

When the House is Not a Home: A Study on the Family Home and Its Foreclosure

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I. INTRODUCTION

Most Filipinos have misconceptions regarding the nature of a family home and what happens if they use it as collateral for a loan. Some think that because the mortgaged property is a family home, the same cannot be foreclosed. In other cases, there are those who belatedly aver that a property is a family home in the hope of saving it from execution.

This Article aims to answer the following questions in order to clarify issues regarding the constitution of a family home, the proof of its existence, and the remedies available should the same be foreclosed:

- (a) How does one constitute a family home?
- (b) Is a family home exempt from foreclosure?
- (c) How should one prove that a particular property is indeed a family home and should be exempt from execution, forced sale, or attachment?

II. DEFINITION OF A FAMILY HOME

In *Taneo, Jr. v. Court of Appeals*,¹ the Supreme Court defines a family home as “the dwelling place of a person and his family.”² In *Taneo, Jr.*, the family

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home is characterized as “a real right, which is gratuitous, inalienable[,] and free from attachment, constituted over the dwelling place and the land on which it is situated, conferring upon a particular family the right to enjoy such properties, which must remain with the person constituting it and his heirs.”³ Furthermore, the Court, in the same Case, highlights the importance of the family home by stating that it can only be seized by creditors in special circumstances.⁴

III. CONSTITUTION OF A FAMILY HOME

Prior to the enactment of the Family Code of the Philippines,⁵ Article 224 of the Civil Code⁶ provided that one may constitute a family home judicially or extrajudicially.⁷ To effect the judicial constitution of the family home, a verified petition must be filed with and approved by the proper court.⁸ The extrajudicial constitution of the family home required the recording of a public instrument declaring a house to have been established as such in the proper Registry of Property.⁹

In contrast, under the Family Code, which repealed Titles III to XV of Book I of the Civil Code,¹⁰ the family home is “constituted jointly by the husband and wife or by an unmarried head of a family.”¹¹ The Law now considers the occupation of a home as a “family residence” as the time of the constitution of the family home.¹² In *Modequillo v. Bрева*,¹³ the Court explained that this change brought about by the Family Code eliminated the need for houses constructed after its effectivity to be judicially or

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1. Taneo, Jr. v. Court of Appeals, 304 SCRA 308 (1999).
2. *Id.* at 318.
3. *Id.* (citing I ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES: COMMENTARIES AND JURISPRUDENCE 507 (1990)).
4. *Id.*
5. The Family Code of the Philippines [FAMILY CODE], Executive Order No. 209 (1988).
6. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950).
7. *Id.* art. 224.
8. *Id.* art. 225.
9. *Id.* art. 240.
10. FAMILY CODE, art. 254.
11. *Id.* art. 152.
12. *Id.* art. 153.
13. *Modequillo v. Bрева*, 185 SCRA 766 (1990).

extrajudicially constituted, since it is now the family's act of residing in the premises which legally confers upon the house the status of a family home.¹⁴ Hence, the family home now enjoys the exemptions from execution, forced sale, and attachment from the time it is occupied as the family's residence, and such exemption continues as long as its beneficiaries are residing therein.¹⁵ However, Article 153 of the Family Code provides limits to the enjoyment of this exemption, particularly with regard to the "value allowed by law."¹⁶

In *Modequillo*, the Supreme Court further clarified the effect of Articles 152 and 153 regarding the point in time at which the family home is constituted by stating that these provisions

[do not] have a retroactive effect[,] such that all existing family residences are deemed to have been constituted as family homes at the time of their occupation prior to the effectivity of the Family Code and are exempt from execution for the payment of obligations incurred before the effectivity of the Family Code.¹⁷

Here, the Court pointed out the significance of Article 162¹⁸ in the non-retroactive application of Chapter 2, Title V of the Family Code.¹⁹ The Court explained this effect by stating that "Article 162 of the said Code simply means that all existing family residences at the time of the effectivity of the Family Code are considered family homes and are prospectively

14. *Id.* at 770-71.

15. *Id.* at 771. *See also* FAMILY CODE, arts. 153-154. These Sections provide:

Article 153. The family home is deemed constituted on a house and lot from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.

Article 154. The beneficiaries of a family home are:

(1) The husband and wife, or an unmarried person who is the head of a family; and

(2) Their parents, ascendants, descendants, brothers and sisters, whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for legal support.

