

**TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE**

**PUBLIC LAW NO. 10-29**

**H.B. NO. 10-238, HD1, SS1, SD1**

**SECOND SPECIAL SESSION, 1996**

---

---

**AN ACT**

To authorize a single-family home loan financing program through the Northern Marianas Housing Corporation, utilizing financial resources of the Marianas Public Land Trust, with special provision for low income home purchasers; to facilitate homestead development; to provide security for the investment of the Marianas Public Land Trust; and for other purposes.

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

Section 1. Short Title. This Act may be cited as the “MPLT-NMHC Home Financing Act of 1996.”

Section 2. Findings. The Legislature finds that:

(a) There is a need to provide security and capital for banks to extend loans to families who want to build or finance the purchase of their own homes.

(b) The need for home finance is particularly pronounced for low income families who generally do not meet the criteria of banks for home loans. Further, these families generally have land obtained through homestead, and because of the restrictions on the sale of homestead property, special assistance is needed for these families to obtain financing.

(c) The Marianas Public Land Trust (MPLT) has resources adequate to provide the security and capital needed to provide for home financing.

(d) Through lending money to the Northern Marianas Housing Corporation (NMHC) to use as a security for home construction and home purchase financing at a rate of six percent (6%), MPLT can still obtain a rate of return for the beneficiaries of the MPLT that will meet the fiduciary duty of the MPLT if MPLT is given the right to offset any loan losses against its interest payments to the general fund and its principal (and hence its long-term income potential) is enhanced through appropriation of an amount equal to the interest earned on its loan to NMHC back to MPLT as principle.

(e) The securing and providing of capital for home construction and purchase financing will help stimulate the overall economy of the Commonwealth and will be a benefit to all Commonwealth residents.

(f) Home loan financing is an inherent part of homestead development within the meaning of Article XI, Section 5(g) of the Commonwealth Constitution. Thus, it is

appropriate to use revenues from public land as security against losses on capital made available for home loans for homesteaders, and offset any losses prior to transfer of the net to the Marianas Public Land Trust.

(g) Pursuant to Article XI, Section 1 of the Commonwealth Constitution public lands belong “collectively to the people of the Commonwealth who are of Northern Marianas descent.” Section 4(a) of Article XI emphasizes that public lands are to be managed “for the benefit of the people of the Commonwealth who are of Northern Marianas descent.” Article XII of the Commonwealth Constitution restricts the acquisition of permanent and long-term interests in real property within the Commonwealth to persons of Northern Marianas descent. The United States Ninth Circuit Court of Appeals has upheld the Commonwealth’s restrictions on alienation of land based on the unique history of the Commonwealth, its relationship with the United States, and the special interest of the indigenous peoples in their lands. Those same principles apply, perhaps with even greater force, to the public lands held in collective ownership by the indigenous peoples and the direct and indirect proceeds from those lands. Principal held by MPLT is the income from property held “collectively [by all] the people of the Commonwealth who are of Northern Marianas descent,” and the interest on that principle is indirect income from the property so owned. The fact that the Constitution permits indirect income from public lands to be expended in ways that benefit non-NMI descent persons does not prohibit the Legislature from applying these funds to programs that exclusively benefit the collective owners, that is, persons of NMI descent. The program established by this Act is consistent with the principles of collective ownership and the explicit provisions of the Commonwealth Constitution.

Section 3. Definitions. Except where the context otherwise clearly requires, as used in this Act:

(a) “Home loans” means any loan to a qualified resident of the Commonwealth of the Northern Mariana Islands for either the

- (1) construction,
- (2) purchase,
- (3) refinancing of an existing loan secured by a principal place of residence,

or

(4) home renovation,  
of a single family, owner-occupied principal place of residence within the Commonwealth of the Northern Mariana Islands, administered by NMHC and secured by the loan from MPLT to NMHC.

(b) “Governmental agency” includes any branch, department, division, public corporation, authority, or other entity of the Commonwealth government.

(c) “MPLT” means the Marianas Public Land Trust.

(d) “NMHC” means the Northern Marianas Housing Corporation (formerly MIHA), a subsidiary corporation of the Commonwealth Development Authority.

(e) “Takeout” means the purchase or retirement of the construction loan, in exchange for a home loan, by the lender.

(f) “The Funds” means the funds lent to NMHC pursuant to Section 4(a) of this Act.

(g) “Tho Loan Agreement” means the comprehensive loan agreement between MPLT and NMHC required by Section 4(a) of this Act.

