

THE ACQUISITIVE PRESCRIPTION BILL

(No. XII of 2018)

Explanatory Memorandum

The object of this Bill is to repeal the Affidavits of Prescription Act and the Affidavits of Prescription Act (Suspension of Certain Provisions) Act and to provide for a new and more appropriate legislative framework with better safeguards regarding acquisitive prescription.

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Attorney-General, Minister of Justice, Human Rights and Institutional Reforms

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A BILL

To provide for a better legal framework for acquisitive prescription

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Acquisitive Prescription Act 2018.

2. Interpretation

In this Act –

“Conservator” means the Conservator of Mortgages;

“DCDB” has the same meaning as in the Cadastral Survey Act;

“land surveyor” has the same meaning as in the Land Surveyors Act;

“Minister” means the Minister to whom the responsibility for the subject of lands is assigned;

“Ministry” means the Ministry responsible for the subject of lands;

“MIPD” has the same meaning as in the Transcription and Mortgage Act;

“notary” has the same meaning as in the Notaries Act;

“objector” means a person who makes an objection under section 5;

“PIN” has the same meaning as in the Cadastral Survey Act;

“Register” means the Register kept under section 5 of the repealed Affidavits of Prescription Act.

3. Request to notary to draw up deed of prescription

The occupier of an immovable property who wishes to claim ownership of the immovable property by way of acquisitive prescription shall request a notary to draw up a deed of prescription on the submission of the following information and documents –

(a) an affidavit, sworn by the occupier–

(i) specifying the number of years during which he has occupied the immovable property; and

- (ii) that he agrees with the contents of the affidavits of the 2 witnesses referred to in paragraph (e);
- (b) 2 memoranda of survey drawn up, in accordance with Cadastral Survey Act, by 2 land surveyors, setting out the location, description and exact boundaries of the immovable property;
- (c) an affidavit of each of the land surveyors referred to in paragraph (b) regarding the contents of the memoranda of survey;
- (d) the PIN in respect of the immovable property;
- (e) 2 affidavits of 2 witnesses who are not less than 48 years of age and reside or occupy, or who has resided or occupied, a plot of land in the vicinity of the immovable property, confirming that the occupier has occupied the immovable property for at least 30 years;
- (f) the occupier's recent passport size photograph and National Identity Card;
- (g) the recent passport size photograph and National Identity Card of each of the witnesses referred to in paragraph (e); and
- (h) a utility bill, in the name of each of the witnesses referred to in paragraph (e), issued not more than 2 months before the date on which the request is made to the notary under this section, as proof of address.

4. Obligations of notary

(1) Where a notary draws up a deed of prescription pursuant to a request made under section 3, he shall –

- (a) cause a notice in the form set out in the Schedule to be displayed, in such manner as may be prescribed, for a period of 3 months starting on the date of display of the notice –
 - (i) in a conspicuous place of the immovable property forming the subject matter of the acquisitive prescription;
 - (ii) in such other places, which are visible to the public, as the notary may determine in consultation with the land surveyors referred to in section 3(b); and
- (b) thereafter, cause the notice to be published, not later than 5 days after the date of display under paragraph (a) –

- (i) once in the Gazette; and
- (ii) in 2 daily newspapers having wide circulation in Mauritius, of which at least one shall be approved by the Conservator, on 3 consecutive days, including weekend.

(2) The notary shall send a copy of the notice to the Ministry which shall be posted on the website of the Ministry.

(3) Notwithstanding any other enactment, no notary shall cause any deed of prescription to be transcribed before the expiry of the period referred to in subsection (1)(a).

5. Notice of objection

(1) Any person who claims 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 a deed of prescription has been drawn up may, within 3 months from the date of display of the notice under section 4(1)(a), object to the transcription of the deed of prescription by serving a notice of objection on the notary and on the occupier, by setting out the grounds of his objection.

(2) The notary shall forthwith record, in a register to be kept by him, the particulars of any objection received by him under this section, including the date of service of the notice of objection.

