

(H. B. 1179)

**(No. 152)**

(Approved November 1, 2007)

## **AN ACT**

To add a third paragraph to Section 76 of Act No. 198 of August 8, 1979, as amended, known as the “Mortgage and Property Registry Act,” in order to establish that in those final judgments in which the registry defect is based on any defect of form, the authorizing notary is hereby authorized to file an administrative appeal.

### **STATEMENT OF MOTIVES**

The purpose of the Property Registry is the registration of transactions and contracts relating to real property through a public record system of titles containing the acquisitions, modifications and extinctions of domain and other real rights on said property, and the recordable rights on same, and those judicial opinions which may affect the legal capacity of the owners of record.

Each Section of the Property Registry is in the charge of a Registrar, who is the head of the office and as such intervenes in all the activities that take place therein. His/her most important function is to pass judgment on the titles presented in the Registry.

The Registrars pass judgment on the legality of all types of documents for which an entry is requested. Said judgment includes the extrinsic forms of the documents presented, the competence of the grantors and the validity of the transactions and contracts contained in these documents. The Registrars shall base their judgment of the transactions and contracts to be recorded on the documents presented, the existing registry entries and the statutes.

If the Registrar finds any defect in the document, he/she shall notify said judgment in writing to the presenter and the attesting notary for the defect to be corrected.

The presenter or the interested party shall correct the defect indicated by the Registrar. If in disagreement with the judgment, the interested party may request a revised judgment. If the Registrar decides to uphold his/her original judgment, then the interested party may file an administrative appeal before the Supreme Court of Puerto Rico. The high forum shall resolve as it deems is in agreement with the law, and in consequence, it shall decide whether to confirm or repeal the judgment of the Registrar.

The Supreme Court of Puerto Rico, in the case of Benjamín Juarbe Martínez v. Registrador, 2002 T.S.P.R. 32, resolved that notaries who authorize public documents, per se, are not an interested party with legal standing to file an administrative appeal against the judgments made by the Registrar with respect to documents filed before him/her.

A commentator analyzed this matter several years ago and concluded that notaries are expressly excluded from the concept of interested persons that can file administrative appeals. According to that commentator, that exclusion does not apply “*para el caso en que la suspensión o denegación de la inscripción se funde en defectos del instrumento, en cuya hipótesis sí estará el Notario directamente interesado, admitiéndose entonces su legitimación procesal activa.*” [“in the event that the suspension or denial of registration is based on defects in the instrument, under which hypothesis the notary shall certainly be directly concerned, and his/her active procedural legitimation shall then be admitted. (Our translation)”] Eduardo Vázquez-Bote, Elementos de Derecho Hipotecario Puertorriqueño (1973), p. 333.

In a previous case it was already stated by a Registrar that the notary does not have the legal capacity to appear per se in an administrative appeal. Even though the statement was made and was not resolved, some statements that deserve consideration were in fact made.

*“No es necesario que discutamos el planteamiento del Registrador en el sentido de que el notario no tiene capacidad jurídica para comparecer ante nos en este recurso, debido a que además de comparecer por sí también compareció en representación profesional de la parte interesada, Anilda L. Quiñones Núñez. Nuestra jurisprudencia interpretativa de la Ley Hipotecaria parece así sostenerlo, pero es conveniente recordar que la vigente Ley Hipotecaria Española y su Reglamento, los cuales son posteriores a nuestra Ley, al tratar el recurso gubernativo disponen que éste pueda ser entablado por el notario autorizante del título, en todo caso. [“It is not necessary to discuss the standpoint of the Registrar to the effect that the notary does not have legal standing to appear before us in this appeal, because, in addition to appearing per se, he/she also appeared as the professional representation of the interested party, Anilda L. Quiñones-Núñez. Our case law interpreting the Mortgage Law seems to sustain it thus, but it is convenient to recall that the Spanish Mortgage Law in effect and the Regulations thereof, which are subsequent to our Act, in dealing with the administrative appeal provide that the same may be initiated by the attesting notary of the title, in any case. (Our translation)] Art. 112, Reglamento para la Ejecución de la Ley Hipotecaria de España [Regulation for the Execution of Mortgage Law of Spain.]*

