

FIFTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

SECOND REGULAR SESSION, 2006

**PUBLIC LAW NO. 15-49
SENATE BILL NO. 15-66, HD1**

AN ACT

To enact legislation for the effective implementation of Public Law 15-20; and for other purposes.

**BE IT ENACTED BY THE FIFTEENTH NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

1 **Section 1. Findings and Purpose.** The Legislature finds that a class of persons
2 with rights specifically granted to them by the Constitution is being denied the effective
3 enjoyment of those rights. Article XII, Section 3, of the Constitution gives persons not of
4 Northern Marianas descent the right to acquire an interest above the first floor of a
5 condominium building on privately owned land in the Commonwealth, and declares such an
6 interest to be an exemption from the meaning of "permanent and long-term" interests in
7 Commonwealth real property. The Legislature passed Public Law 15-20 to specifically
8 declare that the economic development of the Commonwealth would be enhanced if such
9 persons, who include many residents of the CNMI as well as United States citizens and
10 others, would invest in condominium units above the first floor on privately owned land, and
11 to enact provisions specifically declaring their right to do so. The Legislature finds that
12 there are private landowners in the Commonwealth who would like to join together with
13 their tenants or other developers to make such condominium units available to the class of
14 persons entitled to purchase them.

15 The Legislature further finds that the Commonwealth Uniform Condominium Act,
16 by which condominium interests may be created, and which is based on a uniform act

1 designed for general usage in the United States, does not provide appropriate definitions and
2 provisions to accommodate the contrasting interests, under Article XII, of both classes of
3 persons of Northern Marianas descent whose land interests are protected and those persons
4 not of Northern Marianas descent who are allowed to purchase condominium interests. The
5 Legislature finds that this Act will implement the intent and purpose of Public Law 15-20.
6 The Legislature finds that denying persons not of Northern Marianas descent the effective
7 enjoyment of their right to acquire an interest above the first floor of a condominium
8 building is fundamentally unfair to them, and injurious to the economic welfare and
9 development of the Commonwealth. The Legislature finds that the creation of Article XII
10 condominiums as provided for in this Act will equitably and fairly balance the interests of
11 both classes of persons whose rights are protected by Article XII.

12 The Legislature further finds that the owners of private land in the Commonwealth
13 are unfairly denied the right to make new leases of their privately owned lands to take
14 advantage of changes in the economy which may be mutually advantageous to the owner
15 and the tenant due to a perceived legal impediment that prevents them from doing so, and
16 the Legislature desires to clarify this issue to assure those land owners that they do and shall
17 have that right. The Legislature finds that this reluctance to enter into such new leases is
18 inhibiting capital renewal, is a burden on further economic development in the
19 Commonwealth, and an unfair disadvantage to owners of privately owned leased lands. The
20 Legislature finds that this "renewal right" is not a permanent and long-term interest in real
21 property under certain circumstances, and that the uncertainty surrounding such renewal
22 rights is a consequence of failure to carefully distinguish between rights given to a tenant to
23 unilaterally extend the term of a lease under some option or other discretion granted at the
24 commencement of a lease, and the act of renewing or making a new lease contract during
25 the term or upon expiration of a lease. The Legislature finds that a "renewal right", however
26 denominated, given in the circumstances identified in this Article, constitutes an allowable
27 contract for a new lease term, independent from the term of any lease which may be
28 terminated or cancelled immediately prior to the making of the new lease, or made
29 immediately upon expiration of a prior lease.

1 The Legislature independently finds and determines that by this Act the Government
2 of the Northern Mariana Islands is carefully regulating the alienation of permanent and long-
3 term interest in Commonwealth real property so as to restrict the acquisition of such
4 interests to persons of Northern Marianas descent. The Legislature declares that these
5 findings shall be an integral part of the law of Article XII Condominiums.

