

(S. B. 1720)

**(No. 132)**

(Approved September 2, 2010)

## **AN ACT**

To establish the “Real Property Market Stimulus Act” for the purposes of creating an incentive program to expedite and promote the purchase of housing and other real estate through the granting of benefits such as exemption from real property tax and the special real property state tax in connection with Newly-built Properties acquired within the time frame set forth herein, exemption from taxes on capital gains generated from the sale of certain real property, exemption from income taxes on the leasing of residential property for a term of ten (10) years, and exemption from fees and duties on public instruments; to amend Section 11 of Act No. 75 of July 2, 1987, as amended, known as the “Puerto Rico Notarial Act,” in accordance with the provisions of the “Real Property Market Stimulus Act”; to appropriate the sum of three million five hundred thousand dollars (\$3,500,000) to the Legal Aid Society of Puerto Rico; to appropriate one million dollars (\$1,000,000) to the Department of Justice to be transferred to the Special Fund for the Modernization and Mechanization of the Operations of Property Registry; and for other related purposes.

### **STATEMENT OF MOTIVES**

Since 2006, Puerto Rico has been undergoing an economic crisis that has severely affected different sectors of the local economy. The construction and housing sector is not the exception. During 2009, sales of approximately five thousand (5,000) newly-built housing units were reported, a marked reduction when compared to previous years. Such trend continues as of 2010. The reported sales for the first semester of 2010, were one thousand seven hundred and twenty-six (1,726) units, which would project an annual number of sales of approximately three thousand five hundred (3,500) new units for this year.

This situation worsens by the difficult financial situation of many of our citizens and the financial status of local banks that have been affected by high loan delinquency rates, which renders the granting of new financing difficult. It is becoming more difficult for our families to acquire or build their own homes. More stringent qualification standards, higher indebtedness rates, and credit-related problems are among the problems encountered when purchasing new housing.

Such combination of factors has had devastating consequences for the housing construction sector, which is estimated to have lost a great part of its labor force in the last three years. Since 2004, approximately sixty thousand (60,000) construction industry-related jobs have been lost, this largely due to the constant reduction in housing sales while a surplus of newly-built housing accrued.

Insofar as the newly-built housing sales reduce significantly, the post-closing economic chain that activates with the sale of a housing unit is interrupted. In that sense, the multiplying economic effect in which real estate brokers, notaries, engineers and/or architects, appraisers, moving companies, hardware stores, sales associates, and other sectors of the economy nourish from the closing of a housing unit, is interrupted.

All this prevents more families and citizens from having real options for acquiring a safe and decent housing. At the same time, it promotes the informal construction or acquisition of housing units by families in locations and by means on the fringes of the law and planning.

This Government is committed to fostering the economic development and the protection and generation of jobs, as well as expediting the acquisition of decent and safe housing for the people of Puerto Rico. By virtue of the aforesaid, the “Real Property Market Stimulus Act” is established for the purpose of creating an incentive program for the acquisition and leasing of housing, the construction of predesigned homes, and the acquisition of certain non-residential real property.

Specifically, this Act seeks to incentivize the purchase of newly-built residential real properties suitable for family living that have not been occupied, without limiting its application to the acquisition of real property intended as the main residence of the acquirer. Likewise, it also seeks to incentivize the construction of reinforced concrete predesigned or prefabricated houses acquired from bona fide predesigned or prefabricated home companies. Incentives shall be granted to both those who acquire a newly-built housing unit, an existing housing unit or a predesigned or prefabricated housing unit, and those who sell existing real property from September 1, 2010 to June 30, 2011, so that the latter be able to acquire, add or build a new property. Incentives shall also be granted to those who acquire or sell a non-residential real property whose value is less than three million dollars (\$3,000,000) from September 1, 2010 to June 30, 2011, in order to promote this activity in small and medium-size businesses.

Furthermore, in order to compensate both the Legal Aid Society of Puerto Rico and the Property Registry for the funds that they would cease to receive as a result of the exemption from the payment of stamps and duties on different public instruments, they are hereby appropriated the sum of three million five hundred thousand dollars (\$3,500,000) and one million dollars (\$1,000,000) respectively.