*La explicación para esta disposición del Reglamento Hipotecario Español que autoriza al notario a establecer a nombre propio el recurso gubernativo es de fácil inteligencia. Cuando el Registrador suspende o deniega la inscripción de un título*

*es porque estima que éste adolece de faltas. Si el título es un instrumento público, la calificación del Registrador envuelve, aunque sea implícitamente, una especie de censura para el notario autorizante, cosa que inevitablemente ha de ser un interés personal y profesional para el notario. También puede afectar su prestigio profesional. Si el notario no está conforme con la calificación recaída se produce una divergencia entre Registrador y Notario, y como, aunque no es probable, es posible que la calificación del Registrador sea equivocada o improcedente, parece justificada la disposición moderna española de permitir al notario recurrir contra la calificación Registral.”* [The explanation for this provision of the Spanish Mortgage Regulation authorizing the notary to establish the administrative appeal on his/her own behalf is easily understood. When the Registrar suspends or denies the registration of a title it is because he/she deems that it has defects. If the title is a public instrument, the judgment of the Registrar involves, although implicitly, a sort of censure for the authorizing notary, which shall inevitably be of personal and professional interest for the notary. It may also affect his/her professional prestige. If the notary is not satisfied with the judgment issued, a divergence between the Registrar and the Notary is produced, and since it is possible, although unlikely, that the judgment of the Registrar may be in error or inappropriate, the modern Spanish provision of allowing the notary to resort to filing against the judgment of the Registrar seems to be justified. (Our translation)"] *Quiñones Núñez v. Registrador*, 104 DPR 194, pp. 200-201.

The decision of the Supreme Court in the cited case of *Jiménez-Martínez* is based on the provisions in Section 88.1 of the General Rules for the Execution of the Mortgage and Property Registry Act, which expressly states that “*notarios que hubieren autorizado los instrumentos a los que se les haya señalado defecto no podrán recurrir en su propio nombre.*” [“Notaries who have authorized the

instruments which have been found to have defects shall not resort to filing in their own behalf. (Our translation)"]

Such prohibition is not contained in the Mortgage Law, and there is no legal basis to preserve said prohibition. Especially when in Section 63 of said statute it is established that the attesting notary “who, by mistake causes an omission which impedes the registration of a transaction or contract in accordance with the provisions of this subtitle shall immediately make the correction upon demand, issuing a new document at his own expense, if possible, and compensating the interested parties for the damages caused by his mistake, in every case.”

It is certainly necessary and convenient to the public interest to establish that in those judgments in which the registration defect is based on a defect of form, the authorizing notary is hereby authorized to file an administrative appeal.

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

Section 1.— A third paragraph is hereby added to Section 76 of Act No. 198 of August 8, 1979, as amended, known as the “Mortgage and Property Registry Act,” to read as follows:

“Section 76.— Any interested party may file an appeal in the Supreme Court of Puerto Rico to prevent a Registrar from making a final determination refusing the entry requested. Nevertheless, an appeal may not be filed by anyone who has not filed the writ provided in Section 70, requesting a reconsideration of the determination, in due time.

An interested party may also file an administrative appeal when, after having recorded the title presented, the Registrar refuses to admit the full value and legal effect of the title to the entry as requested.

In those final judgments in which the registry defect is based upon any defect of form the authorizing notary is hereby legally authorized to file an

administrative appeal. In any case, the notary shall comply with the provisions established in Section 63 of this Act.”

Section 2.— This Act shall take effect immediately after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 152 (H.B. 1179) of the 6<sup>th</sup> Session of the 15<sup>th</sup> Legislature of Puerto Rico:

**AN ACT** to add a third paragraph to Section 76 of Act No. 198 of August 8, 1979, as amended, known as the “Mortgage and Property Registry Act,” in order to establish that in those final judgments in which the registry defect is based on any defect of form, the authorizing notary is hereby authorized to file an administrative appeal,

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

In San Juan, Puerto Rico, today 31<sup>st</sup> of January of 2008.

Francisco J. Domenech  
Director