6 **Section 2. Amendment.** Section 6103(j)(1)(A) of Chapter 1 of Division 6 of Title 2
7 of the Commonwealth Code is amended to read as follows:

8 "(A) **Any** person who has executed a declaration, or an amendment to a declaration
9 to add additional real estate, other than persons holding interests in the real estate
10 solely as security for an obligation, persons whose interests in the real estate will not
11 be conveyed to unit owners, or, in the case of a leasehold condominium, a lessor who
12 possesses no special declarant rights and who is not an affiliate of a declarant who
13 possesses special declarant rights, or in the case of an Article XII condominium and
14 unless expressly declared otherwise in the declaration, the owner(s) of the restricted
15 descent estate; or"

16 **Section 3. Amendment.** A New Chapter 5A is added to Division 6 of Title 2 of the
17 Commonwealth Code to read as follows:

18 "Chapter 5A. Article XII Condominiums.

19 \$6510. Applicability

20 \$6511. Definitions

21 \$6512. Creation of Article XII condominium

22 \$6513. Creation of Article XII Condominium on Land Leased by Persons Not of
23 Northern Marianas Descent

24 \$6514. Termination

25 \$6515. Management

26 \$6516. Acquisition of Article XII Unit Interests

27 \$6517. Ownership Restrictions

28 §6518. Substantial Compliance

29 \$6510. Applicability.

1 The provisions of this Division shall apply generally to Article XII condominiums,
2 except when this Chapter specifically provides otherwise or when deference to this Chapter
3 is necessary to effect the findings and purpose of Public Law 15-20.

4 §6511. Definitions.

5 For the purposes of this Chapter, the following terms shall be defined as follows:

- 6 (a) "Above the first floor" shall mean on or above a boundary constituting a
7 horizontal plane of a condominium building that is above the ground level
8 floor of the building, provided such horizontal plane boundary is at least six
9 feet above the mean elevation of the ground level floor of the building.
- 10 (b) "Article XII common elements" shall mean all portions of an Article XII
11 condominium other than the units and the descent restricted estate.
- 12 (c) "Article XII condominium" shall mean three elements of real estate that
13 together comprise a condominium, consisting of:
- 14 (1) portions with in a condominium building or complex designated for
15 separate ownership units, and
 - 16 (2) portions of the condominium building or complex designated for
17 common ownership (the common elements), and
 - 18 (3) a real property portion of the condominium building or complex
19 designated exclusively for descent restricted interest ownership
20 upon which the units and common elements are situated (the
21 descent restricted estate), created specifically to enable persons not
22 of Northern Marianas descent to own permanent or long-term
23 interests in units above the first floor of the building as permitted by
24 Article XII, Section 3 of the Commonwealth Constitution and
25 encouraged by Public Law 15-20.

26 Real estate is not an Article XII condominium unless the ownership
27 of the land on which the condominium building is sited is vested
28 exclusively with a descent restricted interest, and the undivided
29 interests in the Article XII common elements are vested in the

1 condominium owners; the condominium owners, for this purpose,
2 shall be exclusively comprised of the unit owners and the owners of
3 the descent restricted estate.

4 (d) "Article XII unit" shall mean a unit above the first floor within an Article XII
5 condominium. A unit is inseparable from its common element interest. Each
6 Article XII unit together with its Article XII common element interest
7 constitutes for all purposes a separate parcel of real estate, except as provided
8 in Section 6106 subsection (b).

9 (e) "Descent restricted estate" shall mean that portion of the land upon which an
10 Article XII condominium building is sited, ownership of which is restricted
11 to descent restricted interests. Ownership of the descent restricted estate shall
12 be restricted to natural persons, including associations, partnerships and trusts
13 for the benefit of natural persons, but not corporate or other such entities.

14 (f) "Descent restricted interest" shall mean those permanent and long-term
15 privately-owned interests in real property within the Commonwealth the
16 ownership of which are restricted by Article XII of the Commonwealth
17 Constitution to persons of Northern Marianas descent.

18 §6512. Creation of Article XII Condominium.

19 (a) For a condominium to be subject to the provision of this Chapter, the declaration
20 required by Section 6201 shall contain:

- 21 (1) a statement that the condominium is an "Article XII condominium;"
22 (2) a legally sufficient description of the real estate and interests comprising
23 the descent restricted estate; and
24 (3) a statement restricting ownership of the descent restricted estate to
25 persons of Northern Marianas descent as required by Article XII of the
26 Constitution.

