

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 JUL -1 A10:48

SENATE **1241**
S. B. No. _____

RECEIVED BY: _____

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Proposed measure seeks to systematize and professionalize the real estate industry in the Philippines. Despite the tremendous growth of the industry and its impact on the economy, it is unfortunate that no comprehensive laws have been enacted to regulate it.

For this reason, the public have become victims to anomalous real estate transaction in a rising unprecedented frequency with no adequate remedy. Unscrupulous real estate brokers, developers or dealers, meanwhile, have gone penalized.

In order to safeguard public interest, there is a need to consolidate and integrate the laws, rules and regulations relative to real-estate practice. There is also a need to create a Real Estate Commission, with appropriate duties, powers and functions, that will allow it to regulate, supervise and oversee the industry. When these are done, the buying public as well as the government can finally be protected against unlawful and unconscionable transactions.

This bill is a consolidation of related bills submitted during the previous congress before the Committee on Constitutional Amendments, Revision of Codes and Laws, of which the undersigned chaired.

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 JUL -1 AIO:48

SENATE
S. B. No. 1241

RECEIVED BY: [Signature]

Introduced by Senator Miriam Defensor Santiago

AN ACT
REGULATING THE PRACTICE OF REAL ESTATE SERVICE IN THE PHILIPPINES,
CREATING A REAL ESTATE COMMISSION AND APPROPRIATING FUNDS THEREFOR

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Short Title. - This Act shall be known as the "Real Estate License Act of the Philippines."

SEC. 2. Declaration of Policy. - The Estate recognizes the need to professionalize and regulate real estate services in the country as a vital component of economic development. For this purpose, real estate service practitioners shall be under the supervision and control of a Real Estate Commission with quasi-judicial powers to regulate, curtail and penalize acts or practices prejudicial to the public interest.

SEC. 3. Definition of Terms. - As used in this Act, the following terms shall mean:

- (a) "Real estate" - refers to the land, building, or other improvements permanently attached or annexed to the land, including the rights and interest therein;
- (b) "Real estate development project" - the development of land for residential, commercial, industrial, agricultural, institutional or recreational purposes, or any combination or such including but not limited to tourist resorts, reclamation projects, building or housing projects whether for individual or condominium ownership, memorial parks, and others of similar nature;
- (c) "Real estate service practitioners" shall refer to and consist of the following:

(1) Real estate salesperson - a natural person who performs services under the direct supervision and control of a real estate broker any or all the functions of the latter,

for or in expectation of a share in the commission, fee, compensation, or other valuable consideration of the broker and who is separately licensed as such under the rules and regulations of the Real Estate Commission;

(2) Real estate broker. - any person, natural or juridical, who on behalf of another person and for or in expectation of a fee, commission, compensation or other valuable consideration, shall perform any of the following acts: offers, advertises, solicits, lists, promotes, mediates, negotiates or affects a sale, purchase exchange, mortgage, lease, joint venture or other transaction in real estate or any interest therein;

(3) Real estate appraiser - a natural person who is a licensed real estate broker and who, for and in expectation of a fee, compensation or other valuable consideration, offers to render or renders services as an expert on real estate values.

(4) Real estate consultant - a natural person who is a licensed real estate broker and who, for and in expectation or a fee compensation or other valuable consideration, offers or renders professional advise and judgement on: (a) the acquisition, enhancement, preservation, utilization or disposition of lands or improvements thereon; and (b) the conception, planning, management, and development of realty projects.

ARTICLE II

REAL ESTATE COMMISSION

SEC. 4. *Real Estate Commission.* - A "Real Estate Commission" is hereby created which shall be composed of a chairman and two (2) Deputy Chairmen who shall be appointed by the President, and the tenure of office of the Chairman shall be for five (5) years, and the Deputy Chairmen for four (4) years and three (3) years respectively.

To be eligible for office as member of the Commission, he shall be thirty-five (35) years of age, of good moral character and a holder of a four-year Bachelor's degree: *Provided*, that at least two (2) members shall have been engaged in the real estate business either as real estate broker, appraiser or consultant for at least ten (10) years.