FAMILY CODE, arts. 153-154.

16. *Id.* art. 153.

17. *Modequillo*, 185 SCRA at 771-72.

18. FAMILY CODE, art. 162 ("The provisions in this Chapter shall govern existing family residences insofar as said provisions are applicable.").

19. *See Modequillo*, 185 SCRA at 771-72.

entitled to the benefits accorded to a family home under the Family Code.”²⁰

Subsequently, in *Manacop v. Court of Appeals*,²¹ the Supreme Court succinctly explained the difference in the procedure to be followed pursuant to the changes brought about by the Family Code by stating that “prior to August 3, 1988, [the date of effectivity of the Family Code,] the procedure mandated by the Civil Code had to be followed for a family home to be constituted as such.”²²

IV. JUDICIAL PROCEDURE FOR THE CONSTITUTION OF A FAMILY HOME

Under Rule 106 of the 1997 Rules of Court, the judicial procedure for the constitution of the family home begins when a verified petition is filed with the Regional Trial Court of the province or city where the property is located.²³ Section 5 (h) of Republic Act (R.A.) No. 8369, otherwise known as the Family Courts Act of 1997, now states that the Family Courts shall have exclusive original jurisdiction to hear and decide petitions for the constitution of the family home.²⁴

In the event, however, that the fortune of the head of the family or the person obliged to give support is lost due to grave mismanagement or riotous living, Section 1 of Rule 106 further provides that “his or her spouse, if any, and a majority of those entitled to his or her support, may also file the petition ... for the creation of a family home.”²⁵

The said Petition must contain the following particulars:

- (a) Description of the property;
- (b) An estimate of its actual value;
- (c) A statement that the petitioner is actually residing in the premises;
- (d) The encumbrances thereon;
- (e) The names and addresses of all the creditors of the petitioner or head of the family[,] and of all mortgagees and other persons who have an interest in the property; and

20. *Modequillo*, 185 SCRA at 772.

21. *Manacop v. Court of Appeals*, 277 SCRA 57 (1997).

22. *Id.* at 65.

23. SPECIAL PROCEEDINGS, rule 106, § 1.

24. An Act Establishing Family Courts, Granting Them Exclusive Original Jurisdiction Over Child and Family Cases, Amending Batas Pambansa Bilang 129, Otherwise Known as Act of 1980, Appropriating Funds Therefor and for Other Purposes [Family Courts Act of 1997], Republic Act No. 8369, § 5 (h) (1997).

25. SPECIAL PROCEEDINGS, rule 106, § 1.

(f) The names of all the beneficiaries of the family home.²⁶

After the filing of the Petition, it becomes incumbent upon the court to “notify the creditors, mortgagees[,] and all other persons who have an interest in the estate, of the filing of the petition, causing copies thereof to be served upon them, and published once a week for three (3) consecutive weeks in a newspaper of general circulation.”²⁷ In addition to such notice, the law requires the petition to be posted, for at least 14 days prior to the hearing, in a conspicuous place both in the land where the home is constituted and in the municipal building of the place where said land is located.²⁸

Furthermore, the law mandates the court to include in such notice and publication a requirement for “the interested parties to file their objection to the petition within a period of not less than thirty (30) days from receipt of notice or from the date of last publication.”²⁹ In addition, the date and time of the hearing of the petition shall be fixed by the court in the same notice and publication.³⁰

An approval of the Petition shall be granted after hearing, upon establishing “that the actual value of the proposed family home does not exceed the amount provided by law and that no third person is prejudiced thereby, or that creditors have been given sufficient security for their credits.”³¹

Finally, the Register of Deeds shall be furnished a certified copy of such approval of the Petition, which he or she shall record in the Registry of Property.³²

V. REQUISITES OF A FAMILY HOME

The Family Code requires that the family home must belong to either the absolute community, the conjugal partnership, or the exclusive property of one of the spouses with the latter’s consent.³³ However, the law adds that “property that is the subject of a conditional sale on installments where ownership is reserved by the vendor only to guarantee payment of the

26. *Id.* § 2.

27. *Id.* § 3.

28. *Id.*

29. *Id.* § 4.

30. *Id.*

31. SPECIAL PROCEEDINGS, rule 106, § 5.

32. *Id.* § 6.

