

**TITLE BY REGISTRATION
(NEW REGISTER) ACT**

CHAPTER 56:51

**Act
16 of 1980**

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Note
on
Subsidiary Legislation

This Chapter contains no Subsidiary Legislation.

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ARRANGEMENT OF SECTIONS

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CHAPTER 56:51

TITLE BY REGISTRATION
(NEW REGISTER) ACT

16 of 1980. **AN ACT to authorise the making of a new register for certificates of title destroyed by fire at the High Court building in Roseau, Dominica on 16th June 1979 and for matters connected therewith and incidental thereto.**

Commencement. [16th June 1979]

Short title. **1. This Act may be cited as the –**
TITLE BY REGISTRATION
(NEW REGISTER) ACT.

and shall be deemed part of and read and construed as one with the Title by Registration Act (hereinafter referred to as the “principal law”).

Interpretation. **2. In this Act –**

“certificate of title” includes a certificate of qualified title and certificate of possessory title;

“conclusive” used with reference to a certificate of title or to a registered instrument, or to the entry of a memorial of a registered instrument, means that the certificate of title or register copy or registered instrument or entry, as the case may be, has the same effect as if the certificate of title or register copy or registered instrument or entry had been issued, made, registered, or entered under the provisions of the principal law;

“destroyed” means lost, destroyed or rendered indecipherable by or in consequence of the fire;

“the fire” means the fire which destroyed the High Court Building, Roseau, Dominica, on 16th June 1979 and includes all damage consequent thereon or incident thereto;

“new register” means the register of title made under the authority of this Act and includes the provisional register;

“old register” means the register of title for the Commonwealth of Dominica under the principal law in existence immediately prior to 16th June, 1979 and includes the provisional registry;

“Registrar” means the Registrar of Titles under the principal law;

“said date” means 16th June 1979;

“transfer”, “mortgage” and “lease” respectively mean memorandum of transfer, memorandum of mortgage and memorandum of lease.

3. (1) The Registrar is hereby directed to make a new register for Dominica and for that purpose the Registrar is hereby given all necessary authority as is not expressly conferred by this Act.

Registrar to make new register.

(2) This Act applies only in cases where certificates of title which were registered in the old register have been destroyed.

4. (1) Where duplicates of certificates of title which were destroyed are available to the Registrar, he shall cause copies of the duplicates to be prepared.

Where outstanding duplicates have not been destroyed.

(2) If the Registrar is satisfied that the duplicate is an authenticated copy of a certificate of title which was registered in the old register, he shall cancel the duplicate and issue a new certificate of title which shall subject to this Act have the same force and effect as if it was a certificate of title issued under the principal law. Every new certificate shall have endorsed thereon a memorandum to the effect that it is issued in lieu of a certificate of title the original of which has been destroyed.

5. (1) Except as provided in subsection (4), no new certificate of title issued under sections 4 and 6 or issued in respect of any part of the land comprised in any such certificate of title shall, until the expiration of six months from the date of the issue of the first such certificate of title, or from the date of the issue of the first such certificate where more than one certificate of title has been issued, or until the expiration of six months from the date of the passing of this Act, whichever period is the later to expire, be conclusive as to the proprietorship of any mortgage, lease, easement, or *profit à prendre*, or as to the *nonas* to the non-existence on the said date of –

Evidential value of certificate issued under section 4.

- (a) any charge created otherwise than by a registered mortgage (not including a sub-mortgage);
- (b) any registered lien;
- (c) any caveat lodged to protect any estate or interest;
- (d) any proclamation taking the land or any part of it;

- (e) any restriction or other matter in respect of which any memorial may have been registered in the old register; or
- (f) any incumbrance upon or other dealing with any mortgage, lease, easement, or *profit à prendre*, registered on or before the said date.

(2) Any person claiming the benefit of any such charge, lien, estate or interest, incumbrance, or other dealing referred to in subsection (1) may re-register such charge or lien in the manner provided for the registration of the same in the new register, or may lodge a caveat or a new caveat to protect such charge, lien, estate or interest, or incumbrance, or other dealing.

(3) Upon the expiration of the time limited by subsection (1), every such charge or lien which has not been entered on the new register by the Registrar, or which has not been re-registered, or in respect of which a caveat has not been lodged, and every caveat lodged to protect an interest in respect of which a new caveat has not been lodged shall, as against any person who within the time limited as aforesaid or at any time thereafter becomes a registered proprietor *bona fide* and for value, be deemed never to have been registered or lodged, as the case may be.

