

## 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?





JUN. 16 1995

PUBLIC HEARING: INTRODUCTORY STATEMENT OF THE CHAIR


The Committee on Land and Personal Rights of the Third Northern Marianas Constitutional Convention hereby opens its public hearing on Article 12, dealing with alienation of land in the Commonwealth.

Initial hearing: This is an initial hearing on Article 12. We may have other hearings. The Committee has not yet discussed Article 12 in its meetings. We thought it was important to have public input before we began our discussions so that we can take into account everyone's views when we consider possible amendments to Article 12.

Summary of issues: We have prepared a summary of all the proposals and suggestions we have received about possible amendments to Article 12. We have made that summary available to everyone, so that the comments made at the public hearing this morning can be directed to those possible amendments. When you speak, we do not expect you to give us your views on everything on the summary. We would like you to tell us what changes you think are important to the people of the Commonwealth.

Ground rules: There are certain ground rules for this hearing.

1. Anyone who wishes to be heard will address the Committee from the witness table here next to me. You may approach the witness table and use the microphone only at the invitation of the Chair. When you have finished, you should leave the witness table and return to the audience area so that another person may testify.
2. The audience should be respectful of those who are testifying and should remain quiet while testimony is going on. There will be no cheering or heckling in reaction to a witness or a witness's testimony. We have a lot to cover today and we don't want to waste time.
3. Each individual will be limited to 10 to 15 minutes. If the Committee asks you questions after your presentation, the time will not be limited by the 10-minute rule, however the Chair will determine how long the questioning of any one witness may last.
4. All discussion will be between the Committee and the witness who is testifying. There will be no open debating or arguing between individuals.
5. Witnesses will be allowed to testify only once. There will be no opportunity for rebuttal statements.
6. Witnesses will limit their remarks to Article 12. We are not discussing Article 11 on public lands or Article 14 on natural resources at this hearing. Those will come later in the Committee's work.



Written statements. We realize that there is a lot to say about Article 12 and that many people have extensive experience that cannot be stated in our 10 to 15 minute limit. So we welcome written statements. It is important to get the written statements to the Committee within the next week, however. The Convention has limited time and limited funding, so we are required to get our work in the Committee done expeditiously. The Committee will formulate its recommendation for the Convention within the next two weeks. The Convention will vote soon after that. Our Convention rules prevent last minute changes on the floor, so it is important to get your ideas to us soon. Written statements should be delivered to us here at the Convention's offices.

Transcript: We will have a written transcript of this hearing. Our court reporter, Les Martin, who is sitting here, will be taking down the statements and the questions and answers. He has a computerized system, so the transcript will be available promptly for the Committee's use at its meeting on Monday and throughout next week. We will extract the proposals from the transcript and consider them in our meetings. If you would like your written statements to be a part of the transcript, please submit them by the close of business on June 21, 1995 and we will publish them with the transcript. If you do not want your written statements to be a part of the transcript, just indicate that when you send them to us.

Thank you all for coming, and we will start now with the first witness.

THE SENATE  
EIGHTH NORTHERN MARIANAS COMMONWEALTH  
LEGISLATURE

FOURTH REGULAR SESSION, 1993

Public Law No. 8-32  
SENATE BILL NO. 8-124, SCS2, IID1, IICS1

AN ACT

To enact enforcement provisions for Article XII of the CNMI Constitution; to amend 2 CMC, Division 4, Chapter 9, by adding Section 4917 and 4918; to limit attorneys' fees on real property cases and to call for equitable adjustment to parties adversely affected in land disputes under Article XII of the Constitution; to place a statute of limitations on actions brought pursuant to Article XII; to set forth the legal requirements and procedures to enforce Article XII against corporations; to provide for the severability of contractual provisions violating Article XII, to repeal Public Law No. 8-29; and for other purposes.

Offered by Senator: Paul A. Manglona

DATE: November 9, 1992

SENATE ACTION

Referred to: Committee on Resources, Economic Development & Programs

Standing Committee Report No. 8-63

First Reading: December 9, 1992

Second Reading: August 12, 1993

Acceptance of House Amendments: October 28, 1993

HOUSE ACTION

Referred to: Special Committee

Special Committee Report No. 8-7

First Reading: September 23, 1993

Second and Final Reading: October 15, 1993

  
-EDWARD U. MARATTIA  
SENATE LEGISLATIVE SECRETARY

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BE IT ENACTED BY THE NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

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Section 1. Findings. The Legislature finds that a number of court cases have been filed in the last several years seeking to overturn land transactions pursuant to Article XII of the CNMI Constitution. Only a few of these court actions have yet been reduced to judgment.