33. FAMILY CODE, art. 156.

purchase price may be constituted as a family home.”³⁴ The Family Code also provides requirements with regard to the value of the family home at the time of its constitution. In urban areas, the value of the family home should not exceed ₱300,000.00 while in rural areas, the law sets the maximum value of the family home at ₱200,000.00.³⁵

More importantly, *Taneo, Jr.* clarifies that since the Family Code defines the family home as a “dwelling house where a person and his family resides *and* the land on which it is situated,”³⁶ it is paramount that in order to be considered as a family home, “the house should be constructed on a land *not* belonging to another.”³⁷

When one or both spouses or the unmarried head of the family dies, the law provides that, despite such occurrence, the family home shall subsist “for a period of ten years or for as long as there is a minor beneficiary, and the heirs cannot partition the same unless the court finds compelling reasons therefor.”³⁸ This Rule is applicable “regardless of whoever owns the property or constituted the family home.”³⁹ However, with regard to the acts of constituting and enjoying the benefits of a family home, the Law provides that, for such purpose, “a person may constitute, or be the beneficiary of, only one family home.”⁴⁰

VI. EXEMPTION FROM EXECUTION, FORCED SALE, OR ATTACHMENT

Generally, the family home shall be exempt from execution, forced sale, or attachment except:

- (a) For nonpayment of taxes;
- (b) For debts incurred *prior* to the constitution of the family home;
- (c) For debts *secured by mortgages* on the premises *before or after* such constitution; and

34. *Id.*

35. *Id.* art. 157. This Article also provides that these amounts are subject to change by law. It further states that “[i]n any event, if the value of the currency changes after the adoption of this Code, the value most favorable for the constitution of a family home shall be the basis of evaluation.” *Id.*

36. *Taneo, Jr.*, 304 SCRA at 321 (citing CIVIL CODE, art. 223) (emphasis supplied). See also FAMILY CODE, art. 152.

37. *Taneo, Jr.*, 304 SCRA at 321 (emphasis supplied).

38. FAMILY CODE, art. 159.

39. *Id.*

40. *Id.* art. 161.

- (d) For debts due to laborers, mechanics, architects, builders, materialmen[,] and others who have rendered service or furnished material for the construction of the building.⁴¹

From these exceptions, it then follows that a family home may be used as collateral for loans and, in the event of non-payment of such loans falling under Article 155, may even be foreclosed.⁴²

Recently, in *Ramos v. Pangilinan*,⁴³ decided in July 2010, the Supreme Court laid down guidelines regarding the applicability of the rule on exemption of a family home from execution, forced sale, or attachment. There are two factors to consider in determining whether the benefit provided for by the law may be availed of.⁴⁴ The first factor is the time of the construction of the family home and the second is whether the corresponding requirements have been fulfilled by the judgment debtor.⁴⁵

For houses built before the effectivity of the Family Code, that is, before 3 August 1988, the constitution of such as a family home must follow either the judicial or extra-judicial procedure laid down in Articles 223 to 251 of the Civil Code.⁴⁶ The Supreme Court explains these procedures as follows:

Judicial constitution of the family home requires the filing of a verified petition before the courts and the registration of the court's order with the Registry of Deeds of the area where the property is located. Meanwhile, extrajudicial constitution ... involves the execution of a public instrument which must also be registered with the Registry of Property. Failure to comply with either one of these two modes of constitution will bar a judgment debtor from availing of the privilege.⁴⁷

A different set of rules, however, governs the constitution of a family home under the Family Code. This set of rules applies to houses built after 3 August 1988. In this regard, the Supreme Court states that:

[T]here is *no need to constitute extrajudicially or judicially*, and the exemption is effective from the time it was constituted and lasts as long as any of its beneficiaries under Art. 154 actually resides therein. Moreover, the family home should belong to the absolute community or conjugal partnership, or if exclusively by one spouse, its constitution must have been with consent of the other, and its value must not exceed certain amounts depending

41. *Id.* art. 155 (emphasis supplied).

42. *See, e.g.,* Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc., 628 SCRA 79 (2010).

43. *Ramos v. Pangilinan*, 625 SCRA 181 (2010).

44. *Id.* at 186-88.

45. *Id.*

46. *See* CIVIL CODE, arts. 223-251.