(4) If the Registrar is satisfied, upon such evidence as may seem to him to be sufficient, that the land comprised in any certificate of title referred to in section 4 was not on the said date subject to any such charge, lien, estate or interest, incumbrance, or other dealing as is mentioned in subsection (1), the Registrar may endorse upon the copy prepared and authenticated, and upon the new certificate of title issued, as respectively provided for in section 4, a memorandum to the effect that it is conclusive as to such matters, or as to any one or more of them and it shall thereupon be conclusive accordingly.

(5) Notwithstanding the provisions of subsection (4), any person being under the disability of infancy, unsoundness of mind, or absence from Dominica may register any such charge, lien, estate or interest, incumbrance or other dealing against any certificate of title issued under section 4 or 6 within six months from the date on which the disability ceases; and the charge, lien, estate or interest, incumbrance or other dealing shall rank in priority from the date of registration.

6. (1) Any person claiming to have been on the said date the registered proprietor, or a mortgagee under a registered mortgage, of an estate of freehold, evidenced by any certificate of title, in any land, if he knows or believes that the certificate of title was destroyed, may make application to the Registrar, in such form as may be prescribed, for the issue of a new certificate of title for the land. The application shall have endorsed thereon or shall be accompanied by three copies of a plan of the land of which the applicant claims to have been the registered proprietor or mortgagee and shall include a statement of the registered incumbrances, liens and interests, statutory and other charges, restrictions, and caveats to which, within the knowledge or belief of the applicant the land was subject and the statutory declaration of the applicant.

Where outstanding copy of title destroyed owner may apply.

(2) Every such application shall be published twice on the national radio and twice in a local newspaper: but a period of one month shall elapse between the date of each publication and the first such publication shall be on the national radio and the second publication in a local newspaper the same sequence being applicable to the third and fourth publication; and the certificate of title shall not be issued until the expiration of two months from the date of the fourth publication.

(3) The Registrar, if he is satisfied, after the making of such inquiries and the sending of such notices and after such public intimation as may be considered reasonable and safe, that the certificate of title was destroyed and that the applicant was the registered proprietor or a mortgagee as aforesaid, shall submit all necessary documents filed in support of the application to a Judge and if the Judge is satisfied that the documents are in order, the Registrar shall issue a new certificate of title under his hand and seal.

(4) Such a new certificate of title shall subject to this Act have the same force and effect as if it was a certificate of title issued under the principal law. Every such certificate shall have endorsed thereon a memorandum to the effect that it is issued in lieu of a certificate of title the original of which has been destroyed.

7. (1) The Registrar shall endorse on every such new certificate a memorandum setting forth the incumbrances, liens, and interests, statutory and other charges, restrictions, and caveats to which the land appears to him to be subject.

Memorandum of interest admitted by proprietor or mortgagee.

(2) In any case in which it seems to him proper to do so the

Registrar may at any time cancel any such memorandum, or he may add to or amend any statement contained in any such memorandum on a certificate of title; and in any case where by way of such addition or amendment it is shown that any interest in the land is subject to any incumbrance, lien, interest, charge, restriction or caveat, the Registrar shall forthwith send by registered letter to every registered proprietor adversely affected by such addition or amendment a notice that such addition or amendment has been made.

(3) Every memorandum shall be *prima facie* proof of the existence of the estates or interests or of the matters referred to in it.

Where outstanding copy of certificate of title destroyed, Registrar may act.

8. The Registrar, in any case where he knows or believes that the duplicate certificate of title to any land was destroyed, may, if it seems to him proper to do so, of his own notion or at the instance of any person claiming an estate or interest in the land or at the instance of any person acting on behalf of a person claiming an estate or interest in the land, cancel the duplicate certificate of title and issue a new certificate of title for the land. Section 7 shall, with the necessary modifications, apply to every such certificate of title.

Establishing interest other than freeholds and certain leaseholds.

9. (1) Any person claiming to have been the registered proprietor on the said date of any estate or interest in or of any charge or lien upon any land, other than an estate of freehold in respect of which a certificate of title existed on the said date, or other than a leasehold interest under a lease or licence embodied in the register as a folium thereof, and knowing or believing that the instrument under which he claims has been destroyed, may without payment of any fee, lodge a caveat in Form 16 or 23 in the Second Schedule to the principal law to protect the estate or interest, charge or lien. Every such caveat shall operate to preserve for all purposes the priority of the estate or interest, charge or lien to protect which such caveat was lodged.