Finally, the leasing of newly-built and existing residential real properties is incentivized through this Act so as to provide a housing alternative for those persons who are unable to acquire a residence.

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

Article 1.—Short Title.—

The “Real Property Market Stimulus Act” is hereby created to read as follows:

Section 1.—Definitions.—

For the purposes of this Act the following terms and phrases shall have the meaning stated below:

(a) “Newly-built Property” means:

- 1) Any newly-built residential real property located in Puerto Rico, suitable for family living that has not been occupied and is acquired from a Developer. In order for the real property to be deemed a Newly-built Property, the seller of the real property shall certify in writing to the acquirer, by means of a sworn statement, on or before the date of acquisition, that it is a newly-built real property and has not been previously occupied.
- 2) Any reinforced concrete predesigned or prefabricated single-story, two-story or elevated home acquired from a bona fide predesigned or prefabricated house company whose plans have been approved by the Regulations and Permit Administration (ARPE, Spanish acronym) on or before December 30, 2009, except by means of a dispensation of the Secretary of the Department of Consumer Affairs. In order for the predesigned or prefabricated homes to be deemed a Newly-built Property, the acquirer shall submit a copy of the sales contract executed between the acquirer and the predesigned or prefabricated homes company, and commence the construction thereof after obtaining a Construction Permit duly issued by ARPE or its succeeding agency between September 1, 2010 and June 30, 2011, and whose construction concludes on or before March 31, 2012, upon due filing of the Use Permit Application before ARPE or its succeeding agency.

- (b) “Eligible Lessor” means any individual, succession, corporation, partnership or trust, whether resident or non-resident of Puerto Rico, that leases any residential Newly-built Property or Qualified Property:
- (c) “Qualified Property” means:
- 1) Any existing residential real property located in Puerto Rico suitable for family living, other than a Newly-built Property, or
  - 2) Any existing non-residential real property located in Puerto Rico sold after September 1, 2010, but not later than June 30, 2011, whose sales price does not exceed three million dollars (\$3,000,000).
  - 3) Whose seller certifies in writing to the acquirer by means of a sworn statement, on or before the acquisition date, that the real property complies with one of the two requirements above.
- (d) “Code” means Act No. 120 of October 31, 1994, as amended, known as the “Puerto Rico Internal Revenue Code of 1994,” or any subsequent law replacing it.
- (e) “Developer” means any natural or juridical person, duly licensed as developer by the Department of Consumer Affairs, engaged in the construction business as entrepreneur or mainly responsible for the promotion, design, sale, construction of housing developments and project works, whether single or multistory; provided, that solely for the purposes of this Act the term “Developer” shall also include those financial institutions or any natural or juridical persons that, by virtue of a judicial, extrajudicial proceeding or by agreement of dation in payment or similar transaction become the successor of an interest of a Developer.

- (f) “Sale” means a contract between two parties—seller and purchaser—executing through a public deed before a Notary Public authorized to practice his/her profession in Puerto Rico, by means of which the title and ownership of a real property is transferred for a certain price.

Section 2.—Tax Exemption Applicable to Income Earned on Account of Residential Property Rent.—

- (a) Granting of Tax Exemption.—The income earned by any Eligible Lessor from the leasing of a residential property shall be fully exempted from Puerto Rico’s income taxes, including the alternate basic tax and the minimum alternative tax provided in the Code. The tax exemption herein provided shall apply to the income earned with respect to leasing contracts entered into after the effective date of this Act, including those entered into after June 30, 2011, as well as those entered into at the time of the approval of this Act.
- (b) Term of the Exemption.—The exemption herein provided shall only apply for a term of up to ten (10) taxable years, commencing on January 1, 2011, and ending on December 31, 2020.
- (c) The rent earned by any Eligible Lessor subject to the tax exemption provided herein shall not be subject to the withholding of income taxes at source. The benefits of this Section shall apply to those eligible taxpayers, regardless of whether they are residents or non-residents of Puerto Rico.
- (d) In order to avail him/herself of the benefits of the tax exemption provided herein, the Eligible Lessor shall include the rent earned in his/her Puerto Rico income tax return and the physical location of the real property and shall declare the rent as exempt income. Otherwise,

the net rent shall be taxed in accordance with the applicable provisions of the Code.

