

CHAPTER 328 POSSESSORY TITLES ACT

• Act • Subsidiary Legislation •

ACT

Act No. 38 of 2004

Amended by

Act No. 29 of 2006

Act No. 40 of 2007

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CHAPTER 328
POSSESSORY TITLES ACT

An Act to facilitate the obtaining of title to land by persons claiming through adverse possession.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows.

[Act No. 38 of 2004 amended by Act No. 29 of 2006, Act No. 40 of 2007.]

[Date of commencement: 1st November, 2005.]

1. Short title and commencement

This Act may be cited as the Possessory Titles Act, 2004, and shall come into effect on a date to be appointed by the Governor-General by Proclamation.

2. Interpretation

In this Act—

“**adverse possession**” means factual possession of an exclusive and undisturbed nature of a piece or parcel of land in Saint Vincent and the Grenadines for a continuous period of twelve years or more accompanied by the requisite intention to possess the said land as owner thereof;

“**applicant**” means a person who claims to have adverse possession of a piece or parcel of land in Saint Vincent and the Grenadines and who makes an application to the Court to be declared the true owner of that piece or parcel of land;

“**Court**” means the High Court of Justice;

“**Gazette**” means the Saint Vincent and the Grenadines *Gazette* published by authority of the Government of Saint Vincent and the Grenadines and includes any supplement thereto;

“**Minister**” means the Minister responsible for legal affairs;

“**plan**”, in relation to a piece or parcel of land to which an application under this Act relates, means a plan which defines the boundaries of the piece or parcel of land, being a plan prepared by a surveyor;

[Definition of “plan” inserted by Act No. 40 of 2007.]

“**Registrar**” means the Registrar of the High Court of Justice;

“**Registry**” means the Registry of the High Court of Justice.

3. Application for declaration of possessory title

(1) A person who claims to be in adverse possession of a piece or parcel of land in Saint Vincent and the Grenadines shall be entitled to make an application to the Court for a declaration of possessory title to the said land.

(2) Without prejudice to the provisions of the Limitation Act, an application for a declaration of possessory title shall not be made in respect of Crown lands.

[Chapter 129.]

(3) An application for a declaration of possessory title may be made by a person claiming in the capacity of executor, administrator, trustee or other person in a fiduciary relationship or capacity only for the estate or for the beneficiaries of the deceased person, as the case may be, but not in breach of the duties as executor, administrator, trustee or fiduciary.

(4) For the avoidance of doubt, an application for a declaration of possessory title may be made by a person claiming in the capacity of executor de son tort if, in the opinion of the court, the person is not in a fiduciary relationship or capacity.

4. Content of application

An application shall be made in accordance with Form 1 of the First Schedule and shall state—

- (a) the description of the land, giving its extent, its boundaries and its estimated value;
- (b) the facts upon which the applicant relies to establish adverse possession;
- (c) whether to the applicant's knowledge, any other person claims or is capable of claiming to be the owner of the land for which the declaration is being sought; and
- (d) the name, if any, of any person recorded in the Registry and entitled to ownership of the land immediately before the period of adverse possession began to run.

[First Schedule.]

5. Affidavits to accompany application

(1) The application shall be accompanied by affidavits of the applicant and of at least two other persons having knowledge of the applicant's adverse possession of the piece or parcel of land.

(2) The affidavit of the applicant shall attest the truth of the facts set out in the application.

(3) The affidavits of the other deponents shall set out in detail any facts known to the deponents that tend to prove the matters mentioned under section 4(b) and shall attest to the truth of those facts.

(4) Where an application is not accompanied by affidavits of at least two other persons having knowledge of the applicant's adverse possession of the piece or parcel of land then, notwithstanding subsection (1)—

- (a) the Registrar may proceed in accordance with section 10;
- (b) the Court may hear the application and make an order or a decision as it sees fit.

6. Plan to accompany declaration

(1) The application shall also be accompanied by a plan of the piece or parcel of land authenticated by the signature of the Chief Surveyor.

(2) The Court may reject a plan that, in its opinion, does not contain sufficient detailed information relating to the piece or parcel of land.