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The Legislature further finds that these pending actions, taken together, have had a cumulative adverse effect on the CNMI economy in the last two to three years. These actions have led to uncertainty of title, instability of land values, and financial inequities. They have caused the Commonwealth to suffer an undesirable reputation as a risky and uncertain place in which to lease land for investment or development or in which to grant leasehold mortgages.

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1           The Legislature finds that the Supreme Court recognized the  
2 possibility of these problems in its decisions, but felt that it could not decide  
3 otherwise under the law of the Commonwealth as it then existed. The  
4 Legislature notes that the law as it then existed was the law of the  
5 Restatement of Trusts.

6           The Legislature finds that the Restatement of Trusts is a compilation  
7 of the common law, and only has effect in the Commonwealth because of a  
8 Commonwealth statute (7 CMC 3-401). The law of trusts in the Commonwealth  
9 is Common law, and so can be modified, amended, or restricted by legislative  
10 action. The Legislature therefore finds that clarification and restriction of  
11 the doctrine of resulting trusts is appropriate.

12           The Legislature further finds that there exists the possibility of  
13 exploitation by, or unjust enrichment of, attorneys who represent parties  
14 in real property cases alleging violation of Article XII of the CNMI  
15 Constitution. The Legislature recognizes that contingent fees are  
16 necessary in order to make legal services available to those not otherwise  
17 able to afford an attorney; however, the Legislature also finds that it has  
18 the power to regulate the legal services industry and to insure that  
19 contingent fees should be reasonable.

20           The Legislature further finds that a reasonable statute of limitations  
21 would go far towards restoring confidence in the title of lands and property  
22 in the CNMI. Having carefully researched the issue, the Legislature finds  
23 that a reasonable statute of limitations is constitutional as long as there is a  
24 "grace period" before the statute takes effect.

25           Finally, the Legislature finds that in cases where a person recovers  
26 land under a judgment according to Article XII of the NMI Constitution, the

1 person adversely affected by such judgment is entitled to recover their  
2 investment, including money or other capital paid for the purchase or  
3 lease of the land, for buildings, structures, or other improvements on the  
4 land, and the cost of money for the time elapsed between the land  
5 transaction and improvements and the judgment voiding the transaction.

6 Section 2. Amendment. A new Section 4917 shall be added to 2 CMC,  
7 Division 4, Chapter 9, Article 1, and shall read as follows:

8 "§4917. Attorney's Fees.

9 (a) Definitions. For purposes of this Section,

10 1. "Attorney" means an attorney, lawyer, personal  
11 representative, or any person who undertakes to represent  
12 another person in any legal proceeding;

13 2. "Contingent Fee" means a fee based on, or  
14 calculated according to, the value of ownership of real  
15 property, which real property is the subject of a legal  
16 proceeding; or, a fee that is a percentage of the value of  
17 ownership of all or any part of the real property which is the  
18 subject of such proceeding, regardless of how the value of the  
19 property may be calculated; or, a fee based on, or calculated  
20 according to, the value of any settlement or award that may be  
21 made in a legal proceeding concerned with real property.  
22 "Contingent fee" for purposes of this section, applies only to  
23 fees based on the value of real property or of settlements or  
24 awards in legal proceedings concerned with real property,  
25 and does not apply to contingent fees in tort cases;

1                   3. "Legal proceeding" means an action at law,  
2 lawsuit, court hearing, arbitration, administrative hearing  
3 before a government agency, or similar proceeding to  
4 determine legal rights and interests, which proceeding has  
5 not been reduced to final judgment as of the effective date of  
6 this Section.

7                   4. "Real Property" means real property or any  
8 interest in real property, including, but not limited to, a lease,  
9 sublease, mortgage, life estate, undivided interest, or  
10 remainder interest.

11                   (b) If an attorney charges a contingent fee or fees, related  
12 to any legal proceeding or transaction arising under Article XII of  
13 the Commonwealth Constitution that deals with or concerns real  
14 property, the contingent fee or fees shall not exceed the limit on  
15 attorney's fees set forth in paragraph (d) of this section 4917, in any  
16 transaction of attorney-client relationship falling within the  
17 jurisdiction of any court in the CNML.

