

(S. B. 1121)

(No. 172-2009)

(Approved December 16, 2009)

## **AN ACT**

To create the “Tourist Residential Project Lien Act,” in order to empower tourist complexes or resorts to collect any assessments authorized under equitable easements and to constitute such assessments into statutory liens.

### **STATEMENT OF MOTIVES**

One of the modalities of the tourist industry is the development of tourist complexes, known as resorts. These resorts are planned communities with tourist facilities, such as hotels, timeshares, golf courses, tennis courts, marinas, residences, and retail stores. These resorts are usually developed in land with an extension of five hundred (500) or more *cuerdas*. They typically have a large number of common areas, such as entrances, streets, and green areas, which require attention under centralized services, such as security and landscape maintenance. In addition, such resorts need to accrue reserves to renovate common facilities, replace equipment and personal property, and make building improvements.

The funds to run the operation of common services and facilities are obtained from assessments charged to all real property owners in the resort. The power to approve assessments arises from a restrictive covenant or equitable easement that encumbers the entire land that comprises the resort and establishes the administrative framework for the community.

For the past forty (40) years, several resorts have been developed in Puerto Rico, various others are currently under construction, and countless others in planning. One of the most common problems encountered by resort developers and property owners is the fact that the requirement to pay assessments is not secured by a lien on resort property. Delinquency rates can be high, forcing administrators to lower maintenance standards, postpone renovation works, and discontinue improvement works, all of which is detrimental to property values and the resort's aesthetics and image. This, in turn, adversely affects the image of Puerto Rico as a tourist destination.

On the other hand, having a lien to secure payment of assessments would enable resorts to obtain loans against future revenues, thus facilitating the building of common improvements that must be carried out over time in order to maintain and improve such resorts.

The development and strengthening of the tourist industry in Puerto Rico is a priority of this Government of Puerto Rico. Proof of this is the fact that, in all resorts in Puerto Rico, there are components that benefit from incentives granted by the Government of Puerto Rico, such as tax exemptions and/or financial participation.

Therefore, the Government has a compelling interest in keeping resorts in optimum conditions, and preventing their deterioration over time. The most effective manner to achieve this goal is by providing owners, developers, and/or administrators with a tool that enables them to collect assessments to defray common expenses. For such reason, this measure authorizes the creation of a lien by operation of law on all resort properties in order to secure the payment of assessments to defray common expenses. This lien shall have priority over all other encumbrances, except for: the fiscal lien that secures transferred delinquent tax debts pursuant to the provisions of Act No. 21 of June 26, 1997, as amended,

known as the “Tax Debts Sale Act”; the lien in favor of the Municipal Revenue Collection Center (CRIM, Spanish acronym) for collecting real property taxes; the lien on imposts on benefits established in Tourism Improvement Districts, as defined under Act No. 207 of August 8, 1998, as amended, known as the “Tourism Improvement Districts Act of 1998”; the lien on the special tax levied in Commercial Improvement Districts or Residential Improvement Zones, as established under Act No. 81 of August 30, 1991, as amended, known as the “Autonomous Municipalities Act of 1991,” as amended; any lien constituted before the effective date of this Act; and any tacit statutory lien that secures payment of any fees for benefits used to finance public structures.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Section 1.—Title.—

This Act shall be known as the “Tourist Residential Project Lien Act.”

Section 2.—Public Policy.—

It is the public policy of the Government of Puerto Rico that resorts be kept in first-rate conditions by providing the property owners, developers, and/or administrators of such resorts with a tool that enables them to collect assessments to defray maintenance, improvement, and operating expenses, all of which shall inure to the benefit of the Island’s tourist industry.

Section 3.—Definitions.—

1) Constituent Documents.—Shall mean the master deed; supplemental deeds; equitable easements; easements of any kind; restrictive covenants; design, building, or architectural guidelines; and any norms or regulations established from time to time by the owner and/or developer of the Tourist Residential Project or any administrative body of the Tourist Residential Project.

