

LAND (TITLE PROCEEDINGS) ACT, 2011-7

Arrangement of Sections

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FIRST SCHEDULE

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THIRD SCHEDULE

BARBADOS

I assent
C. STRAUGHN HUSBANDS
Governor-General.
10th March, 2011.

2011-7

An Act to reform the law relating to the method of obtaining title to land through the procedure known as "a title suit" or "a foreclosure suit".

(10th March, 2011). Commence-
ment.

ENACTED by the Parliament of Barbados as follows:

PART I

Preliminary

1. This Act may be cited as the *Land (Title Proceedings) Act, 2011*. Short title.

2. In this Act,
"adverse claim" means a claim or right, whether vested or contingent, of a person to or affecting any estate, interest, encumbrance or charge in Interpretation.

or over any land or any part of any land that is the subject of a claim under section 3, being a claim or right that is adverse to or inconsistent with or derogates from any claim or right of the claimant;

"certificate of title" means the certificate referred to in section 3;

"claim" means an application made pursuant to section 3;

"claimant" means a person who makes an application pursuant to section 3;

"court" means the High Court;

Cap. 236. "encumbrance" has the meaning assigned to it in section 2(1) of the *Property Act*;

Cap. 236. "land" has the meaning assigned to it in section 2(1) of the *Property Act*;

Cap. 370. "land surveyor" has the meaning assigned to it in section 2 of the *Land Surveyors Act*;

Cap. 228B. "plan" means a plan prepared by a land surveyor in accordance with the *Land Boundaries Act* and submitted to the Chief Surveyor for recording pursuant to that Act;

Cap. 236. "possession", in relation to land, has the meaning assigned to it by section 2(1) of the *Property Act*;

Cap. 229. "recorded" means recorded under section 157 of the *Land Registration Act*;

"referee" means the person who holds the Office of Commissioner of Titles or such person as the court may appoint for the purpose of section 14;

"Registrar" means the Registrar of the Supreme Court;

"Rules" means rules made pursuant to section 27.

PART II

Certificate of Title

3. (1) A person who claims ownership of a legal estate or legal interest in land within the meaning of section 3 of the *Property Act* and who, in respect of that land,

Application for declaration and certificate of title.
Cap. 236.

- (a) is in possession of documents of title that do not establish a good and marketable title; or
- (b) is not in possession of documents of title but claims ownership of the estate or interest by virtue of inheritance, devise, purchase, adverse possession, prescription or otherwise,

may apply to the court for a declaration in respect of the ownership of the estate or interest and a certificate of title in respect of the same.

(2) Subsection (1) does not apply to a person whose title deeds were destroyed within the meaning of section 2(2) of the *Land (Title Deeds Restoration) Act*.

Cap. 229C.

4. (1) An application for a declaration in respect of ownership of an estate or interest in land and a certificate of title under section 3 shall be made in the Form 1 set out in the *First Schedule*.

Documents supporting application.
Form 1.
First Schedule.

(2) A claimant shall file with an application under subsection (1), the following:

- (a) an affidavit in support of the application in the Form 2 set out in the *First Schedule*;
- (b) evidence of title in accordance with section 5;
- (c) a plan in accordance with section 6; and
- (d) an affidavit by the claimant in respect of any adverse claims in accordance with section 7.

Form 2.
First Schedule.

Evidence of
title.

5. The evidence of title referred to in paragraph (b) of section 4(2) shall include such of the following as are applicable in the circumstances:

- (a) all documents of title including copies and other evidence of title in the possession or custody or under the control of the claimant;
- (b) certified copies of all recorded documents not in the possession or custody or under the control of the claimant which provide any evidence of title;
- (c) an abstract of the title of the claimant signed by an attorney-at-law and deducing title for a period of 20 years or for so much of that period as is possible together with a written statement by an attorney-at-law setting forth the result of all relevant or requisite searches;
- (d) a concise statement, signed by the claimant, of facts that support the title but are not established by the documents produced pursuant to paragraph (a) or (b), as the case may be, or other documents supporting the claim;
- (e) evidence by affidavit or otherwise supporting any facts referred to in paragraph (d) and, where the claimant relies on possession or enjoyment under the *Limitation of Actions Act* or the *Limitation and Prescription Act*, as the case may be, affidavits by at least two persons as to that possession or enjoyment;
- (f) where an attorney-at-law has prepared a written opinion relating to the title and the opinion is in the possession or custody or under the control of the claimant, a copy of the opinion;
- (g) an affidavit by some person other than the claimant who can swear positively to the facts verifying the claim and all documents other than affidavits and exhibits thereto supporting the claim; and

Cap. 231.

