

(H. B. 127)

**(No. 118)**

(Approved September 26, 2005)

**AN ACT**

To amend, add, and designate in alphabetical order the definitions of Section 2; to amend Sections 13, 21, 23, 24, and 27 of Act No. 10 of April 26, 1994, as amended, known as the “Act to Regulate Real Estate Business and the Profession of Real Estate Broker, Salesperson, or Companies in Puerto Rico;” and to provide for the revision of the regulations in effect.

**STATEMENT OF MOTIVES**

The sale in the Commonwealth of Puerto Rico of real estate located outside its jurisdiction has been regulated with much difficulty by the Department of Consumer Affairs and the Department of Justice since the 1970s. Although these agencies intended to regulate all those companies that operated outside of Puerto Rico, and whose businesses were originated in Puerto Rico, the truth is that these companies avoid the jurisdiction of the Commonwealth of Puerto Rico by executing their contracts in other jurisdictions.

Regardless of the various legal provisions and regulations that address the sale of real property outside of Puerto Rico, in the past months the media has pointed out alleged fraudulent practices in the sale and in offering for sale real property outside of Puerto Rico.

These transactions that were originated in the Commonwealth of Puerto Rico by Companies engaged in the real estate business outside of Puerto Rico, caused multiple claims by Puerto Rican consumers who

claimed having been victims of deceitful activities and construction vices in the acquired real properties.

On its part, the Department of Consumer Affairs resolved the controversies presented before this forum, within the framework of its limited resources frame. The Department of Consumers Affairs only looked into complaints relative to deceitful activities by imposing high penalties to the defendant entities. However, since said agency lacked jurisdiction, it could not adjudicate those controversies related to construction vices, because it did not have the necessary minimum contacts to attend to said complaints. This was due to the fact that these companies that were engaged in the sale or in the offering for sale of real property outside of Puerto Rico initiate their real estate transactions in Puerto Rico and executed their contracts outside of Puerto Rico. Many of these companies did not have agents residing in Puerto Rico nor rendered reports to the Department of State, so it was very difficult to initiate a claim against them.

For this reason, it is the duty of the Legislature to amend the regulations in effect in order to temper them to our judicial reality.

Thus, the Legislature deems it necessary to take additional steps to protect Puerto Rican consumers who acquire real property located outside of the Commonwealth of Puerto Rico within the framework of the purposes of Act No. 10 of April 26, 1994, as amended, known as the “Act to Regulate Real Estate Business and the Profession of Real Estate Broker, Salesperson, or Companies in Puerto Rico.”

***BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:***

Section 1.- The definitions of Section 2 of Act No. 10 of April 26, 1994, as amended, are hereby amended and arranged alphabetically [in Spanish], to read as follows:

“Section 2.- Definitions.-

For the purposes of this Act, the following words and phrases shall have the meanings stated below, except when the context clearly states otherwise:

- (a) ‘Advertisement’ – any oral, written, graphical, pictorial announcement or otherwise presented, made for the purpose of offering, describing, or otherwise representing a property or any aspect thereof.
- (b) ‘Non-profit Real Estate Business Corporations or Associations’ – any non-profit private association or corporation whose members are engaged in the real estate business, whether as brokers, salespersons, or companies and whose purpose is to set norms and programs for the subsequent development of said business.
- (c) ‘Certificate of Registration’ – the certificate issued by the Department of Consumer Affairs to brokers, salespersons, real estate businesses, or proprietors who engage in the sale or offering for sale in the Commonwealth of Puerto Rico real property located outside of the Commonwealth of Puerto Rico, whether through sales contracts on installments, in cash or any other manner.
- (d) ‘Buyer’ – any person who is the acquiring party in a real estate transaction of real property located in or outside of the Commonwealth of Puerto Rico.
- (e) ‘Brokerage Contract’ – the agreement whereby a person is bound to render services as an intermediary with a third

party in exchange for payment to perform a real estate transaction, as defined in this Act.