2) Common Element.—Shall mean any personal or real property that the owner and/or developer of the Tourist Residential Project or the administrative

body owns, holds under lease, or otherwise owns, encumbers, or has ownership rights thereof, which is determined under the constituent documents to be necessary from time to time for the use and enjoyment of owners, including, but not limited to, the main entrance, security stations, streets, signs, lighting posts, jogging, bicycle or hiking trails, visitor's parking lots, green areas, gardens, lakes, and trees.

3) Common Expenses.—Shall mean any estimated or actual expenses incurred or to be incurred for the owners' benefit and enjoyment, including any reserve, as determined to be necessary and/or appropriate from time to time under the constituent documents, including, but not limited to, expenses concerning security, operations, repairs, replacement and/or maintenance of common elements, and expenses related to capital improvements in common elements or property destined to be a common element. Common expenses do not include expenses incurred in the initial development or original construction of the Tourist Residential Project.

4) Assessments.—Shall mean, as a whole, the basic assessment, the special assessment, and the specific assessment as established in the constituent documents or from time to time by the owner of the Tourist Residential Project or any body created to administer the Tourist Residential Project.

5) Basic Assessment.—Shall mean the assessment authorized under constituent documents to defray common expenses and capital improvements in a Tourist Residential Project.

6) Special Assessment.—Shall mean the assessment authorized under constituent documents to defray unforeseen common expenses or capital improvements, deficiencies in common expense estimates, expenses in excess of estimates, delinquency in the payment of assessments, special projects, improvements, developments, or construction projects in common elements, or any other kind of expense related to common elements or capital improvements in a Tourist Residential Project.

7) Specific Assessment.—Shall mean the assessment authorized on any unit under constituent documents for administrative and/or operating expenses regarding the rendering of any specific service to the unit’s owner; expenses incurred to make the unit compliant with the constituent documents; and expenses incurred as a consequence of the owner’s behavior or that of guests, relatives, agents, or contractors, in violation of any constituent document or provision or section of any law, regulation, ordinance, or order from any governing, quasi-governing, or administrative body of the Tourist Residential Project in question.

8) Tourist Residential Project.—Shall mean an integrated development of a fundamentally tourist nature which has at least one component that has been granted a concession under Act No. 78 of September 10, 1993, as amended, known as the “Tourism Development Act of 1993,” or any successor law.

9) Owner.—Shall mean the proprietor or holder of a property right in fee simple over a unit or part thereof, including any person who is a registered owner of the unit or part thereof as co-owner or who has an indivisible interest that includes his/her heirs, successors, and assignees.

10) Unit.—Shall mean a construction unit that is sufficiently delimited and suitable for any kind of independent use within a Tourist Residential Project, including the land on which said unit is located and any improvement, that constitutes a separate land lot for purposes of Act No. 198 of August 8, 1979, as

amended, known as the “Mortgage and Property Registry Act” (Sections 2001 *et seq.* of Title 30), and which can be subject to ownership or transfer, and may be encumbered by a lien.

Section 4.—Assessments for Payment of Common Expenses and Capital Improvements.—

(a) Owners shall be required to pay assessments as established in the constituent documents of Tourist Residential Projects.

(b) No owner may be exempted from the requirement to pay assessments by waiving the use and enjoyment of common elements or by abandoning his/her unit or relinquishing his/her right over the unit.

(c) Assessments over each unit, any penalties, late fees, or interest to be paid by the owner for delinquency in the payment of assessments shall be determined, fixed, and imposed as specified in the constituent documents.

Section 5.—Requirement for Owners to Pay Assessments.—

(a) Assessments on a unit, pursuant to the provisions of this Act, shall constitute a statutory lien on said unit, which shall have priority over any other liens on the property, regardless of their nature or whether the unit has been encumbered before or after any assessment is made, except that the same shall be less than:

(i) The fiscal lien that secures transferred delinquent tax debts pursuant to the provisions of Act No. 21 of June 20, 1997, as amended, better known as the “Tax Debts Sale Act.”

(ii) The lien related to the assessments on property imposed under Act No. 83 of August 30, 1991, as amended, better known as the “Municipal Property Tax Act of 1991,” or any successor law.

(iii) Any lien on account of imposts for benefits established in a Tourism Improvement District, as defined under Act No. 207 of August 8, 1998,

better known as the “Tourism Improvement District Act of 1998,” or any successor law.

