

OPINION LETTER

Re: Northern Mariana Islands Land Ownership Laws
and the Ownership of Condominiums

Dear

You have requested our law firm to review the Northern Mariana Islands land ownership laws and the restrictions imposed by such laws with respect to the ownership by corporations or individuals of condominiums and condominium units. Related to this review, you have asked us to also review the proposed condominium legislation which very recently passed the Northern Mariana Islands House of Representatives and which has been transmitted to the Northern Mariana Islands Senate for its consideration and action.

1. The context within which review is made. As you explained to us during your previous visits, you, in conjunction with outside investors, plan to develop, construct and operate a condominium complex on Saipan whose units will either be sold out or leased out to individual unit owners or lessees under a time-sharing plan whereby the unit owners or lessees will occupy their units for only a short period of time each year (say, no more than a month) and for the rest of the year the unit, together with all of the other units, will be managed and operated as if hotel units, under a management agreement with a managing corporation set up to operate and manage such units as a hotel.

2. The proposed development corporation. Initially, your plan is to locally organize and set up a local development corporation which will include you and outside investors interested in the condominium project. This development corporation will handle all aspects regarding land acquisition, construction and site development, financing of the project, and so forth. Your share in this corporation will include the value of your land to be transferred to the corporation on which land the condominium complex will be built. Your share may also

include other agreed upon values and services that you will render or provide. The investors will own shares in such development corporation evidencing the amount of investment capital they plan to put up in the corporation, and other services they will render.

Your main concern with respect to the proposed development corporation is the ability of this corporation to hold title to the land and the real estate improvements thereon (that is the condominium complex built thereon) in fee simple. The law, in terms of permanent and long-term interest or ownership to land in the Northern Mariana Islands, is contained in Title XII of the Northern Mariana Islands Constitution. Title XII of the NMI Constitution restricts the acquisition of permanent ownership (that is, in fee simple) and long-term interests (that is, leases longer than 40 years) to persons of Northern Marianas descent. Under the NMI Constitution, a corporation is considered a person of Northern Marianas descent if: (1) it is incorporated in the Commonwealth; (2) has its principal place of business in the Commonwealth; (3) at least fifty-one percent of its corporate directors are persons of Northern Marianas descent; and (4) at least fifty-one percent of its voting shares are owned by persons of Northern Marianas descent.

Thus, with respect to the development corporation being planned, all of the above requirements must be complied with and met by the corporation in order for it, as a corporate entity, to own title to the land you plan to convey to the corporation. Failure of the corporation to meet all four (4) requirements would render the corporation's ability to own and hold title to land defective. Translated differently, the constitutional requirement is that at least fifty-one percent of the voting stocks or shares of the corporation must be owned by you and other individuals of Northern Marianas descent, and the remaining forty-nine percent may be owned by outside investors. Also, at least fifty-one percent of the corporate directors must be individuals of Northern Marianas descent, and the remaining forty-nine percent of the directors may be persons not of Northern Marianas descent. Therefore, so long as the four (4) requirements enumerated above are met, the corporation has the ability to hold title to land and real property in the Northern Mariana Islands.

3. The condominium concept of ownership. The condominium form of ownership of real estate, consists of an apartment house in which the units consist of individuals apartments and the common areas consist of the remainder of the building and the grounds. Individual owners maintain their own apartments, and an association of apartment owners maintains the common areas.

The association obtains funds for the care of the common areas by charging dues and levying assessments on each apartment owner. The major characteristics of a condominium include the following: (1) individual ownership of a unit or "apartment"; (2) an undivided interest in certain designated common elements which serve all the units in the condominium and; (3) an agreement among the unit owners regulating the administration and maintenance of the property. See generally 15A Am. Jur. 2d Condominiums and Cooperative Apartments. A number of recent innovations have been made the past few decades from the original concept to now include leasehold condominiums and various varieties and types of condominium ownership arrangements, as for example the time-sharing estates that you are proposing. However, such variations are made within or around the basic condominium concept briefly described above. Thus, while such innovative approaches to the concept of condominium ownership have been made, the central formational structure of individual ownership of the various units and joint interest and ownership by the unit owners (through its association of unit owners) in the common elements and areas remain.

4. The proposed condominium legislation. The Commonwealth of the Northern Mariana Islands, in catching up with the mainstream of the various U. S. jurisdictions regarding ownership of condominium units, recently introduced in the Commonwealth Legislature a comprehensive condominium enabling legislation, patterned after the model Uniform Condominium Act. The CNMI House of Representatives has recently passed the measure and appears to have by now transmitted it to the CNMI Senate for its consideration and action. If approved by the Senate and signed into law, this measure will provide the foundation needed with respect to the rights, liabilities, requirements, management, purchaser protection, creation, termination, alteration, and so forth -- all with respect to condominiums. At the present time, however, there is no statutory law or regulations governing condominiums in the Northern Mariana Islands. Further, while there are a number of hotels in the Northern Mariana Islands, there never has been created any condominium units. Only in the past few years has there been an interest shown for this type of ownership of real property. With the passage of this condominium bill, those individuals interested in this type of property development, like yourself, would have a firm statutory basis on which to proceed and create, develop and maintain and manage condominium units. In the absence of such law, developers have understandably hesitated from venturing into this type of real estate development because their rights and liabilities are not clearly spelled out.

The proposed legislation has six (6) major areas governing condominiums. The first area relates to general provisions. The second area deals with the creation, alteration, and termination of condominiums, and also relates to such specific matters as the declaration and by-laws, unit boundaries, common expense liabilities, plats and plans, and so forth.