Cap. 232.

- (h) a statement of all known encumbrances affecting the land other than those revealed in the documents referred to in paragraphs (a) and (b), and including any charges created by operation of law.

6. The plan referred to in paragraph (c) of section 4(2) shall Plans.

- (a) be a plan of the land that is the subject of the claim prepared from a survey of the land provided that the survey was made or the plan certified not more than 10 years prior to the presentation of the claim; or
- (b) be, with the leave of the court, any plan or plans prepared or certified more than 10 years prior to the presentation of the claim and which, in the opinion of the court, is or are sufficient to identify the land that is the subject of the claim.

7. The affidavit referred to in paragraph (d) of section 4(2) shall Evidence of
adverse
claims.

- (a) be made or given
 - (i) by the claimant; or
 - (ii) with the leave of the court,
 - (A) by some person other than the claimant; or
 - (B) partly by one person and partly by another or others as to the part of the land concerned;
- (b) relate to the entirety of the land whether made or given by one person or separately by two or more persons in relation to different parts of the land;
- (c) disclose all adverse claims actual or potential which to the knowledge of the claimant relate to the land, and the nature of such claims;

- (d) disclose the person who is in possession of the land or any part thereof and under any claim, right or title;
- (e) fully and fairly disclose all facts relevant to the title claimed by the claimant and rights adverse thereto and all contracts and dealings relating thereto; and
- (f) state that to the best of the knowledge, information and belief of the deponent, full disclosure has been made to the court of all matters which are or may be relevant to the declaration of ownership and the certificate of title sought by the claimant.

Inspection
and enquiry.

8. (1) At a date not earlier than 3 months prior to the hearing of the claim, the claimant shall cause to be conducted by a land surveyor or such other person as the court approves as qualified to conduct inspections and enquiries in respect of land for the purposes of this Act, an inspection and enquiry in respect of the land, including the boundaries thereof.

(2) A person who conducts an inspection pursuant to subsection (1) shall

- (a) take with him a copy of the relevant plan from the claimant;
- (b) observe the nature of the land and of the growth thereon;
- (c) examine the land for any notice boards, boundary posts, buildings, structures, footpaths, signs of cultivation or any other matters or things whatsoever, that might tend to reveal evidence as to possession by the claimant or any adverse claim in respect of all or any part of the land;
- (d) for the purpose of discovering evidence as to possession by the claimant or any adverse claim, make diligent enquiry of
 - (i) any occupiers of the land or any part thereof;

- (ii) any persons appearing to be the owners or occupiers of any contiguous land;
 - (iii) any persons appearing to be the owners of any easement or right or privilege affecting the land; and
 - (iv) any other person in the vicinity of the land in respect of whom, in the circumstances, it would be reasonable to make an enquiry; and
- (e) at the time of the inspection make a note or record of the results of the observation, examination and enquiry.

(3) A claimant shall, at least 7 days prior to the hearing of the claim, file an affidavit of the person who conducted the inspection and enquiry in respect of the land, setting out the results of the inspection and enquiry.

9. (1) A claimant shall, in the Form 3 set out in the *First Schedule*

Advertise-
ment.
Form 3.
First
Schedule.

(a) serve a notice of the claim on any adverse claimant of which the claimant is aware; and

(b) publish a notice of the claim 3 times at intervals of 14 days in

(i) at least 2 newspapers each having a circulation of not less than 5 days in any one week

(A) in Barbados; and

(B) where the claimant knows or has reasonable cause to believe that an actual or potential adverse claimant is or resides in a jurisdiction other than Barbados, in that jurisdiction; and

(ii) the *Official Gazette*.