47. *Ramos*, 625 SCRA at 186-88.

upon the area where it located. Further, the debts incurred for which the exemption does not apply as provided under Art. 155 for which the family home is made answerable must have been incurred after August 3, 1988.⁴⁸

VII. PROVING THE EXISTENCE OF A FAMILY HOME

In *Veneracion v. Mancilla*,⁴⁹ the Supreme Court held that it is incumbent upon the party alleging the existence of a family home and its conjugal nature to present sufficient evidence in support of such claim.⁵⁰ Here, the Petitioners filed a Petition for the annulment of a judgment, which declared the family home liable for the execution of the decision and sustained the validity of the mortgage.⁵¹ However, since the Petitioners fell short of providing support for their claims, their Petition was denied.⁵² The Court ruled that the

[P]etitioners failed to append to their petition the copies, if any, of the pleadings in [the civil case] in which their mother had alleged that the mortgaged property was the family home and conjugal in nature; and thus, exempt from forced sale under Article 155 of the Family Code. [T]he records of the RTC do not contain such pleadings, as [P]etitioners' mother never alleged therein that said property was conjugal and was the family home.⁵³

Also worth noting with regard to proof of existence of a family home is the right given to a judgment creditor who has "reasonable grounds" to believe that the family home has already exceeded the values provided for by the Family Code at the time of its constitution or through subsequent voluntary improvements by those who constituted it as such, the owner, or its beneficiaries.⁵⁴ This right exists, however, only if the creditors' claims do not fall under those enumerated in Article 155 of the Family Code.⁵⁵ In such a case, Article 160 provides that the judgment creditor "may apply to the court which rendered the judgment for an order directing the sale of the property under execution."⁵⁶ The petition of the judgment creditor shall be granted if the court finds that the value has indeed exceeded the maximum

48. *Id.* at 186 (emphasis supplied).

49. *Veneracion v. Mancilla*, 495 SCRA 712 (2006).

50. *Id.* at 725.

51. *Id.* at 719.

52. *Id.* at 728.

53. *Id.* at 725.

54. FAMILY CODE, art. 160.

55. *Id.* See also JOSE C. VITUG, CIVIL LAW 353-54 (2003 ed.).

56. FAMILY CODE, art. 160.

amounts provided in Article 157.⁵⁷ However, “no bid below the value allowed for a family home shall be considered.”⁵⁸

In *Honrado v. Court of Appeals*,⁵⁹ the Supreme Court noted the time in which a party must prove that his family home is exempt from execution, forced sale, or attachment. The Court, in this Case, stated that “such claim for exemption should be set up and proved to the Sheriff *before* the sale of the property at public auction. Failure to do so would estop the party from later claiming the exemption.”⁶⁰

The Rules regarding the duty of the trial court in the event that its attention has been called to the possibility of a family home being subject to execution is laid down in *Josef v. Santos*.⁶¹ In this Case, the High Court took note of the fact that the “Petitioner claimed exemption from execution of his family home soon after respondent filed the motion for issuance of a writ of execution, thus giving notice to the trial court and respondent that a property exempt from execution may be in danger of being subjected to levy and sale.”⁶² The duties of the trial court in such a case are as follows:

- (1) Determine if petitioner’s obligation to respondent falls under either of the exceptions under Article 155 of the Family Code;
- (2) Make an inquiry into the veracity of petitioner’s claim that the property was his family home;⁶³ conduct an ocular inspection of the premises; an examination of the title; an interview of members of the community where the alleged family home is located, in order to determine if petitioner actually resided within the premises of the claimed family home; order a submission of photographs of the premises, depositions, and/or affidavits of proper individuals/parties; or a solemn examination of the petitioner, his children and other witnesses. At the same time, the respondent is given the opportunity to cross-examine and present evidence to the contrary;
- (3) If the property is accordingly found to constitute petitioner’s family home, the court should determine:
 - (a) if the obligation sued upon was contracted or incurred prior to, or after, the effectivity of the Family Code;⁶⁴

57. *Id.*

58. *Id.*

59. *Honrado v. Court of Appeals*, 476 SCRA 280 (2005).

60. *Id.* at 290 (emphasis supplied).

61. *Josef v. Santos*, 572 SCRA 57 (2008).

62. *Id.* at 68.

63. *See* FAMILY CODE, arts. 152-153 & 162.