27 (b) Allocations of undivided interests in common elements, common expenses, or
28 numbers of votes may be made to the descent restricted estate to take into account, in
29 a fair and equitable manner, the unique contribution of the descent restricted estate;

1 without limitation, the owners of the descent restricted estate may be exempted from
2 making any capital or non-capital expense contributions for a period not exceeding
3 the first fifty-five years of the condominium.

4 (c) Creation of an Article XII condominium shall imply the creation of necessary
5 easements of support, access, encroachment and uses consistent with the character of
6 the condominium over the descent restricted estate for the benefit of the common
7 elements and units of the condominium project.

8 §6513. Creation of Article XII Condominium on Land Leased by Persons Not of Northern
9 Marianas Descent.

10 (a) A person of Northern Marianas descent who has entered into a land lease
11 agreement with a person not of Northern Marians descent allowed by Article XII of
12 the Constitution may enter into agreement with the lessee to submit and dedicate
13 their respective interests to the creation of an Article XII condominium. Any such
14 agreement is subject to the provisions of Section 6112.

15 (b) An agreement authorized by subsection (a) may include provisions dealing with
16 any of the following matters:

17 (1) that their lease shall terminate upon creation of the condominium.

18 (2) that they shall enter into a new lease, not exceeding 55 years including
19 renewal rights, to commence concurrently upon creation of the condominium,
20 whereby the person not of Northern Marianas descent may lease all or some
21 of the units and common elements of the condominium.

22 (3) allocating ownership of the units, including the Article XII units, upon
23 creation of the condominium, subject to the restrictions of Article XII of the
24 constitution, which allocation shall be set forth in the declaration.

25 (4) allocation of the proceeds of the first third party sale of any unit.

26 §6514. Termination.

27 (a) The conversion of the condominium from an Article XII condominium to a
28 general condominium shall require the vote of one hundred percent of the unit
29 owners. Provided, if the Constitution is ever duly amended to remove all restrictions

1 on ownership of long term interests by persons not of Northern Marianas descent,
2 then a majority vote of the unit owners shall be sufficient to cause the condominium
3 to be converted to a general condominium, and, in such event, the interests,
4 contributions and votes may be re-allocated to fairly and equitably reflect the
5 interests of all owners of all interests.

6 (b) Following termination of the Article XII condominium in an event to which
7 Section 6220(e) would otherwise apply, the distribution of proceeds shall be
8 calculated to include a fair and reasonable allocation to the owners of the descent
9 restricted estate as well as to the unit owners, having due regard to the capital growth
10 of the condominium project as a whole.

11 §6515. Management.

12 (a) The membership of a unit owner's association of an Article XII condominium
13 shall include the owners of the descent restricted estate, who shall have the voting
14 rights allocated in the declaration; the association shall have no power to change the
15 voting rights of such owners without their consent.

16 (b) Except as this Chapter otherwise expressly or impliedly provides, the owners of
17 the descent restricted estate shall have all rights and responsibilities of the unit
18 owners.

19 §6516. Acquisition of Article XII Unit Interests.

20 The creation of Article XII unit interests by submission of real estate under a
21 declaration and every subsequent disposition of such unit shall, unless expressly provided
22 otherwise, confer a permanent, indefeasible interest in such Article XII unit.

23 §6517. Ownership Restrictions.

24 The ownership of the descent restricted estate in the declaration shall be restricted to
25 comply with this Chapter and Article XII of the Constitution. There shall be no disposition
26 or other transfer of any such interest during the duration of the condominium except to a
27 qualifying descent restricted interest transferee. Any non-qualifying transfer shall be void.
28 Any unit owner or the association shall have standing to enjoin or contest any transfer of a
29 non-qualifying interest in the descent restricted estate. All heirs, successors and assigns of a

1 descent restricted estate shall take title subject to all rights, obligations and restrictions of the
2 declaration and other applicable condominium instruments. In the event of the death of the
3 owner of such interest without a qualifying heir, the administrator of the estate of such
4 owner shall conduct a sale by public auction of the interest to a qualifying purchaser, and
5 should there be no offers, the court shall appoint a person of Northern Marianas descent as
6 trustee to hold such interest until a qualifying purchaser may be found. Should the estate of
7 the owner have insufficient funds to pay for the administration of the descent restricted
8 interest as specified, the owners association may be instructed to pay the reasonable costs
9 thereof.

