

ANTIGUA AND BARBUDA



THE REGISTERED LAND (AMENDMENT) ACT, 2007

No. 6 of 2007

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The Registered Land (Amendment) Act, 2007.



I Assent,

Louise Lake-Tack,
Governor-General.

8th October, 2007.

ANTIGUA AND BARBUDA

THE REGISTERED LAND (AMENDMENT) ACT, 2007

No. 6 of 2007

AN ACT to amend the Registered Land Act, Cap. 374.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as the Registered Land (Amendment) Act, 2007.

2. Interpretation

In this Act “the principal Act” means the Registered Land Act, Cap. 374.

3. Amendment of section 2 – Interpretation

Section 2 of the principal Act is amended—

(a) by inserting before the definition “application book” the following definition—

““application” means an application in the prescribed form, and where no form is prescribed, means an application made in the manner approved by the Registrar from time to time;”;

(b) by inserting in the definition “guardian” after “means any person” the words “appointed

declaration of the evidence and the matters which are asserted in respect of the lost or misplaced register.

(3) A notice in respect of the replacement of a lost or misplaced register shall be published in the Official Gazette and in at least two issues of a daily newspaper published and circulating in Antigua and Barbuda as the Registrar shall direct, and shall be served on the owners of any parcel of land adjoining the parcel in respect of which the register has been lost or misplaced. The cost and expenses arising from such publication and service shall be borne by the Government out of the Consolidated Fund.

(4) A notice under this section shall contain such particulars of the land and the applicant as may be prescribed and shall contain details of the time within which objections may be submitted to the Registrar.

(5) The Registrar after making all reasonable searches and enquiries and after giving all interested parties an opportunity to be heard shall, if he is satisfied that the register has been irrevocably lost or misplaced, order that a new register be created in respect of the said parcel of land and may include in the order whether and to what extent an interested party shall be required to give an indemnity in respect of any matter entered on the register.”.

7. Amendment of section 16 – Mutation

Section 16 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

“(1) A proprietor of land may apply to the Registrar for the alteration of a boundary of a parcel on the Registry Map, and subject to the agreement of all persons affected thereby, the Registrar may order alteration of the Registry Map, but no such alteration shall be effected except on the written instructions of the Registrar in the prescribed form (a “mutation form”) and the mutation form shall be filed.”.

8. Amendment of section 21 – Combinations and subdivisions

Section 21 of the principal Act is amended by repealing subsections (1) and (2), not including the proviso, and substituting the following subsections—

“(1) Where contiguous parcels are owned by the same proprietor and are subject in all respects to the same rights and obligations, the Registrar, on application by the proprietor, may by order approve the combination and shall cause notice of the order to be forwarded to the Chief Land Surveyor on a mutation form for an amendment to the Survey Map.

(2) Upon notice from the Chief Land Surveyor that the Survey Map has been amended in accordance with an order under subsection (1), the Registrar shall give effect to the order by

by the court or under any Act who is”; and

- (c) by adding at the end of the definition “the register” the words “adjudicated under the Land Adjudication Act, and shall include the electronic register in respect of each parcel of land or in respect of each registered lease which is prepared from the original leaves.”.

4. Amendment of section 6 – General powers of Registrar

Section 6 of the principal Act is amended by inserting after paragraph (a) the following paragraph—

- “(aa) he may upon an application and upon proof on oath from the applicant dispense with the production of any instrument, if satisfied that the absence of the instrument does not affect the rights of any interested person, and that the failure to produce the instrument is not due to the act or default of the applicant and unfairly prejudices the applicant’s ability to deal with any interest in the land;”.

5. Amendment of section 9 – The Land Register and the Land Adjudication Act

Section 9 of the principal Act is amended—

- (a) by adding at the end of subsection (1) the words “and may be held, in whole or in part, in electronic form.”; and
- (b) by inserting after subsection (1) the following subsection—

“(1a) The electronic register shall have the same effect as the original register from which it is prepared and shall be accepted in any court or in any official proceedings as conclusive evidence of the matters contained therein.”.