#### Section 4. Home Loan Program Authorized.

(a) MPLT is authorized, consistent with its constitutional obligations, to loan up to Ten Million Dollars (\$10,000,000) to NMHC at an interest rate of six percent (6%) per annum for NMHC's use in the establishment of programs to provide for home loans to qualified Commonwealth residents as provided by this Act. MPLT and NMHC shall execute a comprehensive loan agreement setting forth the terms and conditions of the loan of the funds to NMHC. The Funds may be used directly for home loans under this Act or placed by NMHC in interest bearing accounts with commercial banks to serve as security for the banks' lending to participants in the programs created by NMHC pursuant to this Act. The banks may leverage any funds so deposited to provide the largest possible portfolio of home loans under this Act.

(b) The Funds may not be used by NMHC or any other governmental agency for any purpose other than the provision or securing of new home loans. In no event shall The Funds be used, directly or indirectly, to pay off or retire any current or existing indebtedness of NMHC, the Commonwealth Development Authority, or any other governmental subdivision or agency. No existing home loan may be refinanced if the effect of the refinancing is to provide or unencumber funds which may be used by NMHC or any other governmental agency to pay off or retire current or existing indebtedness. Any misuse or misallocation of The Funds shall, in addition to any other penalty or remedy provided by law, subject the person or persons responsible for the misuse or misallocation to personal liability therefor.

#### Section 5. Guarantee and Security of The Funds.

(a) The Loan Agreement shall be fully, absolutely, and unconditionally backed each year by the interest earnings accruing to the general fund pursuant to Article XI, Section 6(d) of the Commonwealth Constitution and by the moneys received from public lands subject to Article XI, Section 5(g) of the Commonwealth Constitution. The provisions of this section shall constitute a contractual obligation of the Commonwealth government. The Attorney General is authorized to execute this guarantee on behalf of the Commonwealth as part of The Loan Agreement.

(b) The Secretary of Finance is authorized and directed to pay to MPLT when due, out of the moneys pledged pursuant to subsection (a), all obligations of the Commonwealth Government incurred as a result of the borrowing authorized by this Act. Any such payments may be made without further appropriation or fiscal year limitation, any provision of law to the contrary notwithstanding.

(c) If repayments of principal on the MPLT-NMHC loan authorized by this Act are not made when due, or if any capital of MPLT covered by The Loan Agreement is called by a bank, MPLT may recover any amounts due by taking those amounts as an offset or credit against any sum of money that MPLT might otherwise owe to the Commonwealth Government, whether pursuant to Article XI of the Commonwealth Constitution or for any other reason. Such amounts are hereby appropriated to MPLT for as long as MPLT's capital is in use by NMHC or the participants in NMHC's home loan programs, including all renewals of The Loan Agreement, and in an amount equal to MPLT's capital participation plus accrued and unpaid interest.

(d) The right of offset created by this Act shall take precedence over all earmarked

payments made by MPLT to the general fund such as those set forth at 4 CMC § 1803(d) for health services and to the Northern Marianas College. Should the capital of MPLT be called as a result of the default of a borrower participating in a program administered by NMHC with funds secured by the loan from MPLT to NMHC, the loss of the capital shall be viewed as a loss of income to be transmitted to the general fund, and the Commonwealth government shall have no expectation or right in the amount of the offset.

(e) MPLT shall not exercise its rights of offset or credit under this section without first notifying the Secretary of Finance that an amount is due pursuant to subsection (b) of this section. In the event the Secretary of Finance shall refuse or fail all or any part of such amount due within 30 days of demand, MPLT may then exercise its right of credit or offset by notifying the Secretary in writing of the amount or amounts of credit or offset taken and the nature of the payment or funds withheld.

(f) NMHC shall be relieved of liability to MPLT in the amount of any payment made to MPLT pursuant to subsection (b) of this section, or the amount of any offset taken pursuant to subsections (c) through (e).

(g) The Secretary of Finance shall have a cause of action against NMHC for the recovery of any payment made, or any credit or offset suffered, pursuant to the mandates of this section, including any remedy or relief appropriate to further such recovery.

(h) No forbearance by MPLT in the exercise of any right under this Act or The Loan Agreement shall be construed as a waiver and no waiver shall be effective except as expressly stated in writing. No waiver by MPLT of any right or remedy under this Act or The Loan Agreement with respect to one incident or set of circumstances shall be construed as including a waiver of any other right or remedy or with respect to any other incident or circumstances. Neither shall MPLT be estopped from asserting any right or remedy under this Act or The Loan Agreement by virtue of any act, forbearance, or other conduct upon which the a movant claims reliance.

