand the application of Homestead protection to certain circumstances where it had been uncertain. Mainly, S.B. 1112 applies it to cases where the surviving spouse invokes the protection in the absence of the property's other co-owners, where the protection has been declared and recognized through a judicial decree, and to the totality of the property in cases where a portion of it is used for non-residential purposes.

This document has been prepared for information purposes only and is not intended, and should not be relied upon, as legal advice. Given the potential impact of the proposed amendments, we think this development might be of interest to you. If you have any questions or comments about S.B. 1112, want to obtain additional information, or want to further discuss how this development may impact you and how to participate in the legislative process, please feel free to contact us at your convenience.

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