In the case of the land comprised in any certificate of title or other instrument to which section 5 applies, a caveat lodged in accordance with this section shall not affect the estate or interest if protected by subsection (2) of that section.

(2) Upon the registration of an instrument for the purpose of evidencing any such estate or interest, charge, or lien, the caveat shall be deemed to have lapsed.

(3) No such caveat shall prevent the registration of any instrument in which, or by endorsement on which, the rights of the caveat are admitted. The consent of the caveator to the registration of any such instrument shall not be necessary.

10. (1) Every proprietor whose estate or interest is subject to an incumbrance, lien, or interest acquired under or by virtue of an instrument that was destroyed, upon being requested to do so by the person who was on the said date the proprietor of the incumbrance, lien or interest, or by the successor in title of such person, shall be bound, in the same manner as if he had contracted to do so, but without cost to himself, to execute an appropriate instrument having as nearly as possible the same effect, after registration, as the destroyed instrument had.

Registered proprietor bound to executed where originals destroyed.

(2) No instrument so executed by any such person shall, unless therein expressed or necessarily implied to the contrary as regards the person executing the same, have any greater effect as against any person or any estate or interest than the destroyed instrument had, and no such instrument shall, unless therein expressed or necessarily implied to the contrary, operate so as to relieve any person, other than any party to it, from the obligation to perform any covenant that may have been expressed or implied in any destroyed instrument.

(3) Notwithstanding anything to the contrary in the principal law, every new instrument executed and registered to replace a destroyed instrument shall have the same priority over any other instrument as the destroyed instrument had, notwithstanding that the new instrument may be registered subsequently to the registration of that other instrument. Where a new instrument has such priority the Registrar shall add to the memorial of the new instrument a memorandum indicating the priority.

11. (1) The Registrar may at his discretion at any time apply to the Court for an order to define the rights and liabilities of any person or persons in or in relation to any land or interest in land.

Registrar may apply to the Court declaratory order.

(2) Notice of every such application shall be given by the Registrar by registered letter to every person known or believed by him to be entitled to any right or to be subject to any liability in respect of any land which is the subject-matter of the application.

(3) Every such application, until disposed of by the Court, shall be effective as a caveat by the Registrar, and he shall make an entry in the register that such application has been made.

New instruments
executed under
section 10.

12. Where pursuant to section 10 any person is required to execute an instrument in replacement of a destroyed instrument, it shall not be necessary to obtain in respect of the new instrument any consent, approval or confirmation that may have been required in respect of the destroyed instrument, but unless and until the contrary is proved, every such consent, approval or confirmation shall be deemed to have been duly given in respect of the destroyed instrument on or before its registration.

Power to compel
production of in-
struments, etc.

13. (1) In addition to the powers conferred on him by the principal law, the Registrar may, in respect of land in Dominica, exercise all or any of the powers conferred by subsections (2), (3), (4) and (5).

(2) He may require any person having in his possession or under his control any grant, certificate, or other instrument of title, or any plan, search notes, report on title, or other written or printed document evidencing or tending to evidence in any manner the boundaries, extent or position of, or the state of the title to, or the incumbrances upon, any parcel of land in the district, to produce the same within a reasonable time to be fixed by a notice requiring such production and indicating the particular documents or kind of documents required, and to deposit the same with him for such time as may be necessary to enable the Registrar to examine or make copies of the same.

(3) He may make such copies or records of, or such extracts from, any such plans or documents as he thinks fit.

(4) He may require any person or any of the classes of persons hereinafter mentioned to give any information, explanation or evidence in writing upon oath or otherwise, concerning the subject-matter of the application, title or claim, or, except in the case of a solicitor or agent acting as hereinafter mentioned, to attend before him and give such information, explanation or evidence generally upon oath or otherwise. The classes of persons herein referred to are the following:

- (a) any person making an application under this Act;
- (b) any person being, or claiming to be entitled as, a registered proprietor on the old register;
- (c) any person claiming to become the registered proprietor of any estate or interest in land in the State; or
- (d) any person being the attorney or agent of, and acting on behalf of, any of the aforesaid persons.