6. Insertion of section 13A – Lost or misplaced registers

There is inserted after section 13 of the principal Act the following section—

“13A. Lost or misplaced registers

(1) Where the Registrar, on his own initiative or on the application of any interested person, is satisfied that a leaf from the land register compiled in accordance with the Land Adjudication Act, Cap. 234, has been lost or misplaced, the Registrar may create a new register in place of the one which has been lost or misplaced.

(2) The Registrar may in preparing a register under this section take into account such evidence of the matters that subsisted on the lost or misplaced register as can reasonably be proven from any existing copy of the said register or any other instrument as may be produced by an interested party, who shall provide with the application a statutory

- (b) in subsection (2) by repealing the words “of three hundred dollars” and substituting the words “not exceeding one thousand dollars”.

12. Amendment of section 41 – Priority of registered interests

Section 41 of the principal Act is amended in subsection (3) by repealing the words “or on different days”.

13. Amendment of section 42 – Stay of registration

Section 42 of the principal Act is amended in subsection (1) by repealing “fourteen” and substituting the word “thirty”.

14. Amendment of section 73 – Appointment, powers, remuneration and duties of receiver

Section 73 of the principal Act is amended—

- (a) in subsection (3)—
 - (i) by renumbering the subsection as subsection (2); and
 - (ii) by inserting after “under this section” the words “shall within one month of the appointment apply to the Registrar for the appointment to be noted on the register and”; and
- (b) by renumbering subsection (2) as subsection (3).

15. Amendment of section 75 – Chargee’s power of sale

Section 75 of the principal Act is amended by inserting after subsection (1) the following subsection—

“(1a) A chargee exercising his power of sale may, with the approval of the court, sell the charged land by private treaty subject to such terms and conditions of sale as the court may order.”.

16. Amendment of section 93 – Easements

Section 93 of the principal Act is amended in subsection (3)—

- (a) by inserting after “the easement shall” the words “include a plan sufficient in the Registrar’s estimation to define the easement and shall”;

closing the registers relating to the contiguous parcels and opening a new register or registers in respect of the parcel or parcels resulting from the combination.

(3) Upon the application of the proprietor of a parcel for division of his parcel into two or more parcels, the Registrar may by order approve the division and shall cause notice of the order to be forwarded to the Chief Land Surveyor on a mutation form for an amendment to the Survey Map.

(4) Upon notice from the Chief Land Surveyor that the Survey Map has been amended in accordance with an order under subsection (3) the Registrar shall effect the division by closing the register relating to the parcel and opening new registers in respect of the new parcels resulting from the division, and recording in the new registers all subsisting entries appearing in the closed register:”.

9. Amendment of section 22 – Reparcellation

Section 22 of the principal Act is amended—

(a) by repealing subsection (1), not including the proviso, and substituting the following subsections—

“(1) The Registrar may, on the application of the proprietors of contiguous parcels who wish to change the layout of their parcels, and with the consent in writing of all other persons in whose names any right or interest in such parcels is registered, and of any cautioner, by order approve the cancellation of the registers relating to such parcels and shall forward a notice of the order on a mutation form to the Chief Land Surveyor for an amendment of the Survey Map.

(2) Upon notice by the Chief Land Surveyor that the Survey Map has been amended in accordance with an order under subsection (1) the Registrar shall cancel the registers relating to such parcels and prepare new registers in accordance with the revised layout:”;

and

(b) by renumbering subsection (2) as subsection (3).

10. Amendment of section 34 – Lost or destroyed certificates

Section 34 of the principal Act is amended in subsection (2) by repealing the word “may” and substituting the word “shall”.

11. Amendment of section 40 – Power to compel registration

Section 40 of the principal Act is amended—

(a) in subsection (1) by inserting after “instrument for registration” the words “within such reasonable time as the Registrar deems appropriate”; and

“(3) The proceeds of sale of land sold under this section shall be applied—

- (a) firstly in discharge of any encumbrances to which the land is subject in order of priority;
- (b) secondly in satisfaction of all costs and expenses properly incurred and incidental to the sale or any attempted sale; and
- (c) lastly to the tenants in common in accordance with their respective shares or interests.”.