18                   (c) Any attorney who knowingly and willfully violates this  
19 section shall upon conviction be imprisoned not more than six  
20 months and fined not more than \$10,000. The Court may require the  
21 attorney to return all fees collected in excess of the amount  
22 permissible. Nothing in this section shall prevent the Court or the  
23 Bar Association from suspending, disbarring, or taking other such  
24 disciplinary action against the attorney.

1 (d) A contingent fee in a case arising under Article XII of  
2 the Commonwealth Constitution involving real property may never  
3 in any case exceed the lesser of:

4 1. 20% of the fair market value of the real  
5 property; or

6 2. 20% of the amount actually received by the  
7 client for the property in whatever transaction, legal  
8 proceeding, or settlement the attorney represented him in; or

9 3. the amount of time in hours spent by the  
10 attorney on the case, multiplied by Seven Hundred Dollars  
11 (\$700) per hour."

12 Section 3. Amendment. A new Section 4918 shall be added to 2 CMC,  
13 Division 4, Chapter 9, Article 1, and shall read as follows:

14 "§4918. Equitable Adjustment.

15 (a) In the event that a Court with jurisdiction within  
16 the NMI determines that a real property transaction is in  
17 violation of Article XII of the Constitution of the CNMI, and  
18 such transaction is rendered void ab initio, then the Court  
19 shall award an equitable adjustment to any person, directly  
20 and adversely affected by the judgment, who loses possession  
21 of or loses any interest in real property as a direct result of  
22 the judgment.

23 The equitable adjustment shall take the form of a  
24 judgment for money against the party or parties who have  
25 prevailed in the action, and shall be incorporated into the  
26 Court's final judgment or order.



1 (b) In determining the amount of the equitable  
2 adjustment, the Court shall take into account the following:

3 (1) The fair market value of the real property  
4 interest in question, not including improvements made  
5 subsequent to the transaction that is voided by the  
6 court;

7 (2) The actual cost, in money and other capital  
8 actually spent (including a reasonable assessment for  
9 unpaid labor invested in the property) of all  
10 improvements made to the real property in question  
11 subsequent to the transaction that is voided; including,  
12 but not limited to, buildings and other structures,  
13 landscaping, permit and development fees,  
14 infrastructure, grading, and clearing; plus

15 (3) The cost of money for all expenditures  
16 under paragraph (2) of this subsection which shall be  
17 set at a rate of five per centum (5%) per year of the  
18 amount of the expenditure, compounded annually from  
19 the date such expenditures were made.

20 (c) The Court shall make such provisions for  
21 assuring recovery as it deems lawful, just and equitable,  
22 which may include (but not be limited to) placing a lien on  
23 the property in question in favor of the person adversely  
24 affected by the judgment, garnishing or assigning all income  
25 from the property to pay the equitable adjustment, giving  
26 beneficial possession of the property to the person adversely

1 affected for some period of time, or any such other means as  
2 the Court may consider lawful, equitable, appropriate, and  
3 effective in accomplishing the twin goals of returning fee  
4 simple ownership to the prevailing party and assuring  
5 reimbursement to the party adversely affected.

6 (d) The Court may not deny recovery under this  
7 Section unless the party prevailing in the action shows by  
8 clear and convincing evidence that the person adversely  
9 affected committed actual and deliberate fraud in acquiring  
10 the land and that such fraud was against the party prevailing  
11 in the action.

12 (e) Retroactivity. This Section shall have  
13 retroactive effect upon all cases brought pursuant to Article  
14 XII for the voiding of a real property transaction, excepting  
15 those cases which have been reduced to final judgment before  
16 the effective date of this Section.

17 (f) Severability. If any subsection of this section  
18 should be declared invalid by a court of competent  
19 jurisdiction, the remainder of this section shall not be  
20 affected thereby.

21 Section 4. Amendment. A new Article 2 is hereby added to Chapter 9  
22 of Division 4 of Title 2 of the Commonwealth Code, to be read as follows:

1                   "Article 2. Provisions relating to fee simple ownership of  
2                   real property

3                   "§4921. Definitions.

4                   (a) Purchase Money Resulting Trust: Where a  
5                   transfer of property is made to one person, and the purchase  
6                   price is paid by another, a purchase money resulting trust  
7                   (hereafter referred to simply as a resulting trust) is that trust  
8                   which is said to arise in favor of the person by whom the  
9                   purchase price is paid.