(5) He may from time to time cause printed notices to be fixed or placed on the outside of the several church and chapel doors, or other public conspicuous buildings or places, within Dominica where it shall be set for the several acts to be done for the purpose of making the new register.

(6) If the proprietor of any easement, or *profit à prendre* or other incumbrance which had been registered, neglects to furnish such particulars of his *easement*, or *profit à prendre* or other incumbrance, as the Registrar may require by notice in writing directed to the usual or last known address of the proprietor, the Registrar may at his discretion, at any time after the expiration of six calendar months from the date of the notice, remove any entry of the easement, *profit à prendre*, or other incumbrance from the register, or from any certificate of title, or other outstanding duplicate of the register, by marking the memorial thereof in the register with the words "Removed.— See k. No. (day of , 19), Registrar", and a like entry shall be made or noted on every servient title or tenement against which the easement or *profit a prendre*, or incumbrance has been registered. From the date of such removal being noted by the Registrar the easement or *profit a prendre*, or incumbrances shall cease and determine.

14. If upon a requisition in writing made by the Registrar for any purpose mentioned in section 13 any person without reasonable cause refuses or neglects to comply with the requisition, the Registrar shall apply to the Court for an order directing that such person do comply with the requisitions.

Failure to comply with Registrar's requisition.

15. Until a new certificate of title is issued in respect of any parcel of land, the Registrar shall accept for registration or lodgement every instrument or document relating to the parcel of land that appears to be in order and that could have been registered or lodged if the register had not been destroyed. He shall file and index every such instrument or document, and upon the issue of the new certificate of title for the parcel of land he shall deal in the usual manner with all such instruments or documents that are then found to be in order affecting the parcel of land, in such a manner as to preserve their relative priorities in accordance with the provisions of the principal law and of this Act.

Instruments may be lodged.

16. (1) The Registrar may acquire and file as records of his office such plans or copies of plans as appear to him to be desirable as evidencing or tending to evidence the boundaries of any land in

Providing for copies of plans to be filed, without fees.

Dominica comprised in any certificate of title or in any destroyed deposited plans and no fee shall be payable for the checking or deposit of any such plan or copy of plan.

(2) This section shall extend and apply to plans of surveys made since the said date for the purpose of replacing deposited plans that were destroyed or for the purpose only of fixing the boundaries of the land comprised in any certificate of title existing on the said date.

(3) Except in the case of plans referred to in subsection (2), the Registrar shall endorse on every plan or copy of plan filed as aforesaid a memorandum showing from whom the plan or copy was acquired, and, if possible and necessary, by whom and under whose authority it was made.

Conditions as to
compensation.

17. No person having or claiming any estate or interest in or any charge or lien upon any land who had notice be it personal service or otherwise, or was aware of any proposed act of the Registrar, shall be entitled to commence any action for the recovery of damages under the principal law in respect of any loss he may have sustained by reason of such act of the Registrar unless, within a reasonable time after receiving the notice or becoming aware of the proposed act, he has taken the appropriate steps in accordance with the provisions of this Act or the principal law to protect his estate or interest, charge, or lien.

No fee for
certificate of title
issue in lieu of
destroyed one.

18. No fee shall be payable to the Registrar for a new certificate of title issued in lieu of a destroyed certificate of title; but nothing in this section shall affect the liability of any person to pay any fee outstanding and unpaid in respect of any destroyed certificate of title or other instrument.

Exemption from
stamp duty and
fees.

19. The following instruments shall be exempt from stamp duty or registration fees, as the case may be:

- (a) every instrument executed or registered in substitution for a registered instrument that has been destroyed if the Registrar is satisfied that the new instrument is substantially to the same effect as the destroyed instrument;
- (b) every affidavit or statutory declaration required by this Act, or required by the Registrar for the purposes of this Act;
- (c) every statutory declaration made by a licensed surveyor in respect of any survey plan made for the purpose only of

replacing a deposited plan that was destroyed by the fire, or for the purpose only of fixing the boundaries of the land comprised in any certificate of title existing on the said date; and

(d) every caveat lodged under this Act and every withdrawal of any such caveat.

20. (1) The Minister may make such Rules as may be necessary for the purpose of carrying out or giving effect to the principles and provisions of this Act and for prescribing all matters which are required or permitted to be prescribed. ^{Rules.}

(2) For the purposes of this section, "Minister" means the Minister responsible for Legal Affairs.