- (f) 'Promise of Sales Contract' – any direct or indirect, immediate or deferred bilateral contract which binds the parties to convey title of real property located in or outside the Commonwealth of Puerto Rico.
- (g) 'Real Estate Broker' – a natural person who holds a license to practice the profession of real estate broker issued by the Board and acts as intermediary, through the payment or the promise of payment of any compensation previously and mutually agreed upon between the parties that contract to execute in Puerto Rico a sales transaction, promise of sale, purchase or sale option, exchange, lease, auction, property management, or in the offering, promotion, or negotiation of the terms of all sales, sales options, promise of sale, lease management, or exchange of real property located in or outside of the Commonwealth of Puerto Rico. However, for the purposes of this Act, any type of transaction related to the purchase, sale, lease, exchange, action or management of real property by a broker in which he/she is the owner of said real property and acts in his/her own interest and not as the intermediary between two (2) clients, shall be deemed as practicing the profession of real estate broker.
- (h) 'Escrow Account' – an special account in a banking entity authorized to conduct business in the Commonwealth of Puerto Rico, in which Real Estate Brokers shall deposit all cash advances, down payments, good-faith deposits or other

deposits in trusts received by it, its partners, salespersons, or employees on behalf of any client or entity, until the transaction for which the same were deposited is made or concluded, and shall render account thereof at the time of making or concluding the transaction.

- (i) 'Deposit' – the sum of money that a buyer delivers to a real estate broker, salesperson or company before executing a real estate transaction, with regard to the real property located in or outside the Commonwealth of Puerto Rico, so that the real estate broker, salesperson, or company may initiate the necessary steps for said transaction to be achieved.
- (j) 'Real Estate Company' – any partnership or corporation which holds a license as a real estate company issued by the Board and is engaged in any of the activities that a real estate broker is authorized to perform under this Act.
- (k) 'Bond' – the accessory obligation carried out by the real estate broker, salesperson, or company or proprietor to guarantee and respond for any loss or damage that would be caused to any person for failure to comply with the provisions of this Act.
- (l) 'Initial Registration' – the first registration in the Department of Consumer Affairs of information and promotional material related to the sale of real property located outside the Commonwealth of Puerto Rico.
- (m) 'Subsequent Registration' – any registration made at the Department of Consumer Affairs, of information or

promotional or sales material related to the offer for sale or sale of real property located outside the Commonwealth of Puerto Rico, which has been preceded by an initial registration; or any modification of the information or promotional material related to the sale of said real property.

- (n) 'Board' – the Puerto Rico Board of Real Estate Brokers, Salespersons, and Companies.
- (o) 'License' – the official authorization issued by the Board to practice the profession of real estate broker, salesperson, or company in the Commonwealth of Puerto Rico.
- (p) 'Real Estate Company License' – the license issued to a partnership or corporation to engage in the real estate business in the Commonwealth of Puerto Rico.
- (q) 'Person' – any natural or juridical person.
- (r) 'Proprietor' – any person who owns real property located in or outside of the Commonwealth of Puerto Rico, who solicits and contracts the services of a real estate broker, salesperson, or company to carry out a transaction with regard to said real property.
- (s) 'Multiple Listing Service Program' – any type of program implemented by a group of brokers, salespersons, or companies that are members of the same business entity or private body in the real estates business, through which real estate brokers, salespersons and companies belonging thereto may include properties on a list, thus making it possible for every property thus included to be subject to a

real estate transaction by any other participating real estate broker, salesperson or company.

- (t) ‘Real Estate Transaction’ – any sales contract, promise to sell, option to buy or sell, exchange, leasing, auction, property management contract, or the offer, promotion or negotiation of the terms of a real estate sale, purchase-sale option, sales promise, lease, management or exchange located in or outside the Commonwealth of Puerto Rico, in which a real estate broker, salesperson, or company serves as intermediary.
- (u) ‘Real Estate Salesperson’ – the natural person who holds a license to practice the profession of real estate salesperson issued by the Board, and is employed or contracted as independent contractor, directly or indirectly, through the payment of any compensation, by a real estate broker to perform under his/her direction, control, supervision, and responsibility any of the activities authorized by this Act to a real estate broker. The Real Estate Salesperson shall be bound to comply and keep the Board informed of his/her place of business at all times in order to comply with this provision.”