(3) The notary shall inform the occupier of the objection under subsection (1) and shall not cause the deed of prescription to be transcribed until the objection is withdrawn or disposed of against the occupier who has claimed ownership by way of acquisitive prescription.

6. Disposal of notice of objection

(1) The occupier of an immovable property who has been served with a notice of objection may, within 3 months of the date of service on the notary, apply to a Judge in Chambers for an order setting aside the objection.

(2) (a) Where, after hearing the parties and considering the ground of objection, the Judge in Chambers is of the opinion that the ground of objection is frivolous and unjustified, he shall make an order setting aside the objection.

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

7. Deed of prescription not to be transcribed where there is notice of objection

No deed of prescription of an immovable property in respect of which a notice of objection is served on the notary shall be transcribed unless –

- (a) the objection is withdrawn by notice served on the notary; or
- (b) the notary is in presence of an order of a Judge in Chambers setting aside the objection or of a certified copy of the judgment of a competent Court deciding the issue against the objector.

8. Transcription of deed of prescription

(1) Where no notice of objection is served on a notary within the period specified in section 4(1)(a) or where a notice of objection is withdrawn or disposed of against the occupier who has claimed ownership by way of acquisitive prescription, the notary shall submit the deed of prescription to be transcribed to the Conservator accompanied by copies of the issue of the Gazette and newspapers containing the notices referred to in section 4(1)(a).

(2) Every deed of prescription shall be transcribed by saving a scanned copy of the original in the MIPD.

(3) The Conservator shall transcribe the deed of prescription in the manner specified in subsection (2) and on payment of the transcription fees.

- (4) Notwithstanding any other enactment, a deed of prescription shall –
 - (a) contain a mention of the location, description and exact boundaries of the immovable property forming the subject matter of the acquisitive prescription and the open market value of the property at the time of completion of the statutory period for prescription;
 - (b) contain the date on which the occupation started and be accompanied by a site plan showing the precise location of the immovable property;
 - (c) contain, in respect of the occupier –
 - (i) his first name or other names, in small letters, followed by his surname in capital letters, and his National Identity Card number, in format XXXXXXXXXXXXXXXX (14 characters);
 - (ii) his occupation and the postal address of his residence;

- (iii) his date of birth in format DD/MM/YYYY, with a reference to the registered number of his birth certificate in format Birth Certificate No./Year of Registration of Birth and the Civil Status Office where the birth was registered;
 - (iv) where applicable, his date of marriage in format DD/MM/YYYY, with a reference to the registered number of the marriage certificate in format Marriage Certificate No./Year of Marriage, the Civil Status Office where the marriage was registered and the matrimonial regime applicable to him at the time of the transfer; and
 - (v) where applicable, his business registration number under the Business Registration Act in format XXXXXXXXXX (9 characters);
- (d) contain, in respect of the immovable property –
- (i) its address, its PIN and a site plan showing its precise location;
 - (ii) the area of land in format Xm² up to 2 decimal places and the nature and description of the building, if any, on it; and
 - (iii) its value in format Rs X;
- (e) be of the typeface “Cambria” in regular style and has font size of 12 point and be printed on A4 size paper of not less than 90 grammes;
- (f) be such that every page is consecutively numbered on the bottom-right, page 1 of the total number of pages, page 2 of the total number of pages and so on and so forth and any annex thereto is numbered on the bottom-right, page 1 of the total number of pages, page 2 of the total number of pages and so on and so forth;
- (g) mention any date in format DD/MM/YYYY;
- (h) not contain any abbreviation, interlineation or superscription, and any word erased or struck through has to remain legible;

- (i) on the recto of every sheet, a blank margin of 3 centimetres on the left and one centimetre on the top, right and bottom except on the first and last sheets, where the top margin is to be 10 centimetres;
- (j) on the verso of every sheet, a blank margin of 3 centimetres on the right and one centimetre on the top, left and bottom;
- (k) make the marginal entry on the last page; and
- (l) where it contains marginal corrections which may be handwritten or words which have been erased or struck through, contain a certificate, to which the person filling the original shall affix his signature or his initials, setting out the number of marginal corrections made and the number of words erased or struck through.