22. Amendment of section 106 – Form of instrument

Section 106 of the principal Act is amended—

- (a) in subsection (5)(a) by repealing the words “of a statutory board”;
- (b) by adding at the end the following subsections—

“(6) The Registrar may require an instrument of transfer to be accompanied by a survey plan authenticated by the Chief Land Surveyor indicating that the boundary in respect of the land to which the instrument relates has been authenticated.

(7) The Registrar may require a resurvey of the land to which the instrument relates where the authentication of the boundary was effected more than ten years prior to the date of the instrument.

(8) No instrument shall be prepared in the registry or by registry staff except such forms and orders that are specifically required by this Act to be prepared by or under the direction of the Registrar.

(9) The Registrar shall not register an instrument relating to land unless it is signed by—

- (a) the transferee who shall sign his name under his hand on the instrument and shall inscribe on the back of the instrument his name; or
- (b) an attorney at law who shall sign his name under his hand on the instrument and shall inscribe on the back of the instrument his name or the name and the address of the firm, if any, in which he is employed.”.

23. Amendment of section 107 – Execution of instruments

- (b) in paragraph (b) by repealing the words “if required by the Registrar”; and
- (c) by repealing the words “and shall, if so required by the Registrar, include a plan sufficient in the Registrar’s estimation to define the easement”.

17. Amendment of section 96 – Release and extinguishment of easement, restrictive agreement and profits

Section 96 of the principal Act is amended in subsection (1)—

- (a) by inserting at the beginning the words “On the application of an interested party and”;
- (b) by repealing the words “in the prescribed form”; and
- (c) by repealing “the easement” and substituting the words “an easement”.

18. Amendment of section 100 – Registration of more than one proprietor

Section 100 of the principal Act is amended by adding at the end the following subsection—

“(3)Proprietors in common shall have the same rights, liabilities and responsibilities in relation to each other as tenants in common, and joint proprietors shall have the same rights, liabilities and responsibilities in relation to each other as joint tenants.”.

19. Amendment of section 101 – Characteristics of joint proprietorship and severance thereof

Section 101 of the principal Act is amended in subsection (1) by repealing the word “jointly” and substituting the words “by joint proprietors”.

20. Amendment of section 103 – Partition of land owned in common

Section 103 of the principal Act is amended in subsection (1)—

- (a) in paragraph (b) by repealing “a decree” and substituting the words “an order of any court or of a decree in a matrimonial cause”; and
- (b) by inserting after “in accordance with” the words “any direction contained in the order of the court or”.

21. Amendment of section 104 – When Registrar may order sale

Section 104 of the principal Act is amended by adding at the end the following subsection—

(a) by repealing subsection (3) and substituting the following subsection—

“(3) A person lawfully appointed as a guardian or trustee of a person under a disability may on that person’s behalf make an application, perform an act or be a party to any proceedings under this Act.”; and

(b) in subsection (4)—

(i) by repealing the words “a person so appointed to represent a person under a disability” and substituting the words “trustee representing a person under subsection (3)”; and

(ii) by inserting after “claiming to be the guardian” the words “or trustee”.

28. Amendment of section 116 – Transmission on death of joint proprietor

Section 116 of the principal Act is amended by inserting after “the Registrar, on” the words “the written application of any of the surviving proprietors and upon”.

29. Amendment of section 117 – Transmission on death of sole proprietor or proprietor in common

Section 117 of the principal Act is amended in subsection (3) by adding at the end the words “and includes a resealed grant”.

30. Amendment of section 121 – Transmission by compulsory acquisition or judgment of court

Section 121 of the principal Act is amended by inserting after “supported by” the words “the order or certificate of sale or”.

31. Insertion of section 121 A – Registration of proprietor entitled to Crown land

The principal Act is amended by inserting the following section after section 121—

“121 A (1) Where a person is eligible to apply for registration as proprietor of a parcel of land and can support that application with evidence supported by affidavit as the Registrar shall require, that person may apply to the Registrar for registration as proprietor in respect of the parcel of land.