64. *See generally* *Modequillo*, 185 SCRA 766; *Manacop*, 277 SCRA 57; & *Taneo, Jr.*, 304 SCRA 308.

- (b) if petitioner's spouse is still alive, as well as if there are other beneficiaries of the family home;⁶⁵
- (c) if the petitioner has more than one residence for the purpose of determining which of them, if any, is his family home;⁶⁶ and
- (d) its actual location and value, for the purpose of applying the provisions of Articles 157 and 160 of the Family Code.⁶⁷

The Court also took note of the corresponding duties of a creditor by stating that:

[T]he respondent [creditor] should observe the procedure prescribed in Article 160 of the Family Code, that is, to obtain an order for the sale on execution of the petitioner's family home, if so, and apply the proceeds — less the maximum amount allowed by law under Article 157 of the Code which should remain with the petitioner for the rebuilding of his family home — to his judgment credit.⁶⁸

In *Josej*, the refusal of both the trial court and the respondent-creditor to take note of petitioner's claim that the property subject of the execution is exempt from such led to an abdication of their respective duties as provided by the Family Code.⁶⁹ This prompted the Supreme Court to order the trial court to inquire into the nature of the subject property in order to ascertain if the claim that the said property is petitioner's family home is indeed correct, and to apply the pertinent provisions of the law in connection therewith.⁷⁰

On this note, emphasis was given regarding the grave importance of a family home, and that such importance is the reason behind the protection that the law confers upon it. The Supreme Court explains it in this wise:

'The family home is the dwelling place of a person and his family, a sacred symbol of family love and repository of cherished memories that last during one's lifetime.' It is the sanctuary of that union which the law declares and protects as a sacred institution; and likewise a shelter for the fruits of that union. It is where both can seek refuge and strengthen the tie that binds them together[,] and which ultimately forms the moral fabric of our nation. The protection of the family home is just as necessary in the preservation of the family as a basic social institution, and since no custom, practice[,] or agreement destructive of the family shall be recognized or given effect, the

65. See FAMILY CODE, arts. 154 & 159.

66. *Id.* art. 161.

67. *Josej*, 572 SCRA at 64-66.

68. *Id.* at 69.

69. See generally FAMILY CODE, arts. 152-155, 157, & 159-160.

70. *Josej*, 572 SCRA at 70.

trial court's failure to observe the proper procedures to determine the veracity of petitioner's allegations, is unjustified.⁷¹

VIII. ISSUES ON MORTGAGE VALIDITY AND REDEMPTION

In *Alarilla, Sr. v. Ocampo*,⁷² the Court laid down the following guidelines with respect to issues on the validity of a mortgage constituted on a family home or its foreclosure:

- (1) In case the title to the property has been consolidated, and the one-year period for redemption has lapsed, the successful bidder, as the owner of the property, is now entitled to a writ of possession from the court, a ministerial duty on the latter's behalf which no longer necessitates the filing of an action on the part of the successful bidder.⁷³
- (2) Since the issuance of a writ of possession is a ministerial function, issues with regard to the validity of the mortgage and the foreclosure may not be considered as a ground for its refusal. This is, however, without any prejudice to the outcome of pending actions related to the validity of the sale, mortgage, or foreclosure.⁷⁴
- (3) The immediate enforcement of the writ of possession may not be delayed by issues already previously raised.⁷⁵

In *Alarilla, Sr.*, the Court noted that the Petitioners filed a complaint for the nullification of the foreclosure sale and did not even oppose the Respondent's petition for a writ of possession in the lower court.⁷⁶ Therefore, the Respondent, already having consolidated his title, and the redemption period having lapsed,⁷⁷ the Court denied the prayer of the Petitioners for nullification of the sale due to lack of merit.⁷⁸

71. *Id.* at 66-67 (citing TOLENTINO, *supra* note 3, at 508 & FAMILY CODE, art. 149).

72. *Alarilla, Sr. v. Ocampo*, 417 SCRA 485 (2003).

73. *Id.* at 491 (citing *Manalo v. Court of Appeals*, 366 SCRA 752 (2001) & *Banco Filipino Savings & Mortgage Bank v. Intermediate Appellate Court*, 142 SCRA 44 (1986)).

74. *Id.* at 491-92 (citing *Ong v. Court of Appeals*, 333 SCRA 189 (2000)).