(iv) Any lien on account of a special tax imposed on a Commercial Improvement District or Residential Improvement Zone established under Act No. 81 of August 30, 1991, as amended, better known as the “Autonomous Municipalities Act of 1991.”

(v) Any tacit statutory lien that secures the payment of any imposts for benefits used to finance a public structure.

(vi) Any liens constituted prior to the date of effectiveness of this Act.

(b) After the first sale, the voluntary acquirer of a unit shall be severally liable, together with the seller, for the payment of any sums related to assessments owed by the latter until the time of transfer, without impairment of the acquirer’s right to file a claim against the other party to the sale for the amounts he/she has paid as a joint debtor. However, an involuntary acquirer shall only be liable for assessments that have arisen and have not been paid during the eighteen (18) months preceding the unit’s acquisition without impairment of the acquirer’s right to file a claim against the other party to the sale for the amounts he/she has paid as a joint debtor. For purposes of this Act, an involuntary acquirer shall be deemed to be a creditor whose fundamental interest is not to become the owner of the unit, but rather to protect a financial claim usually constituted prior to debt accrual on account of assessments on the unit.

(c) The lien for assessments shall be enforceable against any person who is the unit's owner, even if the same is not recorded in the Property Registry.

(d) Owners shall be delinquent if they do not pay assessments within thirty (30) days as of their due date. After said thirty (30) days have elapsed, the owner shall be notified in writing and he/she shall have fifteen (15) days to remit his/her payment. If such fifteen (15) days elapse and no payment is received from the owner, the agent authorized by the Tourist Residential Project shall collect, as part of the assessments, any interest on the amount owed at the rate specified in the constituent documents in question, or in its default, at an annual rate of ten percent (10%), as of the date fixed for payment. Such additional sum on account of interest shall be collected together with the principal of the assessments that gave rise to such interest, as well as any demand for payment costs, if any. As soon as owners incur delinquency, and after such fifteen (15) days have elapsed, the Tourist Residential Project, through its agent, may immediately seize the unit and any owner's personal or real property in an amount sufficient to cover the payment owed, and shall, within ten (10) days of the attachment, notify such attachment in writing to the owner of the seizure instituted. Such notice shall be sent to such owner's last known address according to any available records. If the owner believes that there were irregularities in the notice of assessment or in the notice of attachment by the Tourist Residential Project's agent, he/she may file a petition for review before the Court of First Instance of Puerto Rico within the inextensible term of thirty (30) days from the date the notice of attachment is received, if he/she is a resident of Puerto Rico, and within the inextensible term of forty-five (45) days if he/she is not a resident of Puerto Rico. If the owner fails to file a petition for such review, the Tourist Residential Project or its agent shall then proceed, as soon as possible, to sell the property thus seized at public auction in order to collect assessments, including fees, costs, and interest, as of the thirty-first day from the

date of the notice of attachment. The sale shall be carried out in the manner prescribed in Sections 4.03 and 4.05 of Act No. 83 of August 30, 1991, as amended, better known as the “Municipal Property Tax Act of 1991.”

Section 6.—Application.—

This Act shall not apply to any assessments or debts of Tourism Improvement Districts, as defined by Act No. 207 of August 8, 1998, as amended, or of Commercial Improvement Districts or Residential Improvement Zones, by virtue of Act No. 81 of August 30, 1991, as amended, known as the “Autonomous Municipalities Act of 1991.”

Section 7.—Severability of Provisions in this Act.—

If any clause, paragraph, section, or part of this Act were ruled unconstitutional by a competent Court, the ruling to such effect shall not affect, impair, or invalidate the remaining provisions of this Act. The effect of such ruling shall be limited to the clause, paragraph, section, or part thus ruled to be unconstitutional.

Section 8.—Effectiveness.—

This Act shall take effect thirty (30) days after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 172-2009 (S. B. 1121)** of the **2<sup>nd</sup> Session of the 16<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to create the “Tourist Residential Project Lien Act,” in order to empower tourist complexes or resorts to collect any assessments authorized under equitable easements and to constitute such assessments into statutory liens.

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

In San Juan, Puerto Rico, on the 30<sup>th</sup> day of October, 2012.

María del Mar Ortiz Rivera