The third major division relates to the management of condominiums such as the organization of Unit Owners' Association, its powers, the executive board, meetings, quorum, voting, records, insurance, and so forth.

The fourth major division has to do with the protection of unit purchasers and relates to such matters as the public offering statement, time-share estates, the right to cancel, resale of units, escrow of deposits, express and implied warranties, and so forth.

The fifth major division deals with ownership restrictions and provides for disclosure, incorporated associations, and so forth.

The final division relates to the acquisition of short term interests in units by aliens and certain entities.

Insofar as the questions you raised are concerned, the first four divisions, while comprehensive and instructive, do not address the issue of ownership to real property. The last two division touches on ownership of land and real property encompassed by the condominium type of ownership arrangement.

Article V (the fifth division) of the proposed condominium legislation thus provides that the acquisition of permanent or long-term interests in real property, as restricted in Article XII of the NMI Constitution to persons of Northern Marianas descent, must be disclosed in the public offering statement. The effect of this disclosure requirement is to put on notice those who are not of Northern Marianas descent that they cannot own in fee or through a lease of over forty (40) years such units. If, however, a corporation is set up by the unit owners (with one of its purposes being to acquire permanent or long-term interests in real property within the Commonwealth) in such a fashion as to comply with the requirements of Article XII of the Constitution, such incorporated association may thus hold title to the land. See section 5-102 of the proposed condominium law.

Article V, section 5-103, provides further that ownership of units may be restricted to preserve the eligibility of any corporation organized by the association so as to be able to hold title to real property. In other words, at least fifty one percent of the units and common elements must be owned by shareholders of the corporation who are of Northern Marianas descent. For your purposes then, it becomes difficult for the development corporation to transfer its fee simple interest to the corporate association of unit owners, if the substantial majority of unit owners intended or envisioned to own such units are not of Northern Marianas descent. Establishing a corporate association of such unit owners will thus not meet the Article XII constitutional restriction.

* An alternative to the permanent or long-term interest acquisition would be to lease out the units for a period of not more than forty (40) years. This would in effect create a leasehold condominium, but one in which persons of non-Northern Marianas descent could participate. A forty (40) year lease is a pretty substantial length of time that may entice individual investors to invest in such leasehold units. In such a situation the lessor would be the development corporation and the lessees would be the unit owners. Where a lessee, say, leases a unit for a forty (40) year term at a lump sum of, say, \$50,000.00 and then five (5) years later he wants to terminate, one of the lease provisions could provide that the lessee may terminate and recover a proportionate share of his investment only upon finding another unit lessee to replace him and enter into a new lease agreement with the development corporation for a new period of forty (40) years. Article VI (that is, division six) expressly allows for the acquisition of short-term interests in one or more condominium units. See section 6-102 of the proposed condominium legislation. Such leasehold interest may be sold to another individual of non-Northern Marianas descent; or if he prefer, he may sell his interest to the development corporation, upon finding a buyer for the corporation, at which time the lease may terminate as to the existing lessee and a new leasehold interest (again for a different forty years) may be entered into with the new lessee. The detailed language regarding this type of arrangement could be worked out.

* Another alternative, which may not be an alternative, is the fact that the units will be available under a time-sharing agreement with the development corporation to operate and manage the unit and other units in the condominium as a hotel, except for a certain period of time each year when the leasehold unit owner will use it. Under this set-up, it is doubtful

whether the leasehold unit owner will want to terminate his lease or sell it if the venture is profitable.

We have also considered your present plan to set up a corporation wherein the stockholders will be comprised of yourself owning fifty one percent (51%) of the stocks, and the homeowners association corporation owning forty nine percent (49%) of the stocks of the development corporation which would act as a holding company of sort. Under this arrangement, we assume that the financial investors would be the prospective unit owners of the condominium. To the extent, you provide the land and other services as your share in the corporation we imagine you will own certain of the units yourself. We feel that this arrangement may not be entirely in line with the condominium concept because ownership to the units and common areas will not be in the "unit owners" but will remain with the holding company corporation. We want to explore this arrangement in further detail, because we fail to see its rationale. If such were the case, it would appear pointless to set up a condominium if the investors (unit owners) only have a shareholder's interest in the holding company development corporation and if the major thrust of the development, in effect, is for a hotel. In such a case, the investors might as well view their investment as one for a hotel and not a condominium.

Conclusion and suggestion. The land alienation restriction in Article XII of the NMI Constitution are mandatory and must be complied with. We believe, however, that the proposed development corporation could be established and organized within the confines of those restrictions so that the corporation will be able to hold title to land and the condominium improvements. The more difficult problem is the ability of outside investors to buy and own such units in fee simple. Under the NMI Constitution such individuals (not of Northern Marianas descent) will not be able to hold title in fee to their condominium units. The only way they could participate in the condominium arrangement is through a leasehold interest of not more than forty (40) years. If a separate corporation of unit owners were established so that such corporation is made to hold title to all the units, the corporate association, as an entity, may hold title in fee to all of the units, so long as fifty-one percent of the unit owners are of Northern Marianas descent. Overcoming the fifty one percent (51%) hurdle becomes a problem when the majority of intended unit owners are not of Northern Marianas descent.

We suggest, therefore, that the leasehold condominium set-up for purpose of the intended clientele would be less difficult

Page 7

or complicated to achieve within the land-alienation constitutional restrictions. We also suggest that, before any final steps are taken to create and establish the development corporation, the condominium legislation be first enacted into law so that there is a firm statutory foundation to govern the condominium complex to be built and operated.

We hope the above opinion answers your concerns. Please let us know, if you have any questions regarding the matter.

Sincerely,