Section 2.- Section 13 of Act No. 10 of April 26, 1994, as amended, is hereby amended to read as follows:

“Section 13.- Bond.-

The Board shall issue to a real estate broker, salesperson, or company a license after the applicant has passed the proper examination and has posted bond in favor of the Commonwealth of Puerto Rico, and deposited it

with the Board, in the amount of ten thousand (10,000) dollars in cases of real estate broker or salesperson licenses and in the amount of twenty thousand (20,000) dollars in cases of real estate companies. Said bond shall be issued by an insurance company duly authorized to do business in the Commonwealth of Puerto Rico, within a term of thirty (30) days after the Board has issued or renewed the corresponding license. The real estate broker, salesperson, or company shall be bound to inform in writing to the Department of Consumer Affairs the name, physical and mailing address, and telephone number of the insurance company that has issued the bond. The bond shall include the condition that the applicant or person who obtains the license shall comply with all the provisions of this Act and the rules and regulations adopted thereunder. The bond shall be surety for any loss or damage caused to any person for any failure to comply with the provisions of this Act or the rules and regulations issued thereunder. Said bond shall also stipulate that the revocation of a license shall not affect the effectiveness of the bond with regard to original claims for acts incurred prior to the date of said revocation.

Any person who suffers losses or damages due to any act or omission by a real estate broker, salesperson, or company may file a suit pleading redress for the loss or damages suffered against the insuring company directly or the broker, salesperson, or company, or against both.”

Section 3.- Section 21 of Act No. 10 of April 26, 1994, as amended, is hereby amended to read as follows:

“Section 21.- Escrow Accounts – Special Accounts

- (a) The real estate broker or company shall maintain an account (designated as a ‘special account’) in a bank established in the Commonwealth of Puerto Rico, which



shall be kept separate from the business operating account or his/her personal account, and in which he/she shall deposit all down payments, deposits in good faith, and other fiduciary deposits received by him/her, his/her partners, salespersons, or employees, from any buyer or entity shall be kept, until the transaction for they were deposited is performed or completed, and shall account for them when the real estate transaction is carried out or completed.

- (b) The Real Estate Broker or Company shall be bound to report to the Department of Consumer Affairs, within thirty (30) days after obtaining the license issued by the Board, a certification of the bank in which the escrow account has been opened, which shall include the following: the name, address and telephone number of the bank, and the special account number. In addition, he/she shall be bound to keep a record of all funds deposited therein. These records shall state the date, from whom the funds were received, the date of deposit, the date of withdrawal, and any other information related to the real estate transaction. He/she shall also clearly indicate the purpose for which the funds are deposited and to whom the money belongs.
- (c) The Real Estate Salesperson shall be bound to inform in writing to the Department of Consumer Affairs, within thirty (30) days after obtaining the license issued by the Board, a real estate broker authorization to use his/her escrow account consigning the name, address, telephone number of the banking institution, and account number. The

deposit, option, advance or down payment received by a salesperson shall be deposited in the escrow account or special of an authorized real estate broker. Said broker shall be responsible for that account, as pertinent.

These reports shall be subject to the inspection of the Board and the Department of Consumer Affairs. The real estate broker, salesperson or company shall be bound to present within a term of thirty (30) days after obtaining the license issued by the Board, a written authorization which shall empower the Department of Consumer Affairs to review the escrow account.”

Section 4.- Section 23 of Act No. 10 of April 26, 1994, as amended, is hereby amended, to read as follows:

“Section 23.- Powers of the Department of Consumer Affairs.-

The Department of Consumer Affairs is hereby empowered to supervise the real estate business in the Commonwealth of Puerto Rico and the sale in the Commonwealth of Puerto Rico of real estate located outside the Commonwealth of Puerto Rico. Pursuant to the provisions established below and to the purposes established above, the Department of Consumer Affairs may:

- (a) Carry out investigations, *motu proprio* or by petition of an interested party about real estate proprietors, planners, developers, brokers, salespersons, or companies that execute transactions with regard to properties located in or outside of the Commonwealth of Puerto Rico, for violations of any act or practice prohibited under this Act. Provided that when the complaint is filed, the complainant shall provide evidence that he/she has previously

required the real estate proprietor, planner, developer, broker, salesperson, or company to cease and desist from the prohibited act or practice or to comply with the pertinent provisions, which they have not done.