(2) The court may, in any case where it considers it desirable to do so, direct that additional notice of the claim be given by the claimant to such persons and at such times and in such manner as the circumstances of the case may require.

(3) An affidavit verifying the fact that a notice was, in accordance with this section

Form 4. (a) served, shall be made in the Form 4; and

Form 5. (b) published, shall be made in the Form 5,

First
Schedule. set out in the *First Schedule*.

Notice to
adverse
claimants. **10.** (1) Where at any time after the presentation but before the final determination of a claim under section 15, it appears to the court that

(a) there is or may be some person, known or unknown, who may have an adverse claim; and

(b) in the circumstances it is necessary or desirable to give some further notice than that given or to be given under section 9,

the court shall direct that such further notice be given.

(2) Any further notice referred to in subsection (1) shall be in the Form 6 set out in of the *First Schedule* and

Form 6.
First
Schedule.

(a) be sent or served or published by such method, whether by ordinary post, registered post, personal service or publication in the newspapers, whether within or outside Barbados or both, as the court may direct;

(b) be addressed and sent to such person including the attorney-at-law or agent of any person and at such address as the court may direct; and

(c) contain such particulars as the court may require.

11. (1) Subject to subsection (2), the last date for filing an adverse claim shall be, in the case of a notice given under section 9 or 10, not less than 21 days after the date upon which the notice

Filing of
adverse
claims.

(a) is served;

(b) is last published; or

(c) would in the ordinary course of post, be delivered,

as the case may be.

(2) In lieu of the 21 days mentioned in subsection (1), the court may permit an adverse claim to be filed within such other period, being more than 21 days, as may be determined

(a) in any particular case by the court; or

(b) generally or in any particular class of cases by the Rules.

(3) Subject to subsection (4), no claim shall be heard until after the date or the last of the dates, as the case may be, specified in a notice under this Act, as being the last date for filing a claim.

(4) Where after the hearing of a claim has commenced the court directs that further notice be given under section 10, the court shall adjourn the hearing but may resume and complete it at any time after the last date for filing claims stated in the further notice.

(5) Any person having an adverse claim not recognised by the claim shall make his adverse claim in the manner required by this section before the last date or the latest of the last dates, as the case may be, specified in this section.

(6) Where an adverse claimant fails to make his adverse claim in accordance with subsections (1) to (5) but makes the claim in the manner specified by this section at any time before a declaration of ownership is made under section 15, the court shall, subject to subsection (7), duly consider the adverse claim, but may impose upon the adverse claimant such terms if any, as to costs, security for costs or otherwise as the court thinks fit.

(7) Notwithstanding subsection (6), the court may disregard and summarily dismiss any adverse claim which appears to be unmeritorious and not made in good faith.

(8) An adverse claimant shall make his adverse claim by filing and serving on the claimant and his attorney-at-law an adverse claim in the Form 1 of the *First Schedule* supported by an affidavit to be filed with the adverse claim.

Form 1.
First
Schedule.

Directions
by the court.

12. (1) On filing a claim, a claimant may apply to the court, without notice, for directions.

(2) On the hearing of a claim and any adjournment of the hearing, the court shall consider and give directions if necessary, with regard to the claim including directions in respect of

- (a) the extent to which any other evidence or documents are required in order to comply with section 4;
- (b) all matters connected with any notices and further notices given under sections 9 and 10, respectively; and
- (c) such further matters, if any, as may be prescribed by the Rules.

(3) At any time, upon the application of any party or upon its own motion, the court may give such directions or further directions as to the procedure to be followed in respect of any claim or adverse claim as the court considers proper and necessary to determine the validity of the claim and to ensure the absence of fraud or mistake in the making of a declaration of ownership under section 15.

13. (1) On the hearing of a claim the courtProcedure
and
evidence.

- (a) shall receive and may act upon any evidence that is admissible by the court in matters of title; and
- (b) may, in furtherance of section 12(3), receive and give such weight as it thinks fit to any other evidence which the court considers to have any probative value notwithstanding that that evidence would not otherwise be admissible in a court of law.

