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REAL ESTATE & FINANCE ALERT

Puerto Rico Homestead Protection Act of 2011

On September 13, 2011, the Governor of Puerto Rico signed into law Act No. 195, known as the Homestead Protection Act (the "Homestead Act") providing for the protection of the principal residence of every Puerto Rico domiciled individual or head of family.

The Homestead Act establishes that every Puerto Rico domiciled individual or head of family shall be entitled to possess and enjoy, as a protected homestead, a real property consisting of a parcel of land and the structure located thereon or a residential condominium unit, which real property or residence the individual or head of family legally possesses or owns and which is occupied exclusively by the individual or his or her family as the principal place of residence (the "Principal Residence").

The provisions of the Homestead Act cannot be waived and any agreement to the contrary shall be null and of no effect. The Principal Residence shall not be subject to attachment, judgment or foreclosure in connection with the payment of any debts except with respect to the following:

- Mortgages encumbering the Principal Residence;
- Federal and state tax collections;
- Amounts owed to contractors for repairs to the Principal Residence;
- Cases subject to United States Bankruptcy Code; and
- In all cases related to loans, mortgages, sharecropping agreements and/or promissory notes executed or constituted in favor of the Puerto Rico Production Credit Association, Small Business Administration, Puerto Rico Housing Finance Authority, Farmers Home Administration, Federal Home Administration, United States Veterans Administration, and the Department of Economic Development and Commerce of Puerto Rico, or any other state or federal agency or entity which guarantees mortgage backed loans which are secured and sold in the secondary market.

The protection afforded by the Homestead Act will survive the death of one of the spouses in favor of the other, and following the death of both spouses, in favor of their children until the youngest attains legal age. Similar provisions are included for abandonment of the homestead by one of the spouses. In divorce proceedings, courts will apply the Homestead Act based on the merits of each case. Likewise, when dealing with an unmarried individual who is the head of a family, the homestead protection will survive his or her death in favor of his or her ascendants or descendants up to the third degree of consanguinity or affinity until the youngest child attains legal age.

The leasing of a Principal Residence will not waive the protected homestead right if the beneficiary relocates temporarily to another residence for any of the following reasons, provided that any new property acquired is not also claimed as a protected homestead:

- work
- study
- military or diplomatic services or
- disease of the beneficiary or any family member up to the third degree of consanguinity or affinity

No person may claim more than one property, whether the same is located in Puerto Rico or in any other jurisdiction, as a protected homestead. Individuals or heads of families may record in the corresponding section of the Registry of the Property a declaration that a property is his or her homestead subject to the protection afforded by the Homestead Act, which declaration will constitute prima facie evidence of such protection.

If you have any questions or comments, or wish additional information regarding this matter, please contact any of the following attorneys:

<u>Salvador F. Casellas</u>	787-250-5613	sct@mcvpr.com
<u>Jorge M. Ruiz-Montilla</u>	787-250-5816	jmrm@mcvpr.com
<u>Harry Cook</u>	787-250-5620	hoc@mcvpr.com
<u>Paul R. Cortés-Rexach</u>	787-250-5630	prcr@mcvpr.com
<u>Rafael A. Ruiz-Ayala</u>	787-250-5668	rar@mcvpr.com
<u>Silvestre Miranda</u>	787-250-2627	smp@mcvpr.com
<u>Francisco J. Pavía</u>	787-250-5670	fjp@mcvpr.com
<u>Carlos M. Lamoutte-Navas</u>	787-250-5685	cml@mcvpr.com
<u>Leonor Aguilar-Guerrero</u>	787-250-5601	lag@mcvpr.com
<u>Patricia J. Salichs-Rosselló</u>	787-250-5800	pjs@mcvpr.com
<u>Jorge Rexach-Vaquero</u>	787-250-5635	jjr@mcvpr.com

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