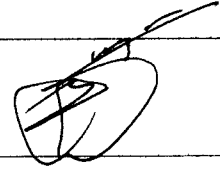


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

THIRTEENTH CONGRESS
2nd REGULAR SESSION

HOUSE BILL NO. 4903

Introduced by the **HON. EDUARDO C. ZIALCITA**



EXPLANATORY NOTE

Republic Act No. 6552, more popularly known as the Maceda Law, was approved into law on August 26, 1972. At that time, there was no creditable withholding tax, value-added tax or business tax imposed on sales by real estate developers based on the gross selling price or total consideration. At that time, the commission rates of brokers and/or sellers, and the marketing expenses, in general, have not soared to such prohibitive heights. At that time, real estate industry was preoccupied with the sale of home lots only. Selling with house components were isolated due to the absence affordable financing programs from the government like what is now being offered by Pag-ibig Fund. At that time, Asia has not yet been hit by the debilitating regional economic crisis. Property values then consistently appreciated. Hence, at that time, the Maceda law was still relevant and provided comfort and equity to buyers of real properties on installment basis who failed to continue to pay their amortization. The developers/sellers were not hurt if they were made to refund 50% of the total payment to their buyers as after all, we could still recover their investment in subsequent sale without having to incur huge marketing, taxes and other incidental expenses.

However, supervening events that transpired through the years have tilted the balance in favor of the buyers, so that, they whom the law originally sought to protect against alleged onerous and oppressive conditions imposed by sellers, are now placed at a more advantageous position. While this situation may elicit popular acceptance considering that it is "pro-people", the long-term effect may be to slowly but surely "kill" the industry which creates a big multiplier effect on economic activities.

The lapse of more than three (3) decades has made the Maceda Law obsolete and no longer palatable to the present norms in business. Because of the 50% refund provision of the law, many financing transactions involving real estate have collapsed. The present documentation of the Home Development Mutual Funds for its Contract to Sell with buy back guarantee from the developers are not spared from the imminent danger of requiring the payment of refund to delinquent homebuyers. The CTS financing transactions between banks and developers are unnecessarily impeded by the fear of refund if buyers default in their amortizations. There is constriction in the assignability of installment receivables thus, making financing cost of developers higher. Instead of helping promote long-term installment packages, the Maceda Law is an obstacle to fair business deals between the real property sellers and buyers.

To safeguard, therefore, the interest of the real estate industry, and consequently, of the entire economy, without necessarily sacrificing the needs, rights and interests of the buying public, an amendment to the Maceda Law is hereby sought.

Among the amendments proposed in this bill is to limit the applicability of the Maceda Law to individual buyers (natural person) only of residential real property. In its original state, it would appear that any person, whether natural or juridical, may invoke the benefits provided by law. However, housing is a basic need of an individual or the natural person who normally uses hard-earned money or his entire life's savings to acquire a roof over his and his family's heads. He, more than a partnership or a corporation, needs the protection that the law seeks to afford real property buyers.

Another important amendment proposed herein is the deduction of penalty charges and interest on the installment amortizations, certain taxes and expenses actually paid to third persons, such as the Bureau of Internal Revenue, the local government unit/s and real estate brokers and agents, from the total payments made for purposes of determining the cash surrender value refundable to the buyer. The rationale for these amendments are:

- Penalty are sanctions imposed on the buyer for the delay in payment which the seller should be allowed to recognize as other income so he can recoup his own losses. Had the buyer been up to date in his payment, the seller would not have incurred his own financing cost in running his day to day operations.
- The taxes and expenses are those that have been mentioned in the opening paragraph hereof which range from 1 ½% to 5%, in the case of creditable withholding tax; 10% for value-added tax; and .12% to 3% in business tax paid to the local government. It should be noted that these taxes and expenses do not go into the coffers of the seller but go directly to the national or local government and to third parties. There were no such taxes during the time of Maceda Law's promulgation.
- The interest charges collected from the buyer, on the other hand, which are part of every installment payment made, are supposed to answer for the interest charges that the seller is likewise burdened to pay its creditors. It is a common practice in the industry to avail of bank loans to finance subdivision project developments.