(2) Subject to any directions by the court, it shall not be necessary on the hearing of a claim to

- (a) deduce title for a period longer than that mentioned in the *Property Act*; or

Cap. 236.

- (b) adduce any evidence which, by virtue of the *Property Act*, is dispensed with between vendor and purchaser.

Cap. 236.

(3) Any evidence given on the hearing of a claim may be given by affidavit or orally or in such other manner or form as the court may direct.

(4) Where on the hearing of a claim the court considers that there is insufficient evidence before the court to determine the claim or any adverse claim but that there is a reasonable likelihood of further evidence being adduced if the hearing is adjourned for a reasonable period, the court may adjourn the hearing accordingly upon such terms as to the court may seem just.

14. (1) At any time after a claim has been made, the court may refer to a referee

Court may
refer claim
to referee.

- (a) the claim and any adverse claim generally; or
- (b) any question or questions arising under or in connection therewith.

- (2) The referee referred to in subsection (1) shall
- (a) have, in relation to all matters referred to him, all the powers of the court except the power to make a declaration of ownership under section 15; and
 - (b) upon concluding the hearing and investigation of all matters referred to him, remit the matters to the court with a report of his conclusions thereon in the Form 7 set out in the *First Schedule*.

Form 7.
First
Schedule.

(3) After affording the claimant and any adverse claimant an opportunity of being heard upon the report, the court shall make such order, whether by way of wholly or partly adopting the report or otherwise, as to the court shall seem just and in accordance with section 12(3).

Determina-
tion of
claim.
Form 8.
First
Schedule.

15. (1) Where the court is satisfied that a claimant has established title to a legal estate or legal interest in all or any part of the land that is the subject of the claim, the court shall, in the Form 8 set out in the *First Schedule*,

- (a) make a declaration of ownership in favour of the claimant in respect of that estate or interest; and
- (b) order that a certificate of title be granted to the claimant in respect thereof.

(2) Where the court is satisfied that an adverse claimant has established title to a legal estate or legal interest in all or any part of the land that is the subject of the claim, the court shall in the Form 8 set out in the *First Schedule* but subject to subsections (3) and (4)

Form 8.
First
Schedule.

- (a) make a declaration of ownership in favour of the adverse claimant in respect of that estate or interest; and
- (b) order that a certificate of title be granted to the adverse claimant in respect thereof.

(3) Before making a declaration or an order under subsection (2), the court shall determine to what extent, having regard to any inspections and enquiries conducted and any notices served and published pursuant to section 8, 9 or 10, as the case may be, on behalf of the claimant, it is desirable that any further inspections and enquiries or notices be conducted or served and published, as the case may be, on behalf of the adverse claimant and shall give directions accordingly.

(4) No declaration shall be made or certificate granted under subsection (2) in respect of an adverse claimant unless

- (a) the court has determined under subsection (3) that no further inspections and enquiries or notices under that section are required; or
- (b) further inspections and enquiries and notices have been duly conducted or served and published, as the case may be, and, after considering the results of those inspections and enquiries and notices, and any adverse claim or other representation arising therefrom, the court is satisfied that the title of the adverse claimant is established subject to such modifications, if any, as the court thinks fit.

(5) Notwithstanding any other provision of this Act, the court may make a declaration of ownership and order that a certificate of title be granted declaring the person to whom it is granted to be the owner of the legal estate or a legal interest in respect of any land or a part of any land if that person has established ownership of a legal estate or legal interest in the land or a part thereof and has proved that possession of the land or the relevant part thereof under the *Limitation of Actions Act* would be a bar to an action for recovery of possession of the land by any other person or that enjoyment of the land or the relevant part thereof under the *Limitation and Prescription Act* has made the right thereto absolute and indefeasible.

Cap. 231.

Cap. 232.

(6) Where the court does not consider any claim or any adverse claim to be established to the reasonable satisfaction of the court, the court shall dismiss the claim or adverse claim, as the case may be.

(7) A separate declaration in respect of ownership may be made as regards a separate part of any land or each separate estate or interest in that land as the court considers just and appropriate.

Fraud,
misrepresentation etc.