#### Section 6. Use of The Funds.

(a) NMHC shall use the loan from MPLT authorized by this Act to establish a comprehensive program or multiple programs for home finance with private banks or by NMHC itself. NMHC shall take steps to ensure that an amount of the money used for home construction and purchase is allocated for lower income Commonwealth residents, and that the entire program give priority to providing loans to homesteaders and first-time home owners. Subject to the limitations of this Act, available capital may also be used for refinancing of homes on an individual basis (i.e. no refinancing of subdivisions or multiple-unit developments), financing for home builders and purchasers who are not low income or first-time home purchasers, home renovations and extension loans, the contraction of second homes where the borrower intends to use the new home as a primary residence upon completion, and other lending directly related to home ownership by Commonwealth residents. No lending authorized under this Act shall be permitted for economic speculation or for commercial developments.

(b) NMHC may use the loan proceeds on a revolving basis to provide or secure home loans as defined herein, including home construction loans that are taken out by commercial banks, or long-term home purchase financing where no takeout occurs.

(c) NMHC may leverage the proceeds of the loan received from MPLT to increase

the capital available for home loans to qualified Commonwealth residents under terms that are commercially reasonable and fiscally responsible.

(d) NMHC in conjunction with MPLT shall establish by regulation the home financing programs available, the criteria for borrowers to obtain financing through the programs, and the requirements placed on banks that participate in the programs. The regulations shall be published in the Commonwealth Register, and once adopted shall not be changed, suspended or modified without republication or on an emergency basis. All participants in the programs, including without limitation banks, borrowers, contractors, appraisers, inspectors, NMHC, and MPLT shall comply with all regulations duly adopted under this subsection. The regulations shall include objective criteria for evaluating and approving or disapproving loan applications, and for the collection and foreclosure of delinquent loans, and NMHC shall uniformly apply and enforce these criteria. Any person injured or aggrieved by a failure of NMHC to comply with the provisions of this subsection shall have a cause of action in the Commonwealth Superior Court.

#### Section 7. Appropriation to Principal of Amount Matching Interest Income.

(a) An amount equal to the interest income earned by MPLT each calendar year on the capital of MPLT targeted for local investment and loaned pursuant to this Act is hereby appropriated from the trust fund established by Section 10 of this Act to MPLT as an addition to principal, as a continuing appropriation of said amount each fiscal year, for so long as MPLT's capital is in use pursuant to this Act. The Secretary of Finance shall pay the amount appropriated by this subsection to MPLT annually in the second quarter of each fiscal year, based on the interest earned in the preceding calendar year. All such payments may be made without further appropriation or fiscal year limitation. The provisions of this section shall constitute a contractual obligation of the Commonwealth government.

(b) Following the end of each calendar year, MPLT shall advise the Secretary of Finance of the amount of interest earned on the capital of MPLT outstanding and in use pursuant to this Act during the preceding calendar year. In the event the Secretary of Finance shall refuse or fail to pay the amount prescribed by subsection (a) in the timely manner specified, MPLT shall have a right of offset against funds otherwise due the general fund from MPLT. To exercise the right of offset, MPLT shall advise the Secretary of Finance of the amount it is withholding and the nature of the payment or funds withheld.

#### Section 8. Homestead Participation and Real Property Security.

(a) Borrowers who participate in the programs created by NMHC secured by the loan from MPLT authorized by this Act must pledge their real property interests as security for their home loans. NMHC shall take a deed of trust on all property pledged as security under this Act. Upon default by the borrower, NMHC shall execute on the deed of trust and cause the sale of the property. All proceeds of execution, less administrative costs incurred by the NMHC, shall be transferred to the special trust fund created by Section 10 of this Act. All such transfers to the special trust fund shall reduce any liability NMHC may have pursuant to Section 5 of this Act.

(b) Homestead property shall be acceptable for the programs created by this Act. The Division of Public Lands, Department of Lands and Natural Resources shall, pursuant to 2 CMC § 4336, mortgage its interest in village homestead lots where a homestead permit

has issued but not a deed of conveyance and the homesteader has been approved for a home loan under a program created pursuant to this Act, or, alternatively, may deed the homestead lot to NMHC for use in the manner prescribed by 2 CMC § 4337, as amended by this Act. NMHC shall take deeds of trust on homestead property pledged as security by borrowers participating in the programs created under this Act. Should NMHC execute on deeds of trust given for homestead property, NMHC may convey fee simple ownership in the homestead property to recover on the defaults of the loans, subject to the requirements of Article XII of the Commonwealth Constitution.