9. Register

(1) The Conservator shall record in the Register the particulars of every deed of prescription of immovable property for transcription purposes.

(2) The Register shall be opened to the public for inspection.

10. Particulars of transcription to be endorsed on deed

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 has been derived from acquisition by prescription witnessed by a deed of prescription, shall be valid unless the deed is transcribed, and a reference to the particulars of such transcription is endorsed on the deed.

11. Effect of transcription of deed of prescription

The transcription of a deed of prescription shall not confer on any party any rights on any immovable property which, but for this Act, that party would not have possessed.

12. Offences

Any person who –

- (a) without lawful authority, removes, defaces, destroys or tampers with a notice displayed pursuant to section 4(1)(a); or

- (b) otherwise contravenes this Act,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 5 years.

13. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

- (2) Any regulations made under this section may provide –

- (a) for the amendment of the Schedule;
- (b) for the levying of fees and taking of charges;
- (c) that an immovable property belonging to a religious body shall be imprescriptible;
- (d) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

14. Repeal

The following Acts are repealed –

- (a) the Affidavits of Prescription Act; and
- (b) the Affidavits of Prescription Act (Suspension of Certain Provisions) Act.

15. Consequential amendments

- (1) The Cadastral Survey Act is amended, in section 7 –

- (a) in subsection (1), by inserting, after the word “sale”, the words “, prescribe”;
- (b) by inserting, after subsection (1), the following new subsection –

(1A) No PIN shall be issued under subsection (1) to any person intending to prescribe any plot of land under the Acquisitive Prescription Act 2018 unless the Conservator of Mortgages certifies that there has been no objection to the prescription.

- (2) The Code Civil Mauricien is amended –
- (a) in Titre Vingtième, in Chapitre Cinquième, in Section Deuxième, by deleting the following subheading –

II – DE LA PRESCRIPTION PAR DIX ET VINGT ANS

and replacing it by the following subheading –

II – DE LA PRESCRIPTION PAR DIX ANS

- (b) in article 2263, by deleting the words “, si le véritable propriétaire habite à Maurice et par vingt ans, s’il est domicilié hors de Maurice”;
- (c) by repealing article 2264.

(3) The Prescription of Landed Property Act is amended, in section 2, by deleting the words "Affidavits of Prescription Act" and replacing them by the words "Acquisitive Prescription Act 2018".

(4) The Registration and Transcription of Deeds and Inscription of Mortgages, Privileges and Charges (Rodrigues) Act is amended, in section 12 –

- (a) in subsection (1)(d), by deleting the words "Affidavits of Prescription Act" and replacing them by the words "Acquisitive Prescription Act 2018";
- (b) by repealing subsection (3);
- (c) in subsection (4), by deleting the words “section 4(1)(b) of the Affidavits of Prescription Act” and replacing them by the words “section 3(b) of the Acquisitive Prescription Act 2018”;
- (d) in subsection (5), by deleting the words “section 4(2) of the Affidavits of Prescription Act” and replacing them by the words “section 4(1)(b) of the Acquisitive Prescription Act 2018”.

16. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

SCHEDULE
[Section 4]

NOTICE UNDER THE ACQUISITIVE PRESCRIPTION ACT 2018

Notice* is hereby given that, residing at
(occupier)
....., has requested me to transcribe a deed of
(address)
prescription of an immovable property of which the location, description and boundaries are as follows –

- (a)
- (b)
- (c)

The deed of prescription of the immovable property, together with the memorandum of survey accompanying it, may be inspected at my office.

Any person who claims to be the owner or part owner of, or to have an interest in, the whole or part of the immovable property may, within 3 months of, object to the transcription of the deed of prescription by *(date of display)* serving on me and on the occupier a notice of objection setting out the grounds of his objection.

.....
Date

.....
Notary