10                  "§4922.       Where a transfer of an interest in real property  
11                  is made to one person and the purchase price is paid by another who  
12                  is not qualified under the Constitution or laws of the Northern  
13                  Mariana Islands to acquire that interest, a resulting trust does not  
14                  arise in favor of the person by whom the purchase price is paid.

15                  "§4923.       Retroactivity. This Article shall have retroactive  
16                  effect upon all cases brought pursuant to Article XII for the voiding  
17                  of a real property transaction, excepting those cases which have  
18                  been reduced to final judgment before the effective date of this  
19                  Article."

20                  Section 5. Amendment. A new Article 3 is hereby added to Chapter 9  
21                  of Division 4 of Title 2 of the Commonwealth Code, to be read as follows:

22                  "Article 3. Statute of Limitations for actions brought  
23                  pursuant to Article XII of the Commonwealth Constitution.

24                  "§4931.       Limitation on Article XII Actions.

25                  (a) Notwithstanding any other provision of law, no  
26                  action for the recovery of real property, or of any interest in

1 real property, brought pursuant to Article XII of the  
2 Constitution of the Commonwealth of the Northern Marianas  
3 Islands, shall be allowed or maintained, unless it appears that  
4 the plaintiff, or his ancestor, grantor, or other predecessor in  
5 title, was seized or possessed of the property, or of the interest  
6 in property which he seeks to reclaim, within six years before  
7 the commencement of the action.

8 (b) Except for an extension of time by fraudulent  
9 concealment as set forth at 7 CMC Section 2509, the time  
10 prescribed in this Section for bringing an action is absolute  
11 and applies notwithstanding any disability or lack of  
12 knowledge on the part of the plaintiff or any other person, or  
13 absence from the Commonwealth of the Northern Marianas  
14 Islands of the plaintiff, or of any other person, and  
15 notwithstanding any other provisions of law, including any  
16 provision for tolling a statute of limitation; excepting that, for  
17 six months after the passage of this Act the time limit  
18 prescribed in this Section shall be subject to the "grace  
19 period" exception outlined in Section 4932, below.

20 (c) Nothing in this Article shall extend the time for  
21 bringing an action, or revive any right of action or interest  
22 in real property that would otherwise be expired or  
23 unenforceable.

24 (d) The provisions of this Article shall apply to  
25 every action that may be brought pursuant to Article XII of  
26 the Commonwealth Constitution for the recovery of land or of

1 an interest in land, whether the cause of action accrued  
2 before or after the effective date of this Act, excepting only:

3 i) actions brought within the "grace period"  
4 set forth in Section 4931, below; and

5 ii) actions brought by the government of the  
6 CNMI. The CNMI government shall not be affected by  
7 this statute of limitations.

8 "§4932. Application to Existing Causes of Action; Grace  
9 Period.

10 Notwithstanding any other provision of this Article, an action  
11 brought pursuant to Article XII of the Commonwealth Constitution  
12 for the recovery of land or of an interest in land may be maintained  
13 if

14 (a) it is not barred by any applicable period or  
15 statute of limitations existing immediately prior to the  
16 effective date of this Act, and

17 (b) it is commenced within six (6) months of the  
18 effective date of this Act."

19 Section 6. Conforming Amendment. 7 CMC, Division 2, Section 2509 is  
20 hereby amended as follows:

21 "§2509. Extension of Time by Fraudulent Concealment. If any  
22 person who is liable to any action shall fraudulently conceal the  
23 cause of action from the knowledge of the person entitled to bring it,  
24 the action may be commenced at any time within the time limits  
25 within this Chapter, and within Chapter 9, Division 4, Title 2 of this  
26 Code, after the person who is entitled to bring the same shall

1 discover or shall have had reasonable opportunity to discovery that  
2 he has such cause of action, and not afterwards."

3 Section 7. Amendment. A new Article 4 is hereby added to Chapter 9  
4 of Division 4 of Title 2 of the Commonwealth Code, to be read as follows:

5 "Article 4. Disregard of Corporate Entity.