The Chairman shall receive an annual salary of Three hundred thousand pesos (P300,000.00) and the members shall receive an annual salary of Two hundred forty-thousand pesos (P240,000.00) each.

SEC. 5. Powers and Functions of the Commission. - The Commission shall

exercise the following powers and functions:

- (a) To provide comprehensive policy guidance for the promotion and development of the real estate industry;
- (b) To initiate, integrate and recommend such rules and regulations, standards, guidelines and procedures as may be necessary for the growth and effective enhancement of the real estate profession;
- (c) Gather and compile statistical data required in the effective implementation of this Act;
- (d) Draw up recommendations to government agencies or departments concerned for the purpose of rationalizing and coordinating real estate transactions;
- (e) To promulgate such rules and regulations as may be necessary to implement effectively the provisions of this Act;
- (f) To assess and fix the rate of reasonable regulatory license fees;
- (g) To administer oath and affirmation and to issue *subpoena* and *subpoena duces tecum* in connection with any investigation of which it has jurisdiction under this Act;
- (h) To appoint, discipline and/or remove subordinate officials or employees, and to determine the compensation of its technical staff or personnel: Provided, That except as to its technical staff and such other position as the Commission may declare to be highly technical or primarily confidential, all positions under the Commission are subject to the provisions of the Civil Service Law and Rules, but are exempt from the regulations of the Wage and Position Classification Office;
- (i) After notice and hearing, revoke, cancel or suspend the exercise or enjoyment of license and benefits granted under this Act;
- (j) To monitor all forms of advertisements, announcements, signboards, billboards, pamphlets, brochures and other of similar nature concerning real estate and to provide every possible safeguard to protect legitimate and licensed real estate service practitioners and in pursuance thereto it shall exercise its judicial and police powers to finally and completely eradicate the pernicious practices or unauthorized and unlicensed individuals engaged in real estate service practice;

(k) To screen, issue and monitor permits issued to accredited organizations of real estate professionals in the industry; and to accredit seminars and real estate instructors for the purpose of upgrading the quality and knowledge of the profession; and to conduct examination as a prerequisite in the practice of the profession;

(l) To require all transactions involving the sale, lease, exchange or mortgage of real estate to be certified by a duly licensed real estate broker and which in the case of an owner or developer of a real estate development project shall be a requirement for an application for License To Sell with the Housing and Land Use Regulatory Board (HLURB) and registration with the Register of Deeds, except in exempt transactions as provided under Section 18;

(m) To have exclusive jurisdiction in determining and integrating all rules and regulations with respect to the payment of government fees, dues or charges in relation to the privilege to practice the profession;

(n) To adopt a national code of ethics to be strictly observed by all licensed real estate salespersons, brokers, appraisers and consultants.

SEC. 6. License Requirement. - No natural nor juridical person or a division or department thereof, shall directly or indirectly engage in real estate services practice or represent himself or itself as a real estate salesperson, broker, appraiser or consultant without having first secured the corresponding license from the Commission in accordance with this Act and the person or persons authorized to act as such for any juridical person in respect to real estate services shall all be duly licensed real estate service practitioners.

SEC. 7. Application for License. - Any natural person duly qualified and who has successfully passed the examination required by this Act for real estate brokers, appraisers, consultants, may apply for a license as real estate broker, appraiser, or consultant or forms duly prescribed by the Commission.

Any natural person duly qualified under Section 8 of this Act may apply for a license as real estate salesperson and shall at all times be under the direct supervision and control of a real estate broker.

SEC. 8. Qualifications. - Any applicant for examination for license to engage in the real estate profession shall, at the time of the filing of his application be:

(a) a Filipino citizens;

(b) at least twenty-one years old;

(c) of good moral character; and

(d) a holder of a bachelor's degree from a duly recognized school, university or institution and he must have attended and completed a real estate service seminar given by accredited entities for those applying as real estate brokers salespersons, the applicant must be a holder of a high school diploma in a duly recognized school, university or institution and he must have attended and completed a real estate service seminar given by accredited entities.