75. *Id.* at 492.

76. *Id.* at 491.

77. *Id.*

78. *Alarilla, Sr.*, 417 SCRA at 492.

Thus, the provisions of Act No. 3135,⁷⁹ as amended by Act No. 4118,⁸⁰ on extrajudicial foreclosure⁸¹ prevail over mere allegations that a mortgage over a family home is null and void because majority of the beneficiaries thereof did not consent to the mortgage, as was in this Case.⁸²

With regard to the question of which laws are applicable in cases involving the determination of the redemption price and period, and when the mortgagee in such a case is a bank, the Supreme Court clarified in *Union Bank of the Philippines v. Court of Appeals*⁸³ that the pertinent provision is Section 78 of the General Banking Act, and not Section 30, Rule 39 of the Rules of Court.⁸⁴ The Supreme Court explained that:

79. An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages, Act No. 3135, As Amended (1924).

80. An Act to Amend Act Numbered Thirty-one Hundred and Thirty Five Entitled "An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages," Act No. 4118 (1933).

81. See Act No. 3135, § 7. Act No. 4118 amended Act No. 3135 by inserting Section 7, which provides:

Section 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in the form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

Act No. 3135, § 7. See also Act No. 4118, § 2.

82. *Alarilla, Sr.*, 417 SCRA at 489.

83. *Union Bank of the Philippines v. Court of Appeals*, 359 SCRA 480 (2001).

84. *Id.* at 490-91. See also An Act Regulating Banks and Banking Institutions and For Other Purposes [General Banking Act], Republic Act No. 337, § 78 (1948).

Section 78 of the General Banking Act had the effect of amending Section 6 of Act No. 3135⁸⁵ insofar as the redemption price is concerned when the mortgagee is a bank, as in this case, or a banking or credit institution. The apparent conflict between the provisions of Act No. 3135 and the General Banking Act was, therefore, resolved in favor of the latter, being a special and subsequent legislation. ... [T]he amount at which the foreclosed property is redeemable is the amount due under the mortgage deed, or the outstanding obligation of the mortgagor plus interest and expenses in accordance with Section 78 of the General Banking Act.⁸⁶

It should be noted that Section 78 of the General Banking Act has been further amended by Section 47 of R.A. No. 8791 or the General Banking Law of 2000, which reads:

Section 47. Foreclosure of Real Estate Mortgage. — In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the *amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses* incurred by the bank or institution from the sale and custody of said property less the income derived therefrom.

...

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the *right to redeem the property* in accordance with this provision *until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier.* Owners of property that has been sold in a foreclosure sale prior to the

85. Act No. 3135, § 6. This Section provides:

Section 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

Id.

86. *Union Bank of the Philippines*, 359 SCRA at 489 (citing *Ponce de Leon v. Rehabilitation Finance Corporation*, 146 SCRA 862, 878 (1970); *Sy v. Court of Appeals*, 172 SCRA 125, 134 (1989); & Act No. 3135, § 6).

effectivity of this Act shall retain their redemption rights until their expiration.⁸⁷

IX. CONCLUSION

Constitution of a family home is presently simpler under the Family Code, as it no longer needs a judicial or extrajudicial process for the house to be declared as such. The apparent intention is to make it easier for Filipinos to constitute a property as their family home and avail of the benefits that are concurrent with it. While a family home is generally exempt from execution, forced sale, or attachment, an exception to such rule is when the property is mortgaged to avail of a loan and the mortgage is foreclosed. The foreclosure of a family home is allowed by law, but the property owner still has remedies at hand to redeem the same or to question the validity of the foreclosure itself, provided that sufficient evidence has been presented at the opportune time. Trial courts are mandated to determine whether a property averred to be a family home indeed falls under the exceptions to the general rule of its exemption from execution, forced sale, or attachment. These rules in favor of the protection of the family home are in line with the policy that “the protection of the family home is just as necessary in the preservation of the family as a basic social institution.”⁸⁸

87. An Act Providing for the Regulation of the Organization and Operations of Banks, Quasi-banks, Trust Entities and for Other Purposes [General Banking Law of 2000], Republic Act No. 8791, § 47 (2000) (emphasis supplied).

88. *Josej*, 572 SCRA at 67. See also FAMILY CODE, art. 149.