10 §6518. Substantial compliance.

11 The creation of a Constitutional exception for ownership of condominium units
12 above the first floor by persons not of Northern Marianas descent represents a delicate
13 balancing of competing interests in maintaining exclusive Northern Marianas descent
14 ownership of real property interests, and it is the will of the legislature that the interests of a
15 declarant, purchaser or unit owner of an Article XII condominium shall not be prejudiced or
16 void where there has been substantial compliance with the requirements for the creation,
17 management and sale of the condominium or where any technical error may be reasonably
18 cured, including the use of the court's equitable powers and remedies. The rights provided
19 by this Chapter shall be liberally administered to the end that rights and interests of a good
20 faith, bona fide owner or purchaser of an Article XII condominium unit are not made void
21 by instruments or actions that might be reformed to achieve a just result."

22 **Section 4. Amendment.** A new Article 2 is enacted to Chapter 9, Division 4, 2
23 CMC, as follows:

24 " Article 2. Lease Renewals

25 § 4920. Lease renewal rights. A mutual agreement by a landlord and a tenant to
26 make a new lease to replace an existing lease shall not constitute a permanent or long-term
27 interest, and shall constitute an independent, new lease allowable under Article XII of the
28 Constitution where

1 (1) such new lease is not the result of the exercise of an option or other unilateral
2 discretion granted to the tenant,

3 (2) the commencement of the term of the new lease follows the expiration,
4 termination or cancellation of the term of the prior lease,

5 (3) the making of the agreement for the new lease, the end of the prior lease, and the
6 commencement of the term of the new lease are reasonably close in time, and

7 (4) the term of the new lease does not exceed the term of leases allowed by Article
8 XII of the Constitution,

9 (5) regardless of the similarity of the property subject to the leases, the identities of
10 the parties to the leases, or the provisions of the leases."

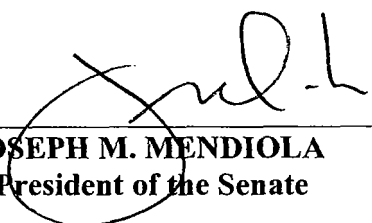
11 **Section 5. Severability.** If any provisions of this Act or the application of any such
12 provision to any person or circumstance should be held invalid by a court of competent
13 jurisdiction, the remainder of this Act or the application of its provisions to persons or
14 circumstances other than those to which it is held invalid shall not be affected thereby.

15 **Section 6. Savings Clause.** This Act and any repealer contained herein shall not be
16 construed as affecting any existing right acquired under contract or acquired under statutes
17 repealed or under any rule, regulation or order adopted under the statutes. Repealers
18 contained in this Act shall not affect any proceeding instituted under or pursuant to prior
19 law. The enactment of the Act shall not have the effect of terminating, or in any way
20 modifying, any liability, civil or criminal, which shall already be in existence on the date
21 this Act becomes effective.

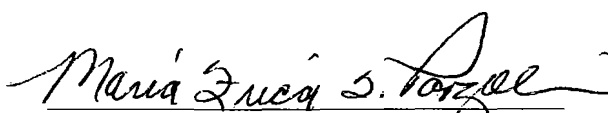
1 Section 7. **Effective Date.** This Act shall take effect upon its approval by the
2 Governor, or it becoming law without such approval.

CERTIFIED BY:

ATTESTED BY:

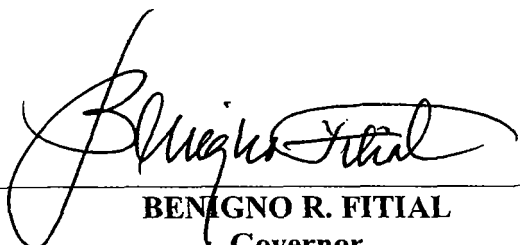


JOSEPH M. MENDIOLA
President of the Senate



MARIA FRISCA T. PANGELINAN
Senate Legislative Secretary

APPROVED this 14th day of MARCH, 2007



BENIGNO R. FITIAL
Governor
Commonwealth of the Northern Mariana Islands