16. (1) A person who, in the course of any proceedings, whether acting as principal or agent, fraudulently, knowingly and with intent to deceive

- (a) makes or assists or joins in or is privy to the making of any material, false statement or representation; or
- (b) suppresses, withholds or conceals or assists or joins in or is privy to the suppression, withholding or concealing from the court of any material document, fact, matter or information,

with respect to any certificate of title obtained by means thereof, is guilty of an offence and is liable on conviction on indictment to a fine of \$25,000 or to imprisonment for 4 years or to both.

(2) A certificate of title obtained in the circumstances referred to in subsection (1) shall be null and void except as against a *bona fide* purchaser for value of any interest in the land concerned, without notice thereof.

Discontinu-
ance of
claims.

17. At any time before the final determination of a claim,

- (a) a claimant may, with the permission of the court and subject to the payment of all fees and the costs of all other parties to the proceedings, discontinue his claim; and
- (b) an adverse claimant may, subject to such order, if any, as to costs and otherwise as the court may think fit, discontinue his adverse claim.

Certificate
of title.
Form 9.
First
Schedule.

18. (1) A certificate of title shall be in the Form 9 set out in the *First Schedule* and shall

- (a) contain a full description of the land concerned and the boundaries of the land including all restrictive covenants, easements, conditions and stipulations to which the land is subject;

- (b) unless the court otherwise orders, have a plan annexed thereto showing the land concerned;
- (c) be under the seal of the court;
- (d) be signed by the Registrar;
- (e) be adjudicated in the same manner as if it were a conveyance within the meaning of the *Property Act*; and Cap. 236.
- (f) within 3 months of the date that it was granted, be recorded, at the Land Registration Office, without any further proof thereof as if it were a conveyance within the meaning of the *Property Act*. Cap. 236.

(2) The Registrar shall

- (a) keep a separate index of certificates of title in a register;
- (b) enter the certificates of title in the register in the order in which they were granted and number them accordingly; and
- (c) enter in the register
 - (i) the names of the claimants and of any adverse claimants;
 - (ii) short particulars of the land;
 - (iii) any restrictive covenants, easements, conditions and stipulations to which the land is subject;
 - (iv) any adverse claims; and
 - (v) any other matters which the court may direct or the Registrar may consider appropriate to be entered in the register.

(3) The Registrar may rectify the register or any certificate of title where

- (a) that rectification relates to errors or omissions not materially affecting the interests of any party; and

- (b) consent for the rectification has been given by all the parties interested.

(4) Where, upon a re-survey of land described in a certificate of title or in the register it is established that there is a mistake respecting the area of that land, the Registrar shall, after giving notice to all persons interested, rectify the certificate of title and register.

(5) The Registrar shall, upon notice in writing being given to him of a change of the address of a person to whom a certificate of title is granted, record that change in the register.

Effect of
certificate of
title.

19. (1) Subject to the provisions of this Act and notwithstanding any other law, a certificate of title granted under this Act shall

- (a) be conclusive evidence

- (i) as to the accuracy of the contents of the certificate and of any plans annexed to the certificate; and
 - (ii) that all the requirements of this Act and the Rules have been complied with;

- (b) effectively vest the estate or interest specified therein and expressed to be conveyed as specified in the certificate, in the person to whom the certificate was granted;

- (c) be binding on all persons; and

Cap. 236.

- (d) notwithstanding sections 50 and 51 of the *Property Act*, be sufficient for the commencement of title in respect of a purchaser of land.

(2) Every certificate of title shall, except in so far as is otherwise provided in the certificate, be subject to

- (a) such rights and interests, if any, as are by the certificate excepted from its operation;

- (b) all public rights, if any, including any public highways;
- (c) the rights, if any, of any person claiming through or under the person to whom the certificate is granted by virtue of any instrument duly recorded when the certificate is granted; and
- (d) the rights, if any, of any other person to whom a certificate has been granted under this Act or under any other enactment relating to land.

20. (1) At any stage of any proceedings under this Act, the court may order security for costs to be given by any claimant or adverse claimant. Costs.