- (b) Require that any real estate proprietor who sells or offers to sell real estate in Puerto Rico which is located outside of the Commonwealth of Puerto Rico post a bond.
- (c) To advise consumers of those laws that protect them when buying real property located in or outside the Commonwealth of Puerto Rico, through announcements or the media. In the case of the sale of property located outside the Commonwealth of Puerto Rico, the proprietor may be required to pay for said announcements before the Department of Consumer Affairs authorizes him/her to commence the sales operations.
- (d) Consider and adjudicate complaints filed by consumers under the provisions of this Act.
- (e) When the Department of Consumer Affairs, after the corresponding investigation, determines that a real estate broker, salesperson, or company has incurred in any practice prohibited by Sections 30 and 31 of this Act, it may request assistance from or intervention by the Department of Justice, and shall also notify the same to the Board not later than ten (10) working days for the pertinent action of the Board pursuant to this Act.
- (f) The Secretary of Consumer Affairs shall use all his/her powers and authorities that have been conferred onto him/her by Act No. 5 of April 23, 1973, as amended, for the investigation, handling,

adjudication, and disposition of the complaints that are brought before his/her consideration under the provisions of this Act.

- (g) The provisions indicated in this Section shall not limit the accountability of real estate corporations, businesses, partnerships, associations, trusts, organizations, proprietors, brokers, salespersons or companies in actions filed against them in any court of competent jurisdiction.
- (h) Establish a registry of natural and juridical persons engaged in the sale in the Commonwealth of Puerto Rico of real estate located outside of the Commonwealth of Puerto Rico.
- (i) In the exercise of his/her discretion and pursuant to the powers vested in him/her by law, direct the freezing of the posted bond, until any initiated administrative procedure is concluded by the Department or by the filing of a consumer complaint.”

Section 5.- Section 24 of Act No. 10 of April 26, 1994, as amended, is hereby amended to read as follows:

“Section 24.- Registry of Brokers, Businesses and Proprietors Engaged in the Sale of Real Property Located Outside the Commonwealth of Puerto Rico.-

Any person engaged in the sale in the Commonwealth of Puerto Rico of real property located outside of the Commonwealth of Puerto Rico whether through purchase sale contracts or promises, in installment or cash or otherwise, shall register as real estate broker, salesperson or company or proprietor in the Department of Consumer Affairs (DACO, Spanish Acronym.)

The Department of Consumer Affairs shall issue a Registration Certificate once the necessary investigations have been conducted and it

determines that the applicant meets all requirements. The registration certificate issued shall be non-transferable. This certificate shall be effective for the term of one (1) year as of the date of issue and be renewed annually. The renewals shall not be necessary when the applicant certifies in writing that he/she has determined that he/she will not longer be engaged in the sale or offering for sale of real property located in or outside the Commonwealth of Puerto Rico.

The real estate salesperson, broker, or company whose intention is to conduct business in representation of a proprietor shall previously require the latter a copy of the registration certificate in effect.

No person in the Commonwealth of Puerto Rico may be engaged in the sale of real property located outside the Commonwealth of Puerto Rico without having first obtained a registration certificate from the Department of Consumer Affairs.

The printed registration form provided for such purposes by the Department of Consumer Affairs shall contain:

- (a) The name or corporate name of the applicant, the main office address, and the address of any branch established in the Commonwealth of Puerto Rico, if any.
- (b) The name and address of any person with shares or interest in the business, whether as real estate principal, official, director, salesperson, broker, or company specifying the extent, nature, and title of the shares of each, in the operations of the business.
- (c) A listing of past business experiences.
- (d) A good conduct certificate from the Police of the Commonwealth of Puerto Rico, of the State of the United

States of America or of the foreign country in which he/she resides.