(c) When homestead property is pledged as security for home financing under this Act, any covenants and restrictions in the homestead deeds that refer to the Marianas Public Land Corporation, or to the Division of Public Lands, shall be read to instead refer to NMHC during the term of the financing.

(d) NMHC is authorized to utilize deeds of trust over all real property pledged so that banks that administer loans secured by the loan from MPLT to NMHC can sell the loans on a secondary market or receive participation on the loans from other banks, and thereby extend the available loanable funds for home loans to qualified Commonwealth residents.

#### Section 9. Program Requirements.

(a) Eligibility. Only persons eligible under Article XII of the Commonwealth Constitution to acquire permanent and long-term interests in real property in the Commonwealth shall be eligible for home loans under programs authorized by this Act. Nothing in this Act shall be construed as preventing any person from being a comaker, guarantor, or coapplicant with a person eligible under this subsection, or from having their income considered in determining qualification for a loan in a program under this Act.

(b) Priorities.

(1) Homesteaders who have been physically residing within the Commonwealth for at least five-years immediately preceding application shall have first priority for home loans under programs authorized by this Act.

(2) Homesteaders who do not meet the five-year residency requirement of paragraph (1) shall have second priority for home loans under programs authorized by this Act.

(3) Other applicants who have been physically residing within the Commonwealth for at least five-years immediately preceding application shall have third priority for home loans under programs authorized by this Act.

(c) Minimum Allocation. Not less than eighty percent (80%) of the aggregate dollar amount of home loans issued and outstanding under programs authorized by this Act shall be reserved for loans to homesteaders and first-time homeowners. Loans to first-time homeowners includes loans for the expansion, improvement, or rebuilding of an owner-occupied home on the original lot.

(d) Low Income Home Ownership Financing.

(1) NMHC shall reserve a portion of the home loans available under programs authorized by this Act for low income home financing. Interest rates in the low income home financing program shall be tailored to income levels, to make possible safe, decent, and sanitary home ownership for the largest number of low income applicants as possible without unduly sacrificing return on the funds lent or

undermining the ability of NMHC to meet its obligations to MPLT. A portion of the loans available under the low income home financing program shall be available to the lowest income applicants at an interest rate of three percent (3%) per annum.

(2) No home loan shall be issued under the a low income home financing program where the applicant fails to meet ability to repay criteria set by NMHC or where payments due under the loan would exceed thirty percent (30%) of the gross income of the applicant. The combined income of joint applicants may be considered in satisfying the requirements of this paragraph only where there is reasonable assurance of continuity of the income of the both applicants and both applicants have or will obtain an interest in the real property securing the loan.

(3) NMHC in conjunction with MPLT shall establish qualification guidelines for the low income home financing authorized required by this section. The guidelines and any amendments thereto shall conform to the requirements of Section 6(d) of this Act.

(e) Fiscal Controls. NMHC shall segregate all repayments and interest received by it in connection with the home loan programs authorized by this Act and shall not commingle such funds with other NMHC funds. NMHC shall reserve such funds for payment of its obligations to MPLT and other uses authorized by The Loan Agreement and this Act.

#### Section 10. Special Trust Fund.

(a) There is hereby established within the Commonwealth general fund a special trust fund to be known as the Homestead Development Home Financing Security Fund.

(b) The Secretary of Finance shall deposit all moneys received from public lands into the special trust fund upon receipt. No reserve, offset, expenditure, disbursement, or other allocation of any kind shall be withheld from moneys received from public lands prior to their deposit into the special trust fund. The Secretary of Finance shall also deposit all interest transferred pursuant to Article XI, Section 6(d) of the Commonwealth Constitution into the special trust fund upon receipt.

(c) Funds in the special trust fund shall be segregated into two accounts, one for moneys received from public lands and the other for interest transferred from MPLT. Payments made by the Secretary of Finance pursuant to Section 5(b) of this Act for obligations arising out of loans to homesteaders are expenses of homestead development and shall be charged against the public land revenues account. In the event MPLT shall take a credit or offset against payments due the general fund for any amounts arising out of loans to homesteaders, the Secretary shall transfer an equal amount from the public land revenues account to the MPLT interest account. All other payments made by the Secretary of Finance pursuant to Sections 5(b) and 7 of this Act shall be charged against the MPLT interest account.