(e) must not have been convicted of a crime where fraud in an essential element: *Provided*, That an applicant for the licensure examination for real estate broker must submit a certification under oath that he has three (3) years experience as licensed real estate salesperson jointly certified by the licensed real estate broker/s with whom he has practiced for such period and the specific dates of employment; for real estate appraisers, certification under oath of five (5) years experience as a licensed real estate broker: *Provided, further*, That an applicant for the licensure examinaiton for real estate consultants must certify under oath that he has at least ten (10) experience as a licensed real estate broker and at least five (5) years experience as real estate appraiser.

SEC. 9. Scope of Examination. - An examination shall be given to the licensure applicants for real estate brokers, real estate appraisers or real estate consultants, which shall include the following:

(a) For real estate brokers - Fundamentals of property ownership; legal requirments for real estate practice; real estate brokerage practice; practical appraisal for real estate broker; site location and map reading; subdivision development; condominium concept; real estate financing; taxation; economics; basic principles of ecology; urban and rural land use; planning, development and zoning; legal aspects of sale, mortgage, lease, documentation and registration; agrarian reform law; code of ethics; and other relevant subjects as may be determined by the Board.

(b) For real estate appraisers - General real estate information; theories and principles in

practical appraisal mathematics; appraisal report writing; laws affecting real estate appraisal; income and investment problems; appraisals of machinery and equipment; case studies; agrarian reform law; code of ethics; and other relevant subjects as may be determined by the Commission.

(c) For real estate consultants - Written and/or oral examination onre-investment/feasibility studies; design; process innovation; construction/installation and other technical services on special studies; agrarian reform law; code of ethics; and other relevant subjects as may be determined by the Commission: *Provided, however,* That applicants shall, at the time of filing the application for real estate consultant examination, must have at least ten (10) years experience in his field of specialization.

SEC. 10. Duration of License. - All licenses shall be valid for a period of three (3) year and renewable in accordance with the rules and regulations of the Commission.

SEC. 11. Rating in the Examination. - In order that candidate may be deemed to have successfully passed the examination, he must have obtained an average of at least seventy percent (70%) in all subject, with no rating below fifty percent (50%) in any subject.

SEC. 12. License Numbers. - The Commission shall assign a permanent license number for each registered salesperson., broker, appraiser and consultant, which number shall be indicated in their respective pocket cards, letterheads, dry seals, signboards, billboards, advertisements, brochures, pamphlets and all other documents or materials released by a real estate service practitioner in the exercise of his profession. As to salespersons, the license number of the real estate broker who has direct supervision and control over them shall be indicated.

SEC. 13. Pocket Cards. - The Commission shall prepare, issue, and deliver to each licensed real estate service practitioner a pocket card in such form and manner as the Commission shall prescribe, but which shall contain the name, business address and license number of the license and in the case of a real estate salesperson, the name, business address and license number of the broker who has direct supervision and control over him and shall certify that the person whose name appears thereon is a licensed real estate service practitioner. Such cards

shall be shown by the licenses to all parties at the commencement of any transaction. In case of loss, destruction or damage, the Commissioner may, upon submission of an affidavit of Loss, issue a duplicate card upon payment of a fee.

SEC. 14. Display of License in the Place of Business. - Every licensed real estate service practitioner shall establish and maintain a principal place of business and such other branch offices as may be necessary and shall conspicuously display therein certified true copies of the licenses of all as real estate service practitioners employed by such office.

SEC. 15. Procedure in the Suspension and/or Revocation of License. - (a) The Commission shall *mutuo proprio* or upon verified complaint, investigate and decide on matters involving the implementation and/or violation of the provisions of this Act and such investigation shall be mandatory when from the allegations of the complaint and the answer of the respondent, including the supporting documents, the merits of the case cannot be decided without conducting an investigation even if the respondent does not request a formal investigation. In no case shall the ruling of the Commission exceed ninety (90) days from the date the complaint is filed, except in exceptionally meritorious cases.

(b) The direct evidence from the complainant and the respondent shall consist of the sworn statement and documents submitted in support of the complaint or answer as the case may be, without prejudice to the presentation of additional evidence deemed necessary but was unavailable during the time of filing of the complaint or answer, upon which the cross-examination by respondent and complainant shall be based. Following the cross-examination, there may redirect and recross-examination when deemed necessary.