6 "§4941. Findings. The Legislature finds that under the  
7 provisions of Section 6 of Article XII of the Constitution of the  
8 Northern Mariana Islands the Legislature is specifically authorized  
9 to enact enforcement laws and procedures relating to permanent  
10 and long-term interests in real property of corporations. The  
11 Legislature finds that many real estate transactions involving  
12 corporations were consummated prior to the amendment of Article  
13 XII of the Constitution in 1985 when corporations not wholly owned  
14 by persons of Northern Marianas descent were eligible to acquire  
15 permanent and long-term interests in real property. The  
16 Legislature finds that numerous corporations acquiring such  
17 interests in real property subsequently sold or leased the property to  
18 bona fide purchasers or lessees for value. The Legislature finds that  
19 such bona fide purchasers and lessees for value relied upon the  
20 apparent ability of the corporations to hold and convey valid title or  
21 other interest in real property, and finds that such reliance was  
22 reasonable in that the corporations appeared to meet the  
23 requirements for eligibility to own and convey permanent and long-  
24 term interests, and other interest, as those requirements were set  
25 forth in Article XII, and finds that reasonable investigation would  
26 not have suggested otherwise.

1           The Legislature finds that bona fide purchasers and lessees of  
2           real property from these corporations, or their successors in  
3           interest, face loss of their property as a result of legal proceedings  
4           commenced pursuant to Article XII by grantors to the corporations.  
5           The Legislature finds that grantors assert that the corporate entity  
6           status of the corporations should be disregarded in order to divest  
7           current owners or lessees of their real property interests. The  
8           Legislature finds that it is in the public interest of the  
9           Commonwealth of the Northern Mariana Islands to exercise its  
10          constitutional authority to enact enforcement laws and procedures  
11          pertaining to proceedings under Article XII.

12          "§4942. Purpose. The purpose of this article is to set forth  
13          the legal requirements and procedures applicable to any proceeding  
14          in law or equity to enforce the provisions of Article XII of the  
15          Constitution of the Northern Mariana Islands against corporations  
16          acquiring permanent and long-term interests in real property in  
17          the Commonwealth.

18          "§4943. Requirements. Any such proceeding pursuant to this  
19          section must comply with, and is subject to, the following  
20          requirements:

21                 (a) Any corporation shall be considered eligible to  
22                 acquire permanent and long-term interests in real property  
23                 in the Commonwealth if it met or meets the applicable four  
24                 criteria set forth in Section 5 of Article XII of the Constitution  
25                 of the Northern Mariana Islands at such times as it acquired  
26                 or acquires such interest. In conformity with Section 5 of

1 Article XII, beneficial title shall not be severed from legal  
2 title, and record proof of stock ownership and percentage of  
3 directors of Northern Marianas descent shall be conclusive as  
4 to which persons are directors or shareholders.

5 (b) Clear and convincing proof shall be required to  
6 disregard the corporate entity status of a corporation for  
7 purposes of divesting current owners or lessees of their  
8 interests in real property. The court may impose sanctions on  
9 any party or counsel bringing a proceeding on the basis of  
10 proof which could not have been reasonably believed to be  
11 clear and convincing.

12 (c) In any proceeding to invalidate the title or interest  
13 of any transferee of real property from a corporation  
14 pursuant to Article XII of the Constitution, evidence of the  
15 conduct of the corporation or any persons associated with it,  
16 which conduct occurred after the transfer of the property  
17 interest from the corporation to any other person, may not be  
18 admitted or in any way considered for the purpose of  
19 establishing that the corporate entity should be disregarded.

20 (d) The prevailing party, whether plaintiff or  
21 defendant, in any action pursuant to Article XII of the  
22 Constitution in which an attempt is made to have the court  
23 disregard the corporate entity status of a corporation shall be  
24 entitled to an award of reasonable attorneys fees



1 (c) The provisions of this article shall apply to all real  
2 property transactions involving corporations heretofore or  
3 hereafter entered into, and shall govern in all proceedings in  
4 which a final judgment, not subject to further appeal, has not  
5 been entered prior to the effective date of this Act."

6 Section 8. Amendment. A new Article 5 is hereby added to Chapter 9  
7 of Division 4 of Title 2 of the Commonwealth Code, to be read as follows:

8 "Article 5. Severability of Contractual Provisions Violating  
9 Article XII.