(2) Applications pursuant to subsection (1) may only be made where the Crown has been registered as proprietor of a parcel of land under section 9(1) because a person who may have

Section 107 of the principal Act is amended in subsection (2)(b)(i) by the repeal of the words “in the presence of and attested by its clerk, secretary or other permanent officer and by a member of the board of directors, council or other governing body of the corporation” and substituting the words “and attested in accordance with the documents of its incorporation”.

24. Amendment of section 108 – Verification of execution

Section 108 of the principal Act is amended in subsection (1) by inserting after “a credible witness” the words “or shall present to the Registrar, or a public officer on the Registrar’s staff a credible form of photographic identification”.

25. Amendment of section 109 – Stamps, taxes and licence

Section 109 of the principal Act is amended by adding at the end the following subsections—

“(2) (c) the instrument contains thereon or has attached thereto a declaration from the parties to the transaction regarding their status as a citizen; national of a Caricom territory; or non citizen.

(3) Registration particulars of a licence to hold land pursuant to the provisions of the Non Citizen’s Land Holding Regulation Act, Cap 293, shall be noted by the Registrar on the Register in relation to the land to which the licence refers.

(4) Where land is held by a proprietor under a Non Citizen’s Land Holding Licence, the Registrar shall not register any transfer of land from that proprietor, unless the proprietor files along with the transfer, a certificate issued by the Attorney General pursuant to the instructions of the Cabinet, certifying that—

- (a) the proprietor has fulfilled the conditions under which the licence was granted;
- (b) the requirement to satisfy the conditions under which the licence was granted have been waived; or
- (c) the transferee has accepted and agreed to be bound by the conditions under which the licence was granted.”

26. Amendment of section 110 – Disposal of instruments

Section 110 of the principal Act is amended by repealing the word “six” wherever it appears, and substituting the word “twelve”.

27. Amendment of section 112 – Agents and persons under disability

Section 112 of the principal Act is amended—

“Where by any instrument two or more proprietors are entitled to be registered jointly as trustees, and the survivor of such proprietors would not be entitled to exercise alone the powers which are vested in them, notice of such provision shall be given by the proprietors to the Registrar who shall enter a restriction to that effect on the register.”.

34. Amendment of section 127 – Lodging of cautions

Section 127 of the principal Act is amended—

- (a) in subsection (1)—
 - (i) in paragraph (d) after “charge” by inserting the words “and had obtained the written consent of that proprietor”; and
 - (ii) by adding at the end the words “but a person who is entitled to be registered as a chargee of lands shall not be entitled to lodge or maintain a caution on the land in addition to a charge”;
- (b) in subsection (3) by repealing “the Registrar may require the cautioner to support it by a statutory declaration” and substituting the words “shall be supported by a statutory declaration executed by the cautioner”; and
- (c) in subsection (4) by adding at the end the words “or may upon receipt of any caution forbid the registration of dispositions or the making of entries on the register for such period as he considers appropriate in the circumstances notwithstanding the application by the cautioner”.

35. Amendment of section 135 – Acquisition of land by prescription

Section 135 of the principal Act is amended by repealing the word “twelve” and substituting the word “twenty”.

36. Amendment of section 137 – Procedure on application

Section 137 of the principal Act is amended—

- (a) in subsection (1) by adding at the end the words “and the Registrar shall forthwith make a notation of the application on the register with such particulars as may be necessary to give interested persons notice of the application.”;
- (b) in subsection (3) by repealing the words “one month has” and substituting the words “three months have”; and

been eligible to be registered as proprietor in respect of that parcel of land did not make an application for registration.

(3) Where an application is made under Section 121A(1) that application shall be advertised by the Registrar at the expense of the applicant and in the manner as may be directed by the Registrar.

(4) The Registrar shall give notice of an application under this section to any person who may, in his opinion, be affected by the application.

(5) The Registrar on being satisfied that the applicant is eligible for registration shall make a recommendation to the Cabinet that the application be approved in favour of the applicant.

(6) Upon receiving the recommendation of the Registrar, the application may be approved by the Cabinet.

(7) The Registrar, upon receipt of the approval in writing of the Cabinet for the grant of the application shall forthwith register the applicant as proprietor of the parcel of land that was the subject of the application.”.

