

COMMITTEE ON LAND AND PERSONAL RIGHTS

Public Hearing: Friday, June 16, 1995

SUMMARY OF ISSUES WITH RESPECT TO ARTICLE XII
BEING CONSIDERED BY THE COMMITTEE

ARTICLE XII: RESTRICTIONS ON ALIENATION OF LAND

Section 1: Alienation of Land

1. Section 805 of the Covenant requires the provisions of Section 1 remain in effect until 25 years after the termination of the Trusteeship. After that time, a constitutional amendment could elect to eliminate Article XII. The 25-year period is still running, however, so that is not an option for this Convention. After the 25-year period expires, Article XII will automatically remain in effect for as long as it remains in the CNMI Constitution.

Section 2: Acquisition

1. Transfers by inheritance

. Should spouses who are not persons of Northern Marianas descent be permitted to obtain title to real property by inheritance?

- Should the limitations imposed by the 1985 Constitutional Convention be continued (spouses may inherit only if there are no children who are persons of Northern Marianas descent)

. Should children who are not persons of Northern Marianas descent and who are adopted by persons of Northern Marianas descent be permitted to obtain title to real property by inheritance?

- Should there be an age limit on adoption in order to qualify (such as 5 years, 10 years?)

- Should there be a residence requirement for children, at the time of inheritance, in order to qualify? (only adopted children who reside the the CNMI are qualified?)

. Are there other kinds of inheritance problems that have come up over the past 10 years that should be addressed in the Constitution?

2. Transfers as a result of defaults on mortgages

. Who should be covered by an exception that allows mortgage holders (who are not persons of Northern Marianas descent) to obtain title to real property in the event of a default on the mortgage?

- The 1976 Constitution provided that mortgage holders (such as banks and government agencies) could obtain title to real property as the result of a default on a mortgage if they did not hold the real property for more than five years.

- The 1985 amendments limited qualified mortgage holders to full service banks, federal government agencies, or CNMI government agencies.

- Is there any need to increase or decrease the kinds of mortgage holders who are qualified?

. How long should mortgage holders (who are not persons of Northern Marianas descent) who take title to real property after a default on a mortgage be permitted to hold that real property?

- The 1976 Constitution permitted 5 years, within which the mortgage holder would have to sell the land to a qualified buyer (a person of Northern Marianas descent)

- The 1985 Constitutional Convention permitted 10 years after the term of the mortgage (which could be 40 years, on a 30-year mortgage on which there was an early default) in order to permit mortgage holders to continue any long term leases in effect as to the land that they took in the default (or to make new long-term leases)

- Is there any need to change the current rule?

3. Other exemptions

. Divorces: Under current law, divisions of marital property in divorces cannot violate Article XII, so non-Marianas spouses who are involved in a divorce cannot receive title to land in a property settlement. Should this be changed?

. Is there any need for other kinds of transactions to be exempted (other than the transfers by inheritance and the transfers as a result of defaults on mortgages)

Section 3: Permanent and Long-Term Interests in Real Property

1. Term of leases

- . The 1976 Constitution allowed 40 year leases
- . The 1985 constitutional amendments allowed 55 year leases
- . Should the length of time for long-term leases be changed?

2. Renewal rights

- . Both the 1976 and 1985 conventions included all renewal rights in the term when measuring the maximum permitted length of time.
- . Are additional protections necessary to ensure that leases do not go beyond the permitted limit?
 - Should transactions be prohibited that require the owner to pay, at the end of the lease, for improvements made by the lessee during a lease
 - Should transactions be prohibited that include loan obligations of the owner that come due at the end of the lease and include forfeiture rights if the loan is not paid
- . Should the Constitution prohibit transactions in which the owner promises that if the law changes and sales are permitted to persons who are not of Northern Marianas descent that the owner will transfer title to the land covered by the lease?
- . Should the Constitution prohibit successive leases, which may not be renewals (because the promise is not contained in the original lease) but are new transactions between the same persons or interests?

3. Condominium rights

- . Should the exception for condominiums above the first floor, added by the 1985 amendments, be deleted?

Section 4: Persons of Northern Marianas Descent

1. Percentage Chamorro or Carolinian blood

. In 1976, the Constitutional Convention elected to protect three generations of persons of Northern Marianas descent who married outsiders. The protection of further generations was left to the decision of later Constitutional Conventions.

- Everyone who was born or domiciled in the Northern Marianas by 1950 and who was a citizen of the Trust Territory before termination of the Trusteeship in 1986 is deemed to be 100% Northern Marianas Descent.

- Using the starting point of 1950, and assuming every generation marries an outsider (non-Northern Marianas descent), the percentages are:

1950	First generation	100%
1970	Second generation	50%
1990	Third generation	25%
2010	Fourth generation	12.5%
2030	Fifth generation	6%
2050	Sixth generation	3%

. Should this Constitutional Convention extend the protection to another two generations to cover the time until the next constitutional convention?