10 "§4951. Legislative Declaration and Purpose. The  
11 Legislature declares as public policy that:

12 (a) Real property is a basic resource of the  
13 people of the Commonwealth of the Northern Mariana  
14 Islands. The purposes of the restrictions of the  
15 ownership of real property in the Commonwealth  
16 which are contained in Article XII of the Constitution of  
17 the Northern Mariana Islands, as those purposes are set  
18 forth in the Covenant to Establish a Commonwealth of  
19 the Northern Mariana Islands in Political Union with  
20 the United States of America, are to protect the people  
21 of the Commonwealth against exploitation and to  
22 promote their economic advancement and self-  
23 sufficiency. The Legislature finds that these purposes  
24 should be achieved by the least restrictive means  
25 possible, so as to disrupt the economic expectations of  
26 the parties to agreements relating to real property in

1 the Commonwealth to the least extent consistent with  
2 the purposes of Article XII. The Legislature further  
3 finds that the punishment of persons who seek to enter  
4 into agreements to avoid the forfeiture provisions of  
5 Article XII is not one of the stated purposes of Article  
6 XII.

7 (b) It is the purpose of the Legislature in  
8 enacting this article to further public policy by  
9 providing for the enforcement of agreements relating  
10 to Commonwealth real property, except to the extent  
11 necessary to further the stated purposes of Article XII,  
12 and specifically to provide for the enforcement of all  
13 provisions of such agreements which do not violate  
14 Article XII.

15 "§4952. Severability of Contractual Provisions Violating  
16 Article XII of the Constitution.

17 (a) If a court determines that any provision of  
18 an agreement would, if enforced, result in acquisition  
19 of a permanent or long-term interest in real property  
20 by a person not of Northern Marianas descent, the  
21 court shall enforce any or all of the remaining  
22 provisions of the agreement if it can be enforced  
23 without unjust enrichment or prejudice to either party  
24 to the agreement, regardless of whether the party  
25 seeking enforcement of the agreement engaged in  
26 serious misconduct or acted in good faith within the

1 meaning of section 183 or section 184 of the  
2 Restatement (Second) of Contracts.

3 (b) If the parties to the agreement have  
4 provided in the agreement that its provisions are to be  
5 considered severable in the event any provision is  
6 determined to be void, it shall be conclusively presumed  
7 for purposes of this article that any provision which is  
8 not so void can be enforced without unjustly enriching  
9 or prejudicing either party, and any such provision  
10 shall be enforced.

11 (c) The provisions of this section shall apply to  
12 all real property transactions heretofore or hereafter  
13 made, and shall govern in all proceedings in which a  
14 final judgment, not subject to further appeal, has not  
15 been entered prior to the effective date of this Act."

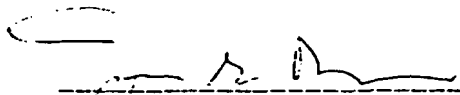
16 Section 9. Repealer. Public Law No. 8-29 is hereby repealed in its  
17 entirety.

18 Section 10. Severability. If any Section or sub-section of this Act  
19 should be declared invalid by a court of competent jurisdiction, the  
20 remainder of this Act shall not be affected thereby.

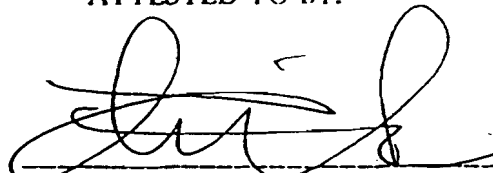
Public Law No. 8-32  
SENATE BILL NO. 8-124, SCS 2, HDL, HCS 1

1 Section 11. Effective Date. This Act shall take effect upon its  
2 approval by the Governor or upon its becoming law without such approval.

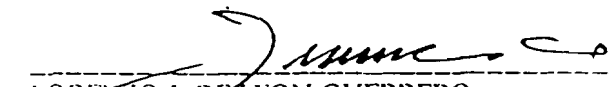
CERTIFIED BY:

  
-----  
JUAN S. DEMAPAN  
PRESIDENT OF THE SENATE

ATTESTED TO BY:

  
-----  
EDWARD U. MARATTA  
SENATE LEGISLATIVE SECRETARY

APPROVED this 29<sup>th</sup> day of OCT., 1993.