32. Amendment of section 122 – Trusts

Section 122 of the principal Act is amended by adding the following subsections after subsection (3)—

“(4) Where an application is made to register any dealing in respect of land the proprietor of which is registered as a personal representative under section 117, or is a trustee, the Registrar may require the applicant to lodge with the Registrar, evidence that the proprietor of the land is entitled to file any dealing and that the beneficiaries of the will, estate or trust have been made aware of the dealing.

(5) The Registrar shall not register a dealing pursuant to subsection (4) if he is not satisfied—

- (a) with the evidence produced; or
- (b) that the beneficiaries have been made aware of the dealing.”.

33. Repeal and substitution of section 123 – Survivor of trustees

Section 123 of the principal Act is repealed and substituted by the following section—

Section 151 of the principal Act is amended by repealing paragraph *(d)* and substituting the following—

- “(d) if served on him by facsimile or by electronic mail at a number or address supplied by that person in the records of the Land Registry and provided that proof of the receipt of such facsimile or mail is provided by a transmission report or an electronic receipt showing the delivery of the same.
- (e) if service cannot be effected in one of the above mentioned ways, by displaying it in a prominent place on the land affected for a period of three weeks and by two publications in a local newspaper.”.

41. Amendment of section 154 – Fees

Section 154 of the principal Act is amended in subsection (1) by inserting after “in respect of” the word “applications for,”.

42. Amendment of section 157 – Jurisdiction of Courts

Section 157 of the principal Act is amended by repealing “fifteen hundred” and substituting the words “fifteen thousand”.

43. Amendment of section 158 – Rules

Section 158 of the principal Act is amended—

- (a) by repealing “for prescribing” and substituting the words “may by Order prescribe”; and
- (b) by repealing the words “and for prescribing anything which under this Act may be prescribed”.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Registered Land Act, Cap 374.

Section 13A has been inserted to provide for the replacement of lost or misplaced registers upon the application of interested persons by the authority of the Registrar.

Sections 21 and 22 have been amended to provide that where proprietors wish to change the boundaries to adjacent parcels of land, the Chief Land Surveyor must now possess the appropriate order from

(c) by adding at the end the following subsection—

“(4) The Registrar shall only complete the registration after the applicant shall have paid a registration fee of 2.5% of the value of the land, together with the valuation fee of the valuer appointed by the Registrar to undertake the valuation.”.

37. Amendment of section 139 – Rectification by Registrar

Section 139 of the principal Act is amended—

- (a) in subsection (1)(b) by adding at the end the words “and has presented to the Registrar the order of prescription duly stamped in accordance with section 137;” and
- (b) in subsection (2) by deleting the word “written”.

38. Amendment of section 143 – Procedure for claiming compensation

Section 143 of the principal Act is amended by repealing the words “so, award compensation and may add thereto any costs and expenses properly incurred in relation to the matter” and substituting the words “he so determines, shall within two months of his decision state a case for the opinion of the court as to the amount of compensation including any costs and expenses properly incurred in relation to the matter, that should be so awarded.”.

39. Repeal and substitution of section 146 – Power of registrar to state case

Section 146 of the principal Act is repealed and substituted by the following section—

- “146. (1) Whenever a question arises with regard to the exercise of a power on the part of a duty conferred or imposed upon him by this Act the registrar may, and shall if required to do so by an aggrieved party, state a case for the opinion of the Court.
- (2) The Registrar shall state a case under subsection (1)—
- (a) within 2 months of the date of receipt by him of an application by an aggrieved party; or
 - (b) in any other case, within a reasonable time of the question arising.
- (3) The Court’s opinion on the case stated shall be binding on the registrar.”.

40. Amendment to section 151– Service of notices

The Registered Land (Amendment) Act, 2007.

No. 6 of 2007

Passed by the House of Representatives on
this 18th day of April, 2007.

Passed by the Senate on this 15th day
of August, 2007.

D. Giselle Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

Yvonne Henry,
Clerk to the House of Representatives.

Yvonne Henry,
Clerk to the Senate.

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