(c) Either party may avail or service of counsel and may require the attendance of witnesses and the production of documentary evidence in his favor through the compulsory process of *subpoena* or *subpoena duces tecum*;

(d) The investigation shall be conducted for the purpose of ascertaining the truth and without necessarily adhering to technical rules of judicial proceedings.

(e) Any complain filed under this Act is without prejudice to civil or criminal actions filed in regular courts for the same acts.

SEC. 16. Appeals. (a) Appeals shall be made by the party adversely affected by the decision to the office of the President within fifteen (15) days from receipt of the decision unless a petition for reconsideration is filed, which petition shall be decided within fifteen (15) days. Notice of the appeal shall be filed with the Commission which shall forward the records of the case together with the notice the notice of appeal to the Office of the President or his duly authorized representative within fifteen (15) days from filing of the notice of appeal, with its comment, if any. The notice of appeal shall specially state the date the decision was appealed from as well as the date of receipt thereof. It shall also set forth clearly the grounds relied upon in making the appeal from decisions;

(b) A petition for consideration shall be based only on any of the following grounds:

- (1) New evidence discovered which materially affects the decision rendered;
- (2) The decision is not supported by the evidence or record; or
- (3) Errors of law or irregularities were committed which are prejudicial to the interest of the respondent:

Provided, That only one petition for reconsideration shall be entertained.

SEC. 17. Preventive Suspension & Others Measures. - The Commission may preventively suspend may license under this Act pending as investigation and/or decision, if the charge against any license involves misrepresentation, dishonesty or grave misconduct or fraud and there is strong evidence to believe that the respondent is quality of the charges which would warrant the revocation of his license.

At any time after the commencement of an administrative action but prior to the resolution thereof, the Commissioner when so warranted by the circumstances, may issue preliminary and/or preventive orders such as but not limited to, temporary cease and desist orders to prevent and/or restrain the commission of acts, which would probably work injustice to, or prejudice the rights of the complainants or any other person or entity involved, and/or which may render any action, order of judgement ineffectual.

ARTICLE III

PRACTICE OF REAL ESTATE SERVICE

SEC. 18. Acts Constituting the Practice of Real Estate Practice. - Any single act or transaction embraced within the definitions contained in Section 3 hereof, shall constitute as real estate service, except when the same is performed by:

(a) Any natural or juridical person who directly performs by himself or itself any of the above-mentioned acts with respect to his or its own property except those covered by Section 22.

(b) Any receiver, trustee or assignee in insolvency proceedings;

(c) Any person acting pursuant to a court order;

(d) Public officers in the performance of their official duties;

(e) Officials and employees of banks, insurance companies, savings and loan associations or other financial institutions with respect to the foreclosure and eventual disposition of their acquired assets and only while they are employed by such bank, insurance company, savings and loan association or financial institution.

SEC. 19. Unauthorized Practice. - No person, whether natural or juridical, nor any of its employees or associates shall be allowed to practice the real estate profession in the Philippines without first obtaining a license under the provisions of this Act. Any person, whether natural or juridical, found guilty of violating this provision or who shall transact with an unlicensed practitioner shall be subject to the penalties provided in Section 29.

SEC. 20. Branch Offices of Real Estate Service Practitioners. - Branch offices of real estate brokers, appraisers or consultants must be manned by a duly licensed real estate salesperson, broker, appraiser or consultant as the case may be and must be registered as such with the Commission

SEC. 21. Real Estate Salesperson under Supervision and Control of Brokers.- No salesperson can negotiate, mediate or transact any real estate transaction for an in behalf of a broker without first securing a license as salesperson under the rules of the Commission. A salesperson cannot by himself be a signatory to a written agreement involving a real estate

transaction unless the real estate broker who has direct control and supervision over him is also a signatory thereto. A broker shall be guilty of violating this act for having a salesperson who has not secured the required license prior to employment.

