

McV ALERT
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Fortuño Administration Files Tourism Development Legislation Package

On Sept 11, 2009, the Fortuño Administration, through the New Progressive Party majority delegation in the Puerto Rico House of Representatives and Senate, filed its much anticipated tourism development legislation package. Amendments to several tourism related laws have been proposed, including a new Puerto Rico Tourism Development Act of 2009 to revamp the existing tourism development initiatives legislation (see our McV Alert on this bill). Below are the major highlights of the proposed legislation package.

Amendments to the Puerto Rico Timeshare Act

This bill provides a summary foreclosure proceeding for mortgages and security interests encumbering timeshare intervals. Under current law, the only way to foreclose on mortgages and security interests encumbering timeshare intervals is pursuant to the Puerto Rico Mortgage and Registry of Property Act in the case of intervals which are real property and under the Puerto Rico Uniform Commercial Code in the case of intervals which constitute personal property. Both require filing judicial proceedings which can be long and expensive, thereby delaying the ability of the creditor to obtain title to the interval subject to foreclosure.

As proposed by the bill, in order to foreclose on a mortgage or a security interest, a demand notice is sent to the debtor/owner of the interval in question and if no defense is raised to the demand, the title to the interval passes to the creditor. However, if the debtor/owner raises a defense, foreclosure proceeds pursuant to court action.

Another proposed amendment to the Timeshare Act authorizes the transfer of intervals that are real property interests and the constitution of liens thereon pursuant to an affidavit as opposed to a deed. The effect of this amendment is to avoid the cumbersome and formal process of executing and filing deeds before the Registry of Property, as currently required by the Puerto Rico Mortgage and Registry of Property Act. Meanwhile, the new simplified process of filing these affidavits before the Registry of Property will save time and money for developers and timeshare owners alike.

Nautical Tourism Act

This bill creates a legal framework for the development of nautical tourism in Puerto Rico, including the mega yacht and charter segments. As such, it provides for the Tourism Company to be the new government entity empowered to certify operators. In addition, the act authorizes private concessions for the installation of offshore moorings to minimize anchoring; thereby protecting coral reefs, sea grass and other subsurface resources.

Amendments to the Tourism Improvement Districts Act

Act Number 207 of August 8, 1998 authorizes the creation of tourism development districts in Puerto Rico. These districts are a vehicle to finance capital improvements in tourism districts and provide an effective mechanism for the levying and collection of assessments on property in the district. Although the Tourism Development Districts Act was approved in 1998, no districts have been created under this Law. This is in large part due to the requirement of unanimity among property owners in order to create a district, as well as the cumbersome process for the collection of assessments. The amendment hopes to foster the creation of districts by requiring the consent of 2/3 of the owners of property in the district and by empowering districts to collect assessments directly from the owners of property in the district. The bill also authorizes the master developer to retain control of the district until 95% of the units planned for the district are sold.

Amendments to the Condohotel Act

The Puerto Rico Condohotel Act of 2008 created a special property regime for condohotels and rental management programs separate and distinct from the horizontal property and timeshare regimes. The Condohotel Act was passed to meet the needs of condohotel developers and managers regarding governance and maintenance of minimum standards in condohotels and rental management programs. In practice, certain sections of the Condohotel Act have proven to be ambiguous and constitute a roadblock to the effectiveness of the Act. The purpose of this bill is to correct ambiguities and clarify certain concepts so as to make the condohotel a viable property regime for condohotels and rental management programs.

Tourist Residential Development Liens Act

The maintenance of common areas and amenities in resorts such as, streets, landscaping and guard houses, as well as the delivery of services such as security and common area repair and maintenance is of critical importance in order to maintain resort aesthetics and quality standards. The costs of maintaining and improving resort common areas and delivering services is funded by assessments upon owners of property in resorts. However, the collection of assessments is difficult because the obligation to pay assessments is not secured by a lien on property. This bill purports to cure that problem by creating a lien on property in resorts subject to master covenants. The lien would be superior to all liens; except those established under the Tax Debts Sales Tax, Municipal Property Tax Act, Tourism Improvement Districts Act, Autonomous Municipalities Act, any tacit lien that guarantees the payment of any charges for benefits utilized to finance public structures, or any lien established before this law will come into effect. Therefore, it is expected that this lien will facilitate the collection of assessments and provide a mechanism for resorts to borrow money secured by revenue from the collection of future assessments.

Amendments to the Puerto Rico Tourist Company Act

The purpose of this bill is to simplify the composition and decision making process of the Tourism Company’s Board of Directors. Currently, the Board is composed of eleven (11) members, each representing specific business sectors. The bill reduces the number of members of the Board to seven (7) and eliminates the business sector requirements. Furthermore, this measure expands the jurisdiction of the Tourism Company in order to include all matters related to nautical tourism.

Amendments to the AFICA Enabling Act

This bill amends the Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority (AFICA) Act to clarify AFICA’s power to finance tourist facilities, including condohotels and tourism residences as an addition to the definition of “tourist facilities”. This amendment is necessitated in part by trends in hotel and resort development whereby core hotels are developed simultaneously with condohotel and residential units. The purpose of this bill is to ensure that AFICA remains a viable financing alternative for hotel and resort projects.

If you have any questions or comments, or wish additional information regarding the matters discussed herein, please contact any of the attorneys listed below.

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