Section 3.—Special Tax to Any Individual, Succession, Corporation, Partnership or Trust on Net Long-Term Capital Gain.—

(a) Gain from the Sale of Qualified Property effected after September 1, 2010, but on or before June 30, 2011.

1) The total net long-term capital gain generated from the sale effected after September 1, 2010, but on or before June 30, 2011, of a Qualified Property shall be fully exempted from Puerto Rico's income taxes, including the alternate basic tax and the minimum alternative tax provided in the Code.

(b) Gain from the Sale of Property Acquired after September 1, 2010, but on or before June 30, 2011.—

1) The total net long-term capital gain generated from the sale of a Newly-built Property acquired by the seller carried out after September 1, 2010, but on or before June 30, 2011, shall be fully exempted from Puerto Rico's income taxes, including the alternate basic tax and the minimum alternative tax provided in the Code.

2) The net long-term capital gain generated from the sale of a Qualified Property acquired by the seller carried out after September 1, 2010, but on or before June 30, 2011, shall have fifty (50) percent exemption from Puerto Rico's income taxes, including the alternate basic tax and the minimum alternative tax provided in the Code. The remainder fifty (50) percent of the net long-term capital gain shall be subject to taxation, in accordance with the applicable provisions of the Code.

3) Certification of the Department of the Treasury.—Once the informative return related to the sale of a Newly-built or Qualified Property is received, the Department of the Treasury shall certify in writing on or before thirty (30) days to the acquirer that the real property is a Newly-built or Qualified Property and that the net long-term capital gain generated from the sale of such property shall be exempted, as applicable, from Puerto Rico's income taxes. The taxpayer shall include in the income tax return corresponding to the year of the sale a copy of the certification issued by the Department of the Treasury.

(c) General Provisions Applicable to this Section.—

1) In order to be entitled to claim the net long-term capital gain exemption provided in this Section, the taxpayer shall declare as totally or partially exempted, as the case may be, such gain in the income tax return corresponding to the year in which such gain was generated. Moreover, in the case of a net long-term capital gain generated from the sale of a Newly-built or Qualified Property, the taxpayer shall include in the income tax return corresponding to the year of the sale a copy of the certification issued by the Department of the Treasury, pursuant to the provisions of this Section.

2) The benefits provided in this Act shall only be available to the first seller and the corresponding first purchaser of each Newly-built or Qualified Property unit, and shall not apply with respect to any purchaser in any subsequent transfer, even when it occurs before June 30, 2011.

- 3) The payments related to the sale of a real property whose net long-term capital gain is subject to the exemption provided in this Section, shall not be subject to withholding of income taxes at source.
- 4) The benefits of this Section shall apply to eligible taxpayers regardless of whether they are residents or non-residents of Puerto Rico.
- 5) The benefits of this Section shall not be applicable insofar as the assignor of the real property covered hereunder is a person related to the acquirer of such real property. For these purposes, it shall be deemed that the assignor of the real property is a “related person” if the assignor and the acquirer are persons between which losses would not be allowed under Section 1024 (b) of the Code.

Section 4.—Use of the Losses from the Sale of a Qualified Property.—

- (a) Increase in the Limitation of Capital Loss Allowed Against Regular Income.—In the case of a taxpayer other than a corporation or partnership, the limitation mentioned in Section 1121(d)(2) of the Code with respect to capital losses that may be used by the taxpayer against his/her regular income for a determined tax year shall be five thousand (5,000) dollars insofar as the capital loss generated from the sale of a Qualified Property effected after the date of effectiveness of this Act, but on or before June 30, 2011.
- (b) Capital Loss Carry-over.—In the event that the taxpayer has a net capital loss generated from the sale of a Qualified Property effected after September 1, 2010, but on or before June 30, 2011, the carry-over of such loss shall not be limited to the succeeding five (5) years, but

rather it may be carried over up to a maximum of fifteen (15) years, pursuant to subsection (a) of this Section.