(2) The court may order the costs of any proceedings to be paid by or to any party thereto.

PART III

Compensation

21. (1) Where any person suffers loss by reason of the grant of a certificate of title, the person may apply for compensation for the loss by presenting a claim to the court, in respect of which the Attorney-General shall be made a defendant; and the procedure in respect thereof shall be such as may be prescribed by the Rules. Claims for compensation.

(2) Where the claimant establishes to the satisfaction of the court that

- (a) immediately before the grant of the certificate of title the claimant was entitled to some estate or interest in the land that is the subject of the certificate;
- (b) the certificate has barred or diminished the value of that estate or interest; and
- (c) the claimant had no notice of the proceedings leading to the grant of the certificate,

the claimant shall be entitled to compensation in respect of the loss caused to him by the grant of the certificate.

(3) No application for the recovery of compensation may be made under this Part where more than 3 years have elapsed since the claimant knowingly suffered the loss.

(4) All compensation shall be determined in relation to the value of the estate or interest of the claimant in the land at the date when the certificate of title was issued; and no claimant shall be entitled to compensation in excess of that value.

(5) No compensation shall be payable to any person who

(a) has himself caused or substantially contributed to the loss by his fraud or negligence; or

(b) derives title from the person referred to in paragraph (a), otherwise than under a disposition for value to a purchaser without notice of any such fraud or negligence.

(6) Where a claim for compensation succeeds, the Attorney-General shall have a right of action for indemnity against the person to whom the certificate of title in respect of which the claim was made was granted; but it shall be a defence to any action for indemnity if that person establishes to the reasonable satisfaction of the court that in his application for the certificate of title, there was in the proceedings pursuant to which the certificate of title was granted, no wilful default or culpable non-disclosure of the rights of the person entitled to compensation.

(7) In this section,

(a) "claim";

(b) "claimant"; and

(c) "defendant",

PART IV

Miscellaneous

22. (1) Where any person who otherwise might have made any application or claim, given any consent, done any act or been party to any proceedings under this Act is an infant, a person to whom Part IV of the *Mental Health Act* applies, or a person of unsound mind, the guardian of the infant or a person appointed by the court to act on behalf of the person to whom Part IV of the *Mental Health Act* applies or the person of unsound mind, may make such application or claim, give such consent, do such act and be party to such proceedings as the infant or other person might have done had he not been under a disability, and shall otherwise represent the infant or other person for the purposes of this Act.

Disabilities.

Cap. 45.

Cap. 45.

(2) Where there is no guardian or person appointed in accordance with subsection (1) in relation to a person referred to in that subsection, the court may, on the application of any person, appoint any suitable person to exercise all the powers of a guardian or person appointed to act on behalf of the infant or other person referred to in subsection (1), as the case may be, for the purposes of this Act.

(3) For the avoidance of doubt, subject to subsections (4) to (5), a certificate of title may be granted in the name of a minor.

(4) Nothing in this section enables a minor to make a disposition of land or any interest in land by virtue of the grant of a certificate of title.

(5) Where a certificate of title is granted in the name of a minor, the Registrar shall enter in the register to be kept pursuant to section 18(2), a restriction against any dealing with the land.

23. (1) In the case of a company, any director thereof or any attorney-at-law acting for the company, may

Corpora-
tions and
co-owners.

(a) sign on behalf of the company any claim, application or instrument; and

(b) swear any affidavit,

required under this Act.

(2) Subsection (1) applies to other corporations as it applies to companies and where a corporation has no directors, the powers conferred by that subsection upon directors shall be exercisable by any officers of the corporation exercising like functions.

(3) In the case of two or more persons claiming to be entitled to any interest in land as joint tenants or tenants in common, any one of them may, if duly authorised by one or more of the others of them, and subject to any directions of the court,

(a) sign on behalf of himself and the other or others so authorising any claim, application or instrument; and

(b) swear any affidavit,

required under this Act.

(4) Where no authorisation has been given by a joint tenant or tenant in common as required under subsection (3), an application may be made to the court for the directions of the court.

(5) In this section "company" has the meaning assigned to it by section 2(1) of the *Companies Act*.