At no time shall the number of salesperson under a broker exceed twenty (20) and a list of the salespersons under the broker shall be submitted to the Commission and updated regularly. In the event a salesperson ceases to be employed with a broker, the same must be reported by the broker within thirty (30) days from cessation of relationship.

No salesperson shall receive or demand a fee, commission or compensation of any kind from any person, other than the duly licensee real estate broker and who has direct control and supervision over him, for any service rendered or work done by such salesperson in any real estate transaction.

No violation of this provision shall be cause for revocation or suspension of the broker unless there was actual knowledge of such violation or the broker retains the benefits, profits or proceeds of a transaction wrongfully negotiated by the salesperson.

SEC. 22. Juridical Persons a Real Estate Service Practitioners. - (a) No partnership or corporation shall engage in real estate service practice unless it is duly licensed by the Commission and registered with the Securities and Exchange Commission (SEC), and the persons authorized to act as such for the partnership or corporation are all duly licensed as salesperson, brokers, appraisers or consultants, as the case may be. The partnership or corporation shall regularly submit a list of its real estate service practitioners to the Commission and to the SEC as part of its annual reportorial requirements.

(b) Division or departments of corporations and partnerships engaged in marketing or selling any real estate development project in marketing or selling any real estate development project in the regular course of business must be headed by a full-time licensed real estate broker and all salespersons in such division, or department must be separately licensed as salespersons under the rules of the Commission. There shall at least be one (1) licensed real estate broker for every twenty (20) licensed salespersons.

In case of resignation or termination from employment of a real estate service practitioner, the same shall be reported by the employer to the Commission within a period not to exceed thirty (30) days from the date of the effectivity of the resignation or termination.

Subject to the provisions of the Labor Code, a corporation or partnership may hire the services of licensed real estate brokers, appraisers or consultants on commission basis to perform real estate services and the latter shall be deemed independent contractors and not employees of such corporation or partnership.

Sec. 23. Duties and Responsibilities of Licensed Salesperson, Brokers, Appraisers and Consultants. - All licenses, in the practice of the profession, are required to:

- (a) Present their pocket cards to all parties at the start of every transaction and inform them of any vital information affecting his or its license;
- (b) Disclose all material facts concerning such real estate transaction;
- (c) Undertake an accurate verification of all land titles, survey plans, technical description, transferability of ownership or possession, construction plans and specifications, zoning regulations, rules and laws, appraisals, assessed values and actual market valuation, before promoting or negotiating any transaction on any particular real estate or real estate development project;
- (d) Promote the fairest agreement among and between the parties to any real estate transaction;
- (e) Authenticate every contract negotiated by him or for and in behalf of his partnership or corporation with his personal signature and personal seal;
- (f) Advise the parties of the amount of taxes, fees and other assessment due the government in connection with said transaction;
- (g) Keep a registry book in the form prescribed by the Commission which shall contain a record of all transactions consummated by him specifying the nature of the property, assessed value, actual consideration for the contract, and nature of transaction, whether a sale, exchange, mortgage, lease, joint venture or the like;
- (h) Submit an annual report of all his transactions to the Commission.

SEC. 24. Grounds for Suspension and Revocation. - The Real Estate Commission may, motu proprio, or upon verified complaint in writing by any person, investigate the activities of any real estate salesperson, broker, appraiser and consultant and after due notice and hearing,

suspend or revoke the license for such period as the Commission may deem proper, when the license is found guilty of any of the following activities;

(a) Procuring license or pocket card through fraud and deceit and making false, fraudulent or deceitful statement of facts in his application for license or forging any signature therein;

(b) Making any false and deceitful promise directly or through prospectus, advertisements, pamphlets, brochures or billboards which are likely to influence persuade or induce any person to enter into a transaction;

(c) Making any substantial misrepresentation or non-disclosure of a material fact;

(d) Any conduct in a real estate transaction which demonstrates gross and evident bad faith, dishonesty, untrustworthiness or incompetence;

(e) Paying or accepting, giving or charging any undisclosed commission, rebate, compensation or profit;

(f) Procuring or helping to procure consent to or effecting the consummation of any real estate transaction or engagement of this service by means of bribery or corruption, fraud, deceit, intimidation, violence or immoral offerings;