  
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LORENZO I. DE LEON GUERRERO  
GOVERNOR  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Minority Report on Special Committee Report No. 8-7  
Senate Bill No. 8-124 S.C.S.2, H.D.1, H.C.1  
October 12, 1993  
Page 1



**EIGHTH NORTHERN MARIANAS COMMONWEALTH  
LEGISLATURE**

**House of Representatives**

**Special Committee on Senate Bill No. 8-124**

**SPECIAL COMMITTEE REPORT NO. 8-7  
October 8, 1993**

**MINORITY REPORT**

on

**Senate Bill 8-124, S.C.S.2, H.D.1, H.C.1**

Although I concur with the Senate and the House Committee majority that enacting enforcement guidelines and procedures for the implementation of Article XII of the Commonwealth Constitution is necessary in order to restore economic confidence in the Commonwealth, I have certain reservations regarding the bill which prevent me from concurring with the majority's report. I therefore submit this minority report in accordance with Section 8(b) of House Rule XII.

One of my concerns is that the bill fails to address the very common scenario of the "strawman" type transaction, where money is furnished by a person ineligible to hold land and purchased by an eligible person who then holds legal title and the reversionary interest after the lease expires. This type of transaction was held by the Supreme Court of the Northern Mariana Islands to violate Article XII. (See, e.g., Aldan-Pierce v. Mafnas, and Ferreira v. Borja.) Although the application of the legal theory of "resulting trusts" in such cases has now been overturned by the 9th Circuit Court of Appeals, (Section 4 of Senate Bill 8-124 accomplishes the same purpose), there is nothing to prevent the Court from arriving at the same result by different means. Whether or not such transactions ought to be protected by legislation is open to debate. My concern is that the Committee has failed to address the issue.

A further concern is what appears to me the unequal "equities" of the "Equitable Adjustment" (Section 3) of the bill. Why should a developer, if he has already recovered his investment and reaped profits in addition, be compensated for the value of his improvements by the original landowner, if an Article XII claim is decided in favor of the landowner? Is such a policy in keeping with the spirit and intent of Article XII? Does this policy protect indigenous control of land?

I am further troubled by the "Severability of Contractual Provisions Violating Article XII" (Section 8) of the bill. If constitutional, such a provision would be a quick and easy fix to innumerable outstanding leases of Commonwealth land which contain terms which may violate Article XII. The most common of these are "change of law", "buy-back", "right of first refusal", "options to extend", and "irrevocable power of attorney" provisions. However in the light of the Court's decision in Wabol v. Villacruz, which has been upheld by the 9th Circuit Court of Appeals, a transaction which violates Article XII, in any of its terms, is void ab initio. However, equitable or practical it may appear to sever the offending portion of a contract and let the rest stand, I believe such a solution may fly in the face of the clear mandate of Section 6 of Article XII.

I offer a floor amendment to the bill in two particulars:

1. to deny equitable adjustment (restitution) to a party who "purposefully and deliberately sought to evade Article XII."
2. to delete a provision prohibiting the Court from looking into the conduct of the party seeking relief when considering severing a portion of an agreement.

Both of these amendments seek to ensure that considerations of equity and fairness are retained even while prescribing guidelines for legal procedures of claims involving Article XII of the Commonwealth Constitution.

Regardless of my various misgivings, I support Senate Bill 8-124, S.C.S.2, H.D.1, H.C.1, with amendments which are attached hereto and are offered as a floor amendment to the bill. I therefore urge the members of the House of Representatives to pass the bill as recommended by the Committee together with the floor amendment.

Respectfully submitted,



Rep. Herman T. Guerrero  
Minority Member

Attachment

**Attachment "A"**  
**Floor Amendment**  
**on**  
**Senate Bill 8-124, S.C.S.2, H.D.1, H.C.1**

TO BE AMENDED AS FOLLOWS:

1. At Page 6, lines 18-22 are amended to read as follows:

"(d) The Court may not deny recovery under this Section unless the party prevailing in the action shows by clear and convincing evidence that the person adversely affected either committed actual and deliberate fraud in acquiring the land and that such fraud was against the party prevailing in the action or purposefully and deliberately sought to evade Article XII of the Commonwealth Constitution."

2. At Page 15, beginning line 15 through line 18, delete the rest of the paragraph beginning with the word "regardless" to read as follows:

"If a court determines that any provision of an agreement would, if enforced, result in acquisition of a permanent or long-term interest in real property by a person not of Northern Marianas descent, the court shall enforce any or all of the remaining provisions of the agreement if it can be enforced without unjust enrichment or prejudice to either party to the agreement, regardless of whether the party seeking enforcement of the agreement engaged in serious misconduct or acted in good faith within the meaning of section 183 or 184 of the Restatement (Second) of Contracts."