Cap. 308.

Irregularities
and
abatement.

24. (1) No claim, affidavit, order, certificate, recording or other proceedings under this Act shall be invalid by reason of any technical irregularity or informality in the proceedings or of any mistake not affecting the substance or the substantial justice of the proceedings.

(2) No proceedings under this Act shall abate or be suspended by reason of any death, winding up, transmission or change of interest of any party to the proceedings; but any party becoming aware of any of these events shall forthwith make an application in connection therewith, unless such an application has already been made by some other party.

(3) On the hearing of an application referred to in subsection (2), the court shall make such order and give such directions as may seem just for carrying on, suspending or discontinuing the proceedings or for giving notice to any person who is or might become interested.

25. (1) It shall not be a valid objection to any claim that the claimant could or should have proceeded by way of bringing an action.

Actions and orders for possession.

(2) Where upon the determination of a claim it appears to the court that any party is entitled to possession of the land or any part of the land to which the claim relates, the court may grant to that party an order against any other party for the delivery of possession of the land or the part of the land.

26. The fees prescribed in the Second Column of the *Second Schedule* are the fees that may be charged by an attorney-at-law in respect of the matters set out in the First Column thereto.

Fees.
Second
Schedule.

27. (1) Subject to

(a) this Act; and

(b) the Rules,

Supreme
Court Act
and Rules to
apply.

the practice and procedure under the *Supreme Court Act* and the relevant rules made under that Act, shall apply to proceedings under this Act.

Cap. 117A.

(2) Where in doing any act required or authorised to be done under this Act or the Rules any person fails to comply with any requirement of this Act or the Rules as to the time at which or within which the act should be done, then, if on the application of any party the court is satisfied that

(a) the failure to comply was due to accident, inadvertence or mistake;

(b) no person has been or is likely to be materially prejudiced or injured thereby; and

- (c) in all the circumstances it is just and equitable to grant relief in respect of the failure to comply,

the court shall, subject to such order as to costs or otherwise as the court may think fit, direct that the act shall be deemed to have been validly done notwithstanding the failure to comply.

Rules.

28. (1) The Rules Committee of the Supreme Court may make rules for the purpose of giving effect to this Act and in particular may make rules for

- (a) regulating references to a referee under section 14 and for prescribing the fees to be paid in respect thereof;
- (b) regulating the practice and procedure to be followed;
- (c) prescribing the costs to be paid with respect to claims brought under this Act; and
- (d) any other forms required,

under this Act.

(2) Where any rule relates to the functions of the Department of Lands and Surveys, the Registrar of Titles or any other Department or Office other than the court, the Rules Committee shall, before making that rule, consult the appropriate Department or office or the Registrar of Titles.

Amendment
to First and
Second
Schedules.

29. The Rules Committee of the Supreme Court may, by Rules, amend the *First and Second Schedules*.

Amend-
ments to
enactments.
Third
Schedule.

30. The enactments specified in the first column of the *Third Schedule* are amended in the manner specified in the second column opposite thereto.

31. (1) Notwithstanding anything to the contrary in this Act and Part 73.3 of the *Supreme Court (Civil Procedure) Rules, 2008*, any proceedings that were filed

Saving and
validation.
S.I. 2008
No. 66.

(a) under Order 31 of the *Rules of the Supreme Court, 1982*; or

S.I. 1982
No. 51.

(b) on or after the 1st of October, 2009, purportedly under Order 31 of the *Rules of the Supreme Court, 1982*,

but before the commencement of this Act, may

- (i) be continued under that Order as if that Order were still in force; or
- (ii) may be treated as an application under section 3 of this Act and this Act shall apply thereto.

(2) The proceedings referred to in subsection (1), and any conveyances issued by the Registrar on or after the 1st of October, 2009 in respect thereof and before the commencement of this Act, shall not be regarded as invalid by reason only of the fact that no statutory authority existed during that period to give effect thereto.

32. This Act does not apply to land that is registered land or land in a registration district within the meaning of the *Land Registration Act*.

Non-
application
of this Act.
Cap. 229.

33. This Act binds the Crown.

Application
to the
Crown.