. Should the protection be extended infinitely to anyone who can demonstrate any Northern Marianas blood, no matter how small a percentage and no matter how long the family members have lived outside the CNMI?

2. Treatment of adopted children

. The 1976 and 1985 Constitutional Conventions allowed adopted children, who were adopted while under the age of 18, to acquire the status of Northern Marianas descent

. Should adopted children be protected?

. Should the age limit be lowered (to children adopted before age 5, 10)?

3. Treatment of pre-1950 Chamorros from Guam

. Some Chamorros who came from Guam before or after WWII and settled in the

Northern Marianas were domiciled in the Northern Marianas by 1950 but never became citizens of the Trust Territory. Guam was not a part of the Trust Territory, so these people did not have Trust Territory citizenship. They do not meet the definition of persons of Northern Marianas descent in the Constitution. Their children, born after 1950, although they are Chamorros and have always lived in the CNMI, are not persons of Northern Marianas descent.

. Should the definition of Northern Marianas descent be expanded to include these Chamorros?

4. Treatment of post-1950 Chamorros from Yap

. Some Chamorros who came from Yap arrived on Tinian in 1951 and 1952. They have lived ever since in the CNMI. They were Trust Territory citizens, but because they did not reach the Northern Marianas by 1950, they are not persons of Northern Marianas descent. Their children, born after 1950, are not persons of Northern Marianas descent even though they are Chamorros who have lived all their lives in the CNMI.

. Should the definition of Northern Marianas descent be expanded to include these Chamorros?

5. Other problems

. Are there other problems with the definition of Northern Marianas descent that should be addressed by constitutional amendment?

Section 5: Corporations

1. Place of business

. The 1976 Constitution requires that businesses be incorporated in the Commonwealth and have the principal place of business in the Commonwealth to qualify as Northern Marianas descent.

. Are any changes needed in these requirements.

2. Directors

. The 1976 Constitution required that 51% of the directors be persons of Northern Marianas descent

. The 1985 amendments required that 100% of the directors be persons of Northern Marianas descent.

. Is any change needed in this requirement?

. The 1985 amendments provided that minors may not be directors

. Are other limitations on qualifications to be directors needed?

3. Stock ownership

. The 1976 Constitution required that 51% of the voting shares be owned by persons of Northern Marianas descent

. The 1985 Constitution required that 100% of the voting shares be owned by persons of Northern Marianas descent.

. Is any change needed in this requirement?

4. Prohibited types of stock ownership transactions

. The 1985 amendments added some prohibited transactions with respect to stock ownership to try to prevent any circumvention of the 100% ownership requirement.

- Trusts were prohibited

- Voting by proxy was prohibited

- Severing beneficial title from legal title was prohibited.

. Are there changes or additions needed with respect to these prohibited stock ownership transactions?

Section 6: Enforcement

1. Transactions in violation of the restrictions

- . The 1976 Constitution provided that transactions in violation of Article XII are void ab initio.
- . Should there be a statute of limitations put into the Constitution that protects transactions after they have been completed for 5 years, 7 years?
- . Should there be a provision for severability, so that if one part of an agreement violates Article XII only that part of the agreement is void and other parts of the agreement (which are lawful) are not affected.
- . Should there be any provision in the Constitution for the award of equitable adjustments for an adversely affected party whose transaction is set aside as void pursuant to the restrictions in Article XII.

2. Corporations that lose qualification as Northern Marianas descent

- . The 1976 Constitution provided that if a corporation owns land, and then loses its qualification as Northern Marianas descent (because it no longer has 100% of its directors and 100% of its stockholders qualified as persons of Northern Marianas descent), then the land is forfeited to the government.
- . The 1985 amendments added a requirement for immediate forfeiture, and added a prohibition on any right of redemption
- . Are any additional or different protections appropriate?

Proposed new limitations on commercial transactions

1. Middlemen and brokers

- . Should transactions be prohibited that involve middlemen and brokers who are of Northern Marianas descent acting for lessees who are persons not of Northern Marianas descent.
- . Should transactions be prohibited where persons who are not of Northern Marianas descent provide the financing for persons who are of Northern Marianas descent who acquire land in order to be able to lease it to persons who are not of Northern Marianas descent.

. Should option contracts be prohibited?

2. Disclosure

. Should a person of Northern Marianas descent who seeks to acquire land in order to lease it to a third party who is not of Northern Marianas descent be required to disclose that intent to the owner prior to the acquisition?

3. Private attorney general litigation

. Should any person of Northern Marianas descent be able to challenge a land transaction that may violate Article XII (acting as a private attorney general) because the purpose of Article XII is to preserve the land and heritage of the people.

4. Advisory opinions

. Should an owner or a prospective lessee be able to seek an advisory opinion from the courts finding that a proposed transaction is permissible under Article XII before entering into the transaction?

5. Attorneys fees

. Should lawyers' fees in connection with land transactions involving persons of Northern Marianas descent be controlled in any way in the Constitution?