(g) Inducing any real party to a real estate transaction to break his contract for the purpose of substituting in lieu thereof a new contract with the same or different principal where such substitution is motivated by personal gain of the licensee;

(h) Misrepresenting himself as a member of an accredited organization of real estate service practitioners and using trade name, insignia or membership of any real estate organization, profession or trade of which the licensee is not a member

(i) Splitting or offering or agreeing to pay, split or rebate any commission, fee or valuable consideration, directly or indirectly with any person who is not a duly licensed real estate broker or real estate salesperson for cooperating, assisting or endorsing a transaction or engagement of his services;

(j) Conviction of a crime where fraud is an essential element;

(k) Dishonesty or engaging in fraudulent representations in any written document including any prospectus, advertisement, brochure, pamphlet, billboard and similar literature concerning any real estate transaction or project;

(l) Acting for more than one party to a transaction without the knowledge and consent in writing of all parties;

(m) Failing to exercise adequate supervision over the activities of his licensed employees;

(n) violation of any of the provisions of this Act or order of the Commission of which the broker has notice.

SEC. 25. Certificate of Transaction. - The parties to a real estate transaction involving sale or exchange shall certify under oath in a form prescribed by the Commission that a real estate broker has negotiated and mediated in the consummation, and that the consideration and all material facts contained in the deed of conveyance are true and correct: *Provided, however,* That in cities and provinces where there are no licensed real estate brokers, or that the parties have directly negotiated and consummated the transaction with each other without the mediation of real estate broker, the certification shall state the fact and shall be made under oath before the Register of Deeds of the city or province where the real estate is located: *Provided also,* That in the case of owners, developers or joint venture partner of real estate project, this certificate of transaction shall be a requirement for an application for License to Sell.

No deed of conveyance in any real estate transaction mentioned herein shall be accepted for registration by the Registry of Deeds unless the aforesaid certification of the parties and the real estate brokers together with certification of payment of withholding tax on income value added tax, capital gains tax and other fees and taxes imposed by the Government are present and filed accordingly.

SEC. 26. Code of Ethics for Real Estate Service Practitioner. - The Board shall adopt the code of ethics for real estate service practitioners which shall be promulgated by the integrated national organization of real estate service practitioners.

ARTICLE V

FINAL PROVISIONS

SEC. 27. - Transitory Provisions. - Those who, on the date of effectivity of this Act, are already licensed as real estate broker, real estate appraisers or real estate consultant by the Bureau

of Domestic Trade shall be registered and issued by the Board and the Commission a certificate of registration and a professional license without taking the prescribed examination: *Provided*, That they shall file their applications in the form prescribed for the purpose not later than one (1) year from the date of the effectivity of this Act: *Provided*, further, That the renewal of their licenses is governed by the provisions of this Act.

All natural or juridical persons which as of the date of the effectivity of this Act are unlicensed real estate service practitioners shall obtain their licenses not later than one (1) year from the date of the effectivity of this Act.

SEC. 28. Appropriations. - Such sums as may be necessary to carry out the provisions of this Act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter.

SEC. 29. Penal Provisions. - All cases of violations of this Act committed by any person whether natural or juridical including violations of implementing rules and regulations, shall be meted the penalty of a fine of not less than one hundred thousand pesos (P100,000.00) or imprisonment of not less than two (2) years, or both such fine and imprisonment upon the discretion of the court.

In case the violation is committed by a juridical person, in addition to the fine imposed by the preceding paragraph on the juridical person, the responsible officer or officers who shall consent to or shall knowingly tolerate such violations shall be directly liable for the acts of his subordinates and shall be criminally liable as a co-principal, and shall be meted a fine of not less than One hundred thousand pesos (100,000.00)

SEC. 31. Separability Clause. If any provision, or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SEC. 32. Repealing Clause. Presidential Decree No. 1602 is hereby amended and any law presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with, the provisions of this Act is hereby repealed, modified or amended accordingly.

SEC. 33. Effectivity. This Act shall take effect fifteen (15) days after its publication in at least two (2) newspaper of general circulation.