In the case of partnerships and corporations, a good conduct certificate shall be included for each partner, and in the case of a corporation, for each shareholder, director, and official thereof, as the case may be. The date, place and number of incorporation, the name and address of each incorporator or the articles of incorporation of the partnership shall be provided. In addition, the name of the residing agent or person authorized to receive summonses in the Commonwealth of Puerto Rico, as well as the certification of the Department of State authorizing them to do business in the Commonwealth of Puerto Rico shall be provided.

The Department of Consumer Affairs is hereby empowered to issue the corresponding registration certificates and to collect the fees set by regulations through Internal Revenue vouchers.

Section 24.1.- Semiannual Report to be Submitted as to Transactions of Real Property Outside of Puerto Rico

The Real Estate Broker shall submit a report to the Department of Consumer Affairs during the first week of each semester, of all sales to residents of the Commonwealth of Puerto Rico for the previous semester. Said report shall be a sworn statement signed before a Notary Public, which shall include the name and address of every buyer, exact location of each property, the sales price, the amount of advance payments, deposits, commissions, and all other conditions of the sale and its financing, and any other necessary information to keep the Department of Consumer Affairs fully informed about any transaction of this kind carried out in Puerto Rico.”

Section 6.- Section 27 of Act No. 10 of April 26, 1994, as amended, is hereby amended to read as follows:

“Section 27.- Bond, Proprietors of Real Estate Located Outside the Commonwealth of Puerto Rico.-

The Department of Consumer Affairs shall not register or issue any registration certificate whatsoever, unless the proprietor of the real property located outside of the Commonwealth of Puerto Rico has posted in favor of the Commonwealth of Puerto Rico and deposited in the Department of Consumer Affairs a bond in the amount of one million (1,000,000) dollars or six (6) percent of the sales price of each real property on the date any sale or option to purchase contract is executed, as determined by regulations. Said bond shall be approved by the Secretary of the Treasury and issued by an Insurance Company duly authorized to do business in the Commonwealth of Puerto Rico, or a mortgage security approved by the Secretary of the Treasury. The Insurance Companies that issue such bonds shall present evidence attesting that they are authorized to do business in the Commonwealth of Puerto Rico.

The Bond shall include the condition that the proprietor of the real property located outside the Commonwealth of Puerto Rico shall comply with all the provisions of this Act and the regulations adopted by virtue thereof, relative to the sale of real property located outside of the Commonwealth of Puerto Rico. Said bond shall also stipulate that the revocation of the registration certificate shall not affect the effectiveness of the bond with regard to claims originated for acts incurred prior to the date of revocation.

The cancellation of a bond shall have the result of rendering the registration ineffective until a new bond is posted. Said bond shall answer for any damages or losses caused to any person due to breach of contract and claims for defects or vices of the property, whether involving deception or

defective construction thereof or noncompliance with the provisions of this Act or the regulations issued thereunder.

Likewise, the bond shall remain in effect for two (2) years as of the date of execution of the final bill of sale of the real property.

Said bond shall not be required for the sale of residences located outside the Commonwealth of Puerto Rico when, as a result of the real estate transaction, the buyer receive the warranty provided by the Home Owners Warranty Program endorsed by the National Association of Home Builders.”

Section 7.- The Department of Consumer Affairs shall revise the regulations in effect pursuant to the provisions of this Act.

Section 8.- Should any Section, paragraph, subsection, norm or provision of this Act be repealed, amended or found null or unconstitutional, the remaining provisions and parts thereof shall remain in effect and shall apply to the extent possible. If its application to any person or circumstance is found null, its nullity shall not affect the remaining provisions of the Act, which shall remain in force without resorting to the nullified provision.

Section 9.- This Act shall take effect immediately after its approval.



## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 118 (H.B. 127) of the 2<sup>nd</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to amend, add, and designate in alphabetical order the definitions of Section 2; to amend Sections 13, 21, 23, 24, and 27 of Act No. 10 of April 26, 1994, as amended, known as the “Act to Regulate Real Estate Business and the Profession of Real Estate Broker, Salesperson, or Companies in Puerto Rico;” and to provide for the revision of the regulations in effect,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 27<sup>th</sup> of November of 2006.

Francisco J. Domenech  
Director