

AFFIDAVITS OF PRESCRIPTION

Act 27 of 1958 – 22 December 1958
(As at 19th December 2009)

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1 Short title

This Act may be cited as the Affidavits of Prescription Act.

2 Interpretation

In this Act –

“affidavit of prescription” means an affidavit witnessing the acquisition by prescription of immovable property;

“Conservator” means the Conservator of Mortgages.

“Register” means the Register of affidavits of prescription kept under section 5.

3 Conditions for transcription of affidavit

Notwithstanding any other enactment, no affidavit of prescription shall be transcribed in the registers kept by the Conservator –

(a) unless the affidavit contains a mention of the situation, description and exact boundaries of the immovable property forming the subject-matter of the affidavit and the open market value of the property at the time of completion of the statutory period for prescription;

(b) unless the affidavit contains the date on which the occupation started and is accompanied by a site plan showing the precise location of the property;

(ba) unless the affidavit contains, in respect of the party alleged to have acquired the immovable property by prescription –

(i) his names in small letters and his surname in capital letters;

(ii) his date of birth, the birth certificate number and the Civil Status Office where the birth was registered; and

(iii) where applicable, his date of marriage, the matrimonial regime governing the marriage, the marriage certificate number and the Civil Status Office where the marriage was registered;

(c) until after the expiry of 3 months from the date of the last publication of the notice required under section 4(2).

[Amended 46/84; 15/88; **20/2009**]

4 Application

(1) Every application for the transcription of an affidavit of prescription shall be in writing in the form specified in the First Schedule, with election of domicile in Port Louis, and shall be accompanied by –

(a) the duly registered affidavit of prescription; and

(b) a memorandum of survey by a surveyor setting out the situation, description and exact boundaries of the immovable property forming the subject matter of the affidavit.

(2) Notice of the application shall be published once in the *Gazette* and on 3 consecutive days in 2 daily newspapers in Mauritius, of which one at least shall be approved by the Conservator.

(3) The notice shall be in the form specified in the Second Schedule.

[Amended 17/07]

5 Register

(1) The Conservator shall enter in a special register kept for the purpose and known as the Register, the particulars of every affidavit of prescription received by him for transcription.

(2) The Register shall be open to inspection by the public.

6 Objection

(1) Any person claiming to be the owner or part owner of, or to have an interest in, the whole or part of the immovable property in respect of which an affidavit of prescription has been sworn, may, within 3 months of the last publication of the notice required under section 4(2), object to the transcription of the affidavit of prescription by serving upon the Conservator and upon the applicant a notice (in which the objector shall elect his legal domicile in Port Louis) setting out the grounds of his objection.

(2) The Conservator shall forthwith enter in the Register particulars of any objection received by him under this section, as well as a mention of the date of service of the notice of objection.

7 Disposal of objection

(1) Any interested party may within 3 months of the date of service on the Conservator of a notice of objection under section 6, apply to a Judge in Chambers for an order setting aside the objection.

(2) (a) Where, after hearing the parties and later considering the grounds on which the objection is based, the Judge is of opinion that the objection is frivolous and unjustified, he shall make an order setting aside the objection.

(b) The Judge shall otherwise refer the parties to the competent Court.

8 Prohibition of transcription of affidavit

No affidavit of prescription in respect of which a notice of objection has been served on the Conservator shall be transcribed unless the objection is withdrawn by notice served on the Conservator or there is presented to the Conservator either an order of a Judge in Chambers setting aside the objection or a certified copy of the judgment of a competent court deciding the issue against the objector.

9 Transcription of affidavit

Where no objection is received by the Conservator within the period specified in section 6, or where any objection received has been withdrawn or disposed of against the objector, the affidavit of prescription shall be transcribed on production by the applicant to the Conservator of the copies of issues of the *Gazette* and of the newspapers containing the publications prescribed in section 4(2), and on payment of the transcription fees.

10 Deeds to mention transcription of affidavit

(1) No deed, whether authentic or under private signatures, witnessing the sale or transfer of, or the constitution of any privilege, mortgage or servitude or right of use over, an immovable property the title to which is derived from acquisition by prescription witnessed by affidavit of prescription, shall be valid unless the affidavit has been transcribed, and a reference to the particulars of such transcription is endorsed on the deed.

(2) Any person who draws up a deed in contravention of this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees.

11 Service of notices

All notices required to be served under this Act shall be served by an usher of the Supreme Court upon payment of the appropriate fee.

12 Effect of transcription of affidavit

The transcription of an affidavit of prescription shall not confer on any party any rights on any immovable property which but for this Act such party would not have possessed.

FIRST SCHEDULE

[section 4 (1)]

APPLICATION UNDER THE AFFIDAVITS OF PRESCRIPTION ACT

APPLICATION FOR TRANSCRIPTION OF AN AFFIDAVIT OF PRESCRIPTION

I of electing my legal domicile at, Port Louis, hereby apply for the transcription of the annexed affidavit of prescription relating to an immovable property of which the situation, description and boundaries are as follows –

Date and registration number of memorandum of survey accompanying the affidavit of prescription

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.....
.....

Name and address of party alleged to have acquired the immovable property by prescription:

.....
.....

Names and addresses of parties having sworn affidavit of prescription

- 1
- 2

Date

.....
Applicant

SECOND SCHEDULE

[section 4 (3)]

NOTICE UNDER THE AFFIDAVITS OF PRESCRIPTION ACT

Notice is hereby given that an application has been made to the Conservator of Mortgages by of for the transcription of an affidavit of prescription relating to an immovable property of which the situation, description and boundaries are as follows –

The affidavit together with the memorandum of survey accompanying it may be inspected on application at the office of the Conservator of Mortgages.

Any person claiming to be the owner or part of, or to have an interest in, the whole or part of that immovable property may, within 3 months of the last publication of the present notice, object to the transcription of the affidavit by serving upon the Conservator of Mortgages and upon the applicant a notice setting out the grounds of his objection.

Date

.....
Applicant