There is likewise a proposal herein to limit the availment of the refund provisions of the Maceda Law to only once during the entire life of the contract or its extensions, instead of the original once every five years, and to remove the escalation of the percentage of refundable amount to the buyer. Installment contracts at present normally run for as long as ten (10) years. During that period, values of properties do not necessarily appreciate. The reverse is true for the house component which depreciates as it is occupied and used by the installment buyer.

With all these justifications, this humble representation presents this bill seeking to amend the Maceda Law to make it more responsive to the current conditions.

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AN ACT
AMENDING REPUBLIC ACT NO. 6552, OTHERWISE KNOWN AS THE
REALTY INSTALLMENT BUYER ACT, AND FOR OTHER PURPOSES

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

SECTION 1. Section 3 is hereby amended to read as follows:

"Section 3. In all [transactions or] contracts [involving the sale or financing of] **to sell or conditional sales involving natural persons who are buyers of residential [real estate] property,** including residential condominium apartments, but excluding industrial lots, **farm lots, leisure lots,** commercial buildings and sales to tenants under **Agrarian Reform Laws, Rules and Regulations** [Republic Act Numbered Thirty Eight Hundred Forty Four, as amended by Republic Act Numbered Sixty Three Hundred Eighty Nine], **where title passes to the buyer only upon full payment of the purchase price,** [where] the buyer **who** has paid at least two years of installments [the buyer is] **shall be** entitled to the following rights in case he defaults in the payment of succeeding installments:

[a] To pay, without [additional interest] **penalty provided for in the contract to sell or conditional sales agreement**, the unpaid installments due within [the total] **a sixty (60) day** grace period [earned by him which is hereby fixed at the rate of one month grace period for every year of installment payments made], provided that, this right shall be exercised by the buyer only once **during** [in every five years of] the life of the contract and its extensions, if any.

[b] If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payment on the property equivalent to fifty percent (50%) of the total payments made, [and, after five years of installments, an additional five percent every year but not to exceed ninety percent of the total payments made] provided that, the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation [or the demand for rescission] of the contract by a notarial act and upon full payment of the cash surrender value of the buyer, **provided further, that the total payments made shall be computed by adding all payments made by the buyer and then deducting payments applied to penalty and interest charges, miscellaneous fees, taxes and costs actually paid or incurred by the seller to a third party, such as but not limited to creditable withholding and value added taxes paid to the Bureau of Internal**

Revenue (BIR) and commission and marketing expenses paid to brokers and selling agents.

Downpayments, deposits or options on the contract shall be included in the computation of the total number of installment payments made.

[c] For purposes of paying the cash surrender value to the buyer, the seller may deposit the cash surrender value in any reputable bank on behalf and in the name of the defaulting buyer, provided, that notice thereof before and after the deposit shall be made to the buyer.

SECTION 2. Section 4 is hereby amended to read as follows:

"SECTION 4. In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due; provided that, where the buyer merely paid the reservation fee, option money or deposit, the grace period shall be fifteen (15) days from the due date of the first installment.

"If the buyer fails to pay the installment due at the expiration of the grace period described above, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation [or the demand for rescission] of the contract by notarial act, in case the buyer has paid less than two years of installments; or immediately upon receipt by the buyer of a notice therefor, in case the buyer merely paid the reservation fee, option money or deposit."

SECTION 3. If any part, section or provision of this Act is held invalid or unconstitutional, other provisions not affected thereby shall remain in full force and effect.

SECTION 4. All other laws, decrees, orders, issuances, rules and regulations contrary to or inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SECTION 5. This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of national circulation.

Approved,

A handwritten signature in black ink, consisting of a stylized 'E' followed by a horizontal line and a small flourish.