FIRST SCHEDULE

(Sections 4 and 11(8))



Land (Title Proceedings) Act, 2011
(Act 2011 – 7)

FORM 1

**APPLICATION FOR DECLARATION OF OWNERSHIP AND
 CERTIFICATE OF TITLE IN RESPECT OF**

(description of property)

**SUPREME COURT OF BARBADOS
 IN THE HIGH COURT OF JUSTICE**

CLAIM NO.

**IN THE MATTER OF THE LAND
 (TITLE PROCEEDINGS) ACT, 2011
 (section 3);**

**AND IN THE MATTER OF ALL THAT
*(full description of property)***

I, *(full name of Claimant/Adverse Claimant)* of *(full address and description of the Claimant/Adverse Claimant)* hereby make application, under section 3 of the above Act, for an order declaring that I am the owner of the legal estate/a legal interest in respect of the property described in the heading of this application and for a certificate of title in respect of the same.

Dated the day of 20 .

Claimant/Adverse Claimant

This application is filed on behalf of the *(Claimant/Adverse Claimant)* by *(name of attorney-at-law)*, whose place of business and address for service is *(address of attorney-at-law)*.

FIRST SCHEDULE – *Cont'd*

(Section 4)



Land (Title Proceedings) Act, 2011
(Act 2011 – 7)

FORM 2

**AFFIDAVIT IN SUPPORT OF APPLICATION FOR
DECLARATION OF OWNERSHIP AND CERTIFICATE
OF TITLE IN RESPECT OF**

(description of property)

**SUPREME COURT OF BARBADOS
IN THE HIGH COURT OF JUSTICE**

CLAIM NO.

**IN THE MATTER OF THE LAND
(TITLE PROCEEDINGS) ACT, 2011
(section 3);**

**AND IN THE MATTER OF ALL THAT
*(full description of property)***

I, *(full name of Claimant)* of *(full address and description of the Claimant)*
MAKE OATH AND SAY as follows:

1. I make this affidavit in support of my application for an order declaring that I am the owner of the legal estate/a legal interest in respect of the property described in the heading of this application and for a certificate of title in respect of the same.

FIRST SCHEDULE – *Cont'd*

2. The property is subject to the following encumbrances:

(List encumbrances)

(1)

(2)

(3)

3. I have in my possession, custody and power the following documents of title to the property:

(List documents)

(1)

(2)

(3)

4. I claim ownership of the property by virtue of the following facts:

(Set out in separate, numbered sub-paragraphs all the facts upon which the Claimant relies to establish etc. ownership of the property)

(1)

(2)

(3)

5. The following are the households who are in actual occupation of the property or some part thereof:

(List the names of households)

(1)

(2)

(3)

6. The person who appears in the records of the Land Tax Department as the owner of the property is *(name and address)*:

FIRST SCHEDULE – *Cont'd*

7. *(State here that to the best of the knowledge, information and belief, of the deponent full disclosure has been made to the court of all matters which are or may be relevant to the declaration of ownership to be granted by the court or to the certificate of title.)*

8. I undertake to pay all outstanding fees and expenses of the High Court Suit No. _____ of _____ in respect of the property and to have the said suit discontinued if and as soon as my present application has been granted by the court and before the Registrar issues to me a certificate of title to the said property.

SWORN by the Claimant, the)
 said)
 at the Law Courts, Bridgetown,) _____
 the _____ day of ,)
 20 before me)

SENIOR CLERK/LEGAL ASSISTANT

FIRST SCHEDULE – *Cont'd**(Section 9)*

Land (Title Proceedings) Act, 2011
(Act 2011 – 7)

FORM 3**NOTICE OF APPLICATION FOR DECLARATION OF
OWNERSHIP AND CERTIFICATE OF TITLE IN RESPECT OF**

(description of property)

**SUPREME COURT OF BARBADOS
IN THE HIGH COURT OF JUSTICE**

CLAIM NO.

**IN THE MATTER OF THE LAND
(TITLE PROCEEDINGS) ACT, 2011
(section 3);**

**AND IN THE MATTER OF ALL THAT
*(full description of property)