- (c) To be entitled to the benefits set forth in this Section, the taxpayer shall declare the sale in the income tax return corresponding to the year in which the loss was generated.

Section 5.—Exemption from Real Property Tax.—

The acquirer of a Newly-built Property between September 1, 2010, and June 30, 2011, shall be fully exempted for a five (5)-year term from real property tax imposed pursuant to the provisions of Act No. 83 of August 30, 1991, as amended, and/or Act No. 71 of July 2, 2010, with respect to such property. Such exemption shall be for a term of five (5) years and shall apply commencing on January 1, 2011, and ending on December 31, 2015.

Section 6.—Exemption from Special Real Property State Tax.—

The acquirer of a Newly-built Property between September 1, 2010 and June 30, 2011, shall be fully exempted from the special real property state tax imposed pursuant to the provisions of Act No. 7 of March 9, 2009, as amended, with respect to such property.

Section 7.—Exemption from the Collection of Fees and Duties for Public Instruments.—

All parties involved in the sale, effected after September 1, 2010, but on or before June 30, 2011, of a Newly-built Property shall be exempted from all kinds of charges on account of internal revenue stamps and vouchers required by law for the execution of public documents and their filing and recording in any public registry of the Government with respect to the sale, purchase, leasing, financing, creation of a mortgage of a Newly-built Property. In order to avail him/herself of the exemption herein, the owner and/or lessor shall submit a copy of the sworn certification of the Newly-built Property to be issued by the seller of the real

property, pursuant to Section 1 of this Act to the notary public, Registrar or any government entity before which the benefits of this exemption are claimed, and attached to any document to be filed with the Property Registry. Provided further, that the seller of a Qualified Property whose sale was effected after September 1, 2010, but on or before June 30, 2011, shall have a fifty (50)-percent exemption from any kind of charges on account of internal revenue stamps and vouchers required by law for the execution of public documents and their filing and recording in any public registry of the Government with respect to the sale or other transfer of said property. The seller of a Qualified Property whose sale was effected after September 1, 2010, but on or before June 30, 2011, shall be fully exempted from all kinds of charges on account of internal revenue stamps and vouchers required by law for the execution of public documents and their filing and recording in any public registry of the Government with respect to the cancellation of any mortgage encumbering such property, notwithstanding that the mortgage cancellation deed is executed after June 30, 2011. The purchaser of a Qualified Property who acquires such property after September 1, 2010, but on or before June 30, 2011, shall have a fifty (50)-percent exemption from any kind of charges on account of internal revenue stamps and vouchers required by law for the execution of public documents and their filing and recording in any public registry of the Government with respect to the purchase and mortgage of such property. Notarial fees and duties shall be governed by the provisions of the Puerto Rico Notarial Act, Act No. 75 of July 2, 1987, as amended.

Article 2.—The last paragraph of Section 11 of Act No. 75 of July 2, 1987, as amended, known as the “Puerto Rico Notarial Act” is hereby amended to read as follows:

“Section 11.—Duties of the Notary--Informative Return on Division, Merger, or Transfer of Real Estate and Tax Exemption Request.—

In the execution of deeds of division, merger or transfer of dominion, the transferor or the person who divides or merges shall be bound to execute and deposit in the office of the authorizing Notary the Informative Return on the Division, Merger or Transfer of Real Estate, at the time of the granting or not later than eight (8) days following such date...

...

In the case of the transfer of a residential real property, the notary shall be bound to inform and advise the acquirer that if his/her intention is to use the real estate property as the primary residence, he/she shall request the benefits of the real property tax exemption, pursuant to Section 2.01 of Act No. 83 of August 30, 1991, as amended, known as the “Municipal Property Tax Act of 1991.” The notary shall include this advice in the transfer deed.

