THE AFFIDAVITS OF PRESCRIPTION ACT 1958

Act 27/1958

Repealed by [Act No. 13 of 2018]

Date in Force: 22nd December 1958

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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.

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

Amended by [Act No. 26 of 2013]

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; and

(ba) unless –

(i) In respect of the party alleged to have acquired the immovable property by prescription, the affidavit contains –

(A) his first name or first names, in small letters, followed by his surname in capital letters, and his National Identity Card Number, where available, in format XXXXXXXXXXXXXX (14 characters);

(B) his occupation and the postal address of his residence;

(C) 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;

(D) 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

(E) where applicable, his business registration number under the Business Registration Act in format XXXXXXXXX(9 characters);

(ii) in respect of the immovable property, the affidavit contains –

(A) the address of the property, the Parcel Identification Number(PIN) where available, together with a site plan showing the precise location;

(B) 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

(C) the value of the property in format Rs X;

(iii) with respect to the drawing of the affidavit –

(A) the typeface is “Cambria” in regular style and has font size of 12 point and the affidavit is printed on A4 size paper of not less than 90 grams;

(B) 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;

(C) any date mentioned is in format DD/MM/YYYY;

(D) it does not contain any abbreviation, interlineation or superscription, and any word erased or scratched out has to remain legible;

(E) on the recto of every sheet, there is 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;

(F) on the verso of every sheet, there is a blank margin of 3 centimetres on the right and one centimetre on the top, left and bottom;

(G) the marginal entry is made on the last page; and

(H) where it contains marginal corrections which may be handwritten or words which have been erased or scratched out, it contains 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 scratched out.

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

Amended by [Act No. 46 of 1984]**;** [Act No. 15 of 1988]**;** [Act No. 20 of 2009]**;** [Act No. 20 of 2011]

Suspended by [Act No. 23 of 2012]

4. Application

(1) Every application for the registration of an affidavit of prescription shall be in writing in the form specified in the First Schedule or in such other form as the Conservator may approve, with election of domicile in Port Louis, and shall be accompanied by -

(a) the affidavit of prescription; and

(b) a memorandum of survey drawn up by a land surveyor in accordance with the Cadastral Survey Act 2011 setting out the situation, description and exact boundaries of the immovable property forming the subject matter of the affidavit.

(2) Notice of the application under subsection (4) shall be published once in the Gazette and on à consecutive days in 2 daily newspapers in Mauritius, of which one at least shall be approved by the Conservator.

(3) The notice under subsection (2) shall be in the form specified in the Second Schedule.

(4) Every application for the transcription of an affidavit of prescription shall be made in writing in the form specified in the Third 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 drawn up by a land surveyor in accordance with the Cadastral Survey Act, setting out the situation, description and exact boundaries of the immovable property forming the subject matter of the affidavit.

Amended by [Act No. 17 of 2007]; [Act No. 22 of 2011]; [Act No. 26 of 2013]

Suspended by [Act No. 23 of 2012]

5. Register of affidavits of prescription

(1) The Conservator shall enter in a special register kept for the purpose and known as the Register of affidavits of prescription 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 record in the Register of affidavits of prescription 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.

Suspended by [Act No. 23 of 2012]

Amended by [Act No. 26 of 2013]

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) 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; he shall otherwise refer the parties to the competent court.

Suspended by [Act No. 23 of 2012]

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.

Suspended by [Act No. 23 of 2012]

9. Transcription of affidavit

(1) 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.

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

(3) The Conservator shall be responsible for the transcription of every affidavit in the manner specified in subsection (2).

Amended by [Act No. 20 of 2011]**;** [Act No. 26 of 2013]

Suspended by [Act No. 23 of 2012]

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))

AFFIDAVITS OF PRESCRIPTION ACT

APPLICATION FOR REGISTRATION OF AN AFFIDAVIT OF PRESCRIPTION

I ... of ... electing my legal domicile at..., Port Louis, hereby apply for the registration 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: ...

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

Suspended by [Act No. 23 of 2012]

Amended by [Act No. 26 of 2013]

SECOND SCHEDULE

(section 4 (2))

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 of 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

Suspended by [Act No. 23 of 2012]

THIRD SCHEDULE

[Section 4(4)]

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 to the Conservator of Mortgages for the transcription of the registered affidavit of prescription, together with the newspaper duly registered, 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

Added by [Act No. 26 of 2013]