7. Notice and advertisements

(1) Upon filing of an application, the applicant shall—

- (a) publish a notice in Form 2 of the First Schedule in two issues of at least two newspapers circulating in Saint Vincent and the Grenadines and the second issue shall be published not less than one month after the first issue; and
- (b) between the dates of the first and last publications in the newspapers, post a copy of that notice in a conspicuous place at the Registry and in a

conspicuous place in the court building of the magistrate in the district in which the piece or parcel of land is situated.

[Subsection (1) renumbered and amended by Act No. 29 of 2006 and Act No. 40 of 2007.]

(2) A person who claims to have an interest in a piece or parcel of land to which an application relates may, within one month from the date of the last publication of the notice under subsection (1), enter an appearance at the Registry.

[Subsection (2) inserted by Act No. 29 of 2006 and repealed and replaced by Act No. 40 of 2007.]

8. Service on adjoining owners

(1) The applicant shall, within twenty-one days after filing the application, cause a copy of the notice referred to in section 7 to be—

- (a) served on all owners or occupiers of property adjoining the piece or parcel of land to which the application relates; or
- (b) posted in a conspicuous place on the piece or parcel of land if the owner or occupier of land adjoining the piece or parcel of land to which the notice relates is unknown or cannot be found.

(2) An order containing a declaration of possessory title shall not be granted unless—

- (a) the provisions of section 7 and this section are complied with; and
- (b) six weeks have expired since the service or posting of that notice.

9. Appearance and written claim

(1) A person who enters an appearance pursuant to section 7 shall, within twenty-one days from the date of the appearance, file in the Registry a written claim setting out the name of the person who has title to the piece or parcel of land and a statement of the facts on which the claim is founded.

(2) For the avoidance of doubt, a person may enter an appearance as principal or agent of another person.

(3) A copy of the entry of appearance and the written claim shall be served on the applicant or his legal practitioner by the person who enters an appearance or his legal practitioner.

10. Duty of Registrar in respect of proceedings

(1) If no appearance has been entered pursuant to section 7, the Registrar shall, on application made by the applicant, issue a certificate of non-appearance and fix a day and time for the hearing of the application.

(2) Where a person enters an appearance pursuant to section 7, the Registrar shall, at the expiration of the time fixed for appearance enter an application in his cause book as a suit in the name of the applicant and of the person who has appeared as the respondent.

(3) The affidavits and written claims filed in support of an application under subsection (2) shall stand as pleadings and no further pleadings shall be filed without the leave of the Court.

11. Proceedings by Court

(1) The Court shall have jurisdiction to hear the application in open Court or in chambers.

(2) If at the hearing of the application the Court requires further evidence, it may take such evidence orally or by affidavit as it sees fit.

12. Default judgement or *ex parte* proceedings

(1) An applicant may obtain judgement without trial where a person fails to—

- (a) enter an appearance; or
- (b) file a written claim within the time allowed for so doing.

(2) The Court may set aside or vary a judgement obtained without trial on any conditions it considers appropriate.

(3) Where a person who has entered an appearance pursuant to section 7 fails to file a written claim within the time allowed for so doing, the applicant may proceed *ex parte* and the Court may make an order or give a decision as it sees fit.

13. Procedure where more than one person claim ownership

Where more than one person enter appearances and file claims in opposition to the application and to any respondents, the Court, upon adjudicating on the opposing claims, may make a declaration of possessory title in favour of any of the parties before it as it thinks fit.

14. Withdrawal of application

The applicant may by leave of the Court withdraw his application at any time before final adjudication, subject to any order for payment of costs that the Court may make.

15. Person who has information may file affidavit

(1) A person who has information in relation to the nature of possession of the piece or parcel of land by the applicant, may file an affidavit with the Registrar whether or not he has an interest in the said piece or parcel of land or whether or not he intends to file an opposing claim with the Registrar.

(2) An affidavit filed pursuant to subsection (1) shall—

- (a) attest the truth of the facts set out therein;
- (b) be filed with the Registrar; and
- (c) be served on all parties to the proceedings.

(3) At the hearing of the application the Court may require the attendance of the person who files an affidavit pursuant to this section.

(4) The Court may make an order or give a decision as it sees fit if the person who is required to attend Court pursuant to this section fails to do so.