In the case of transfers, alienations, or other transactions whereby real property that has full or partial exemption from the payment of fees on account of internal revenue stamps or vouchers required by law for the execution of public documents and their filing and recording in any public registry of the Government pursuant to the “Real Property Market Stimulus Act,” is disposed of or encumbered, the notary shall be bound to state, at the end of the corresponding deed, the applicability of the exemption granted in said Act, based on the representation of the parties.

Notaries shall be bound to submit monthly, to the Department of the Treasury and the Municipal Revenue Collection Center, the returns corresponding to the deeds executed before them during the previous month. Provided, that the Notary shall include together with such returns and attach to the corresponding

deed that is part of the public instrument protocol, a copy of the Newly-built Property certification to be issued by the seller of the real property, pursuant to Section 1 of Article 1 of the “Real Property Market Stimulus Act”.”

Article 3.—Special Appropriation.—

The Office of Management and Budget shall appropriate the sum of three million five hundred thousand dollars (\$3,500,000) to the Legal Aid Society in connection with duties not received on account of stamps, as provided in Act No. 47 of June 4, 1982, and Act No. 244 of September 2, 2004, corresponding to Fiscal Year 2010-2011. Furthermore, the Department of Justice shall be appropriated the sum of one million dollars (\$1,000,000) for the Special Fund for the Modernization and Mechanization of the Operations of the Property Registry corresponding to Fiscal Year 2010-2011. These appropriations shall originate from Joint Resolution 71 of July 2, 2010.

Article 4.—Rulemaking Authority.—

The Secretary of the Treasury shall establish through regulations, circular letter, or administrative determination, the necessary guidelines for the implementation of the provisions of this Act. The regulatory provisions amended or adopted pursuant to this Act shall not be subject to the applicable provisions of the Uniform Administrative Procedure Act, as amended.

Article 5.—Public Interest.—

This Act and the program established herein constitute information of public interest. Therefore, the Department of the Housing, the Department of Economic Development and Commerce, the Department of the Treasury, the Department of Consumer Affairs, the Housing Financing Authority, the Tourism Company and any related public agency, corporation, and instrumentality are hereby authorize to educate and inform the people about this Act, its program and benefits, and to promote this program outside of Puerto Rico in order to attract purchasers and

investors. It is vital and essential that the people be informed about all that pertains to the program established in this Act and that this program be promoted outside of Puerto Rico in order to maximize its economic stimulus impact.

Article 6.—Reports.—

The Secretary of the Treasury shall file in the Office of the Secretary of the Senate and the Office of the Clerk of the House on April 30, 2011 and on August 31, 2011, a thorough report on the economic impact, including, without it being limited to, the number of persons that have availed themselves of the benefits of this Act, the number of units sold, and the economic impact of the granting of the benefits of the exemptions provided herein.

Article 7.—Separability.—

If any article, section, subsection, paragraph, item, clause, phrase or part of this Act were ruled unconstitutional by a court with competent jurisdiction, the ruling thus issued shall not affect, impair or invalidate the remainder of this Act, being such effects limited to the article, section, subsection, paragraph, item, clause, phrase or part of this Act ruled unconstitutional.

Article 8.—Effectiveness.—

This Act shall take effect on September 1, 2010.

## **CERTIFICATION**

I hereby certify to the Secretary of State that the following **Act No. 132 (S. B. 1720)** of the **4<sup>th</sup> Session of the 16<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to establish the “Real Property Market Stimulus Act” for the purposes of creating an incentive program to expedite and promote the purchase of housing and other real estate through the granting of benefits such as exemption from real property tax and the special real property state tax in connection with Newly-built Properties acquired within the time frame set forth herein, exemption from taxes on capital gains generated from the sale of certain real property, exemption from income taxes on the leasing of residential property for a term of ten (10) years, and exemption from fees and duties on public instruments; etc.

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

In San Juan, Puerto Rico, on the 16<sup>th</sup> day of September, 2010.

Solange I. De Lahongrais, Esq.  
Director