(d) The balance in the special trust fund on October 1 of each year shall be transferred as follows:

(1) The balance in the public land revenues account shall be transferred to MPLT pursuant to Article XI, Section 5(g), except that any specific amounts appropriated from this balance by the Legislature for reasonable expenses of administration and management of public lands, land surveying, or homestead development shall be transferred to the general fund for use exclusively for the

purposes for which appropriated; Provided, that in the event the total amounts appropriated exceeds the balance in the account, the amounts appropriated shall be reduced by such proportion as to make the total equal the balance.

(2) The balance in the MPLT interest account shall be transferred to the general fund subject to all earmarking such as that set forth at 4 CMC § 1803(d) for health services and to the Northern Marianas College.

(e) Interest earned on the special trust fund shall be deposited into the general fund when received.

(f) No funds in the special trust fund shall be obligated, expended, transferred, reprogrammed, disbursed, or otherwise encumbered in any way except as specifically authorized by this Act. Any person violating this section shall be personally liable for any loss or injury resulting therefrom, in addition to any other penalty or remedy provided by law.

#### Section 11. Enforcement.

(a) The Office of the Public Auditor shall audit NMHC annually to ensure that NMHC is in compliance with all aspects of the loan agreement between MPLT and NMHC, and with the requirements for the making of home loans to qualified residents of the Commonwealth as published in the Commonwealth Register. The Office of the Attorney General shall enforce The Loan Agreement and all lending criteria established in that loan agreement, and enforce the regulations to be published by NMHC.

(b) NMHC shall, with banks, enforce the collection of the home loans. NMHC may recover the reasonable costs of enforcement out of the proceeds of foreclosures on the home loans.

#### Section 12. Conforming Amendments.

(a) All references to “Marianas Public Lands Corporation” in 2 CMC § 4337 are hereby amended to read “Division of Public Lands, Department of Lands and Natural Resources”.

(b) All references to “Mariana Islands Housing Authority” in 2 CMC § 4337 are hereby amended to read “Northern Mariana Housing Corporation”.

(c) The term “home construction loan” in 2 CMC § 4337 includes any loan under the terms of this Act.

(d) 2 CMC § 4337(d) is amended to read:

“(d) (1) The Northern Marianas Housing Corporation shall issue homestead permits for the lots received from the Division of Public Lands, Department of Lands and Natural Resources to the village homestead recipients in order for the home construction loans to be disbursed and the home financing secured in accord with the spirit and intent of this article. The Northern Marianas Housing Corporation shall be the successor to the Marianas Public Land Corporation with respect to such homesteads for purposes of Sections 4(f) and 5(a) of Article XI of the Commonwealth Constitution. The date of the homestead permit issued by the Northern Marianas Housing Corporation shall relate back to the date of the original grant of the homestead for purposes of compliance with Article XI, Section 5(a) of the Commonwealth Constitution. The Northern Marianas Housing



Corporation may delegate any specific tasks, duties, or functions in the administration of these homesteads to the Division of Public Lands, Department of Lands and Natural Resources as will contribute to effective and efficient administration.

(2) Compliance with the terms and conditions of the home loan shall be an additional condition on the homestead permit. In the event of default by the homesteader in the terms and conditions of the home loan, the Northern Marianas Housing Corporation shall cancel the homestead permit and foreclose on the mortgage of the improvements. Homestead lots for which permits have been canceled pursuant to this paragraph may be sold, together with the improvements thereon, in the same manner as prescribed in Section 6(b) of the MPLT-NMHC Home Financing Act of 1996, with the proceeds to be applied in the manner prescribed by the governing law for the home loan program involved.

(3) The Northern Marianas Housing Corporation shall issue Certificates of Compliance and Deeds of Conveyance pursuant to 2 CMC § 4308 for homesteads under its jurisdiction. Every such Certificate of Compliance shall be subject to creation of a mortgage interest to secure the home loan outstanding to the homesteader. No Deed of Conveyance shall be delivered except concurrently with execution of a mortgage to secure the home loan, refinanced home loan, or takeout loan.”

Section 13. Repealer. Public Law 9-39 is hereby repealed.

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

Section 15. Savings Clause. No specific grant of a cause of action by this Act shall be construed as limiting or eliminating any other cause of action which may exist or be implied at law or in equity. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 16. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

**CERTIFIED BY:**

**ATTESTED BY:**

/s/ Diego T. Benavente  
DIEGO T. BENAVENTE  
Speaker  
House of Representatives

/s/ Evelyn C. Fleming  
EVELYN C. FLEMING  
House Clerk

Approved this 4th day of October, 1996.

/s/ Froilan C. Tenorio  
Governor  
Commonwealth of the Northern Mariana Islands