16. Where any party is a minor or of unsound mind

Where any person who, if not under disability might have made any application, given any consent, or done any act, or been party to any proceedings under this Act, is a minor or a person of unsound mind, the guardian of the minor, or the committee of the patient's property, may make applications, give such consent, do such act, and be party to such proceedings, as such person might do if free from disability, and shall otherwise represent such person for the purposes of this Act, and if the minor has no guardian, or the person of unsound mind has no committee of his property, the Court may appoint a person with like power to act for the minor or the person of unsound mind.

17. Security for costs

The Court may at any stage of the proceedings order security for costs to be given by the applicant or by any person who enters an appearance.

18. Payment of costs

The Court may order costs to be paid by or to any party.

19. Procedure for making applications under this Act

The Eastern Caribbean Supreme Court Civil Procedure Rules, 2000, except where expressly excluded, shall apply to all proceedings made under this Act.

20. Proceedings not void for want of form

No petition, order, affidavit, certificate, recording or other proceedings under this Act shall be invalid by reason of any informality or technical irregularity therein, or any mistake not affecting the substantial justice of the proceedings.

21. Maintenance of register of orders

The Registrar shall keep and maintain a register in which shall be entered—

- (a) the names and addresses of persons in whose favour the Court makes an order containing a declaration of possessory title under this Act;
- (b) a description of the piece or parcel of land to which the order relates;
- (c) the proceedings in respect of which the order is made; and
- (d) any other particulars that are necessary to be recorded by virtue of this Act or any other Act.

22. Registrar to publish particulars of order

The Registrar shall, by Notice in the *Gazette*, publish in one issue of a newspaper circulating in Saint Vincent and the Grenadines particulars of all orders made by the Court containing a declaration of possessory title within one month of the making of the order.

23. Registrar may issue certificate

The Registrar may, upon payment of the prescribed fee, if any, grant to a person a certificate of the order containing the declaration of possessory title for the piece or parcel of land to which it relates.

24. Appeal

A person aggrieved by an order or decision of the Court made or given under this Act may appeal to the Court of Appeal no later than three months after the order or decision is made or given.

25. Indefeasible title

The person named in an order containing a declaration of possessory title is entitled to an indefeasible title—

- (a) three months after the date of publishing particulars of the order pursuant to section 22 where there is no appeal;
- (b) upon the determination of the appeal where there is an appeal and the appeal is made within the time prescribed in section 24.

26. Declaration of title obtained by fraud

(1) If in the course of any proceedings under this Act any person fraudulently, knowingly or with intent to deceive makes, assists, joins in or is privy to the making of any material false statement or representation, or suppresses, withholds or conceals, or assists or joins in or is privy to the suppression, withholding or concealing from the Court any material document, fact or matter of information, any declaration of title obtained by means of such fraud or falsehood, shall be null and void except as against a *bona fide* purchaser for valuable consideration without notice and a second or subsequent mortgagee in respect of that piece or parcel of land.

(2) Any person who swears an affidavit knowing the contents to be false or aids and abets any person in making a false affidavit, commits an offence and on summary conviction shall be liable to a fine not exceeding five thousand dollars or to a term of imprisonment not exceeding two years, or both.

27. Declaration of title obtained by mistake

Where a declaration of possessory title is obtained as a result of a material mistake in the application, the declaration shall be void and shall be set aside by an order of the Court upon an application by an opposing party claiming an adverse interest.

28. Declaration obtained prior to commencement of Act

Where prior to the commencement of this Act, a declaration of possessory title to a parcel of land after twelve years of adverse possession has been registered in the Registry, the procedure outlined in this Act may be followed by an applicant applying for a declaration of title based on adverse possession for a period of not less than twelve years.

29. Restriction on obtaining possessory title

From the commencement of this Act, the Registrar shall not register any statutory declaration purporting to grant possessory title to land or any possessory title which is not obtained in accordance with this Act or by an order of Court.

30. Register of possessory titles

The Registrar shall keep and maintain a register, to be called the Register of Possessory Titles, in which shall be entered particulars of all deeds registered as a result of proceedings under this Act or an order of Court, containing a declaration of possessory title.

31. Stamp duty

(1) There shall be granted, charged and collected upon all deeds registered as a result of the making of an order containing a declaration of possessory title, the duty specified in subsection (2).

(2) The stamp duty shall be three per cent of the value of the real estate set out in the deed which shall be paid by the person in whose favour an order containing a declaration of possessory title is made.

(3) The Minister may by order amend the stamp duty specified in subsection (2).

32. Fees

(1) For the purposes of this Act, the fees specified in the Second Schedule shall be charged and collected in relation to the exercise of functions under this Act.

(2) The Minister may by order amend the fees specified in subsection (2).

33. Regulations

The Minister may make Regulations generally for carrying out the provisions of this Act.

First Schedule

[Sections 4 and 7.]

Forms

FORM 1

IN THE HIGH COURT OF JUSTICE SAINT VINCENT AND THE GRENADINES

In the matter of an Application for a Declaration of Possessory Title to Land

Application for Declaration of Possessory Title

The applicant
(name)

Address

Occupation

declares as follows—

1. The applicant is in possession of a piece or parcel of land in the said State and bound as follows
and shown on the plan drawn by
Licensed Surveyor, filed with this application and approved and lodged at the Surveys Department and bearing registration number
2. The said land is of the extent of and
with the appurtenances, is, so far as the applicant can estimate, of the value of \$.....
3. There are (no) claims affecting the land.
4. There are (no) other persons claiming to be owner of the land.
5. The applicant (or the applicant and his predecessor in title) has (have) been in exclusive and undisturbed possession of the land for twelve years, as appears by the following facts—
.....
.....
6. The applicant claims to be owner of the said land in his own right.
7. Immediately before adverse possession began to run in the applicant's favour (or in favour of the applicant and his predecessors in title) the said land was registered in the name of
.....
.....
8. The applicant has not knowingly withheld any fact concerning the said land which ought to be disclosed in this application, and has truly and honestly, to the best of his knowledge and belief, represented the truth concerning the title of the land.

The applicant therefore prays that the Court will issue a declaration of possessory title in his favour.

Date, 20.....

.....
Applicant or his Legal Practitioner

1. Insert boundaries as on plan

2. Insert number of acres or fraction of an acre
3. If mortgages or other claims exist, here state those which exist to the knowledge of the applicant
4. If there is, here add names of any competing claimants
5. Here state the circumstances in which the land was acquired and other facts in compliance with section 4(b)
6. If not, state whether as executor, administrator, trustee, or how otherwise
7. Here state name of person shown as owner in the Registry

FORM 2

[Section 7. Form 2 amended by Act No. 40 of 2007.]

IN THE HIGH COURT OF JUSTICE SAINT VINCENT AND THE GRENADINES

In the matter of an Application for a Declaration of Possessory Title to Land

Application for Declaration of Possessory Title

Notice

Whereas (name, address and occupation of applicant) by his application filed in the High Court on (date) claims to have acquired title by twelve years adverse possession of the land described in the Schedule to this Notice and has applied to the Court for a declaration of possessory title.

Now all persons claiming an interest in the said land are required to enter an appearance in the Registry in person or by his legal practitioner, within one month from the date of the last publication of this Notice which is being published twice in the newspapers.

SCHEDULE

(Here state description and extent of land as in application)

.....
Registrar

FORM 3

[Section 7.]

IN THE HIGH COURT OF JUSTICE SAINT VINCENT AND THE GRENADINES

In the matter of an Application for a Declaration of Possessory Title to Land

Application for Declaration of Possessory Title

Entry of Appearance

TAKE NOTICE that pursuant to section 7 of the Possessory Titles Act has entered an appearance to oppose the application of for the declaration of title to land situate at

Dated this day of, 20.....

.....
Registrar

FORM 4
[Section 23.]

IN THE HIGH COURT OF JUSTICE SAINT VINCENT AND THE GRENADINES

Certificate of Declaration of Possessory Title

THIS IS TO CERTIFY THAT of
has been granted an order containing a declaration of possessory title for the piece or parcel of
land situated at The said land is of the extent of
.....
Date

.....
Registrar

Second Schedule

[Section 32. Second Schedule amended by Act No. 40 of 2007.]

Fees

Solicitor's fees for uncontested applications	\$1,500.00
Certificate of declaration of possessory title	\$ 10.00

**CHAPTER 328
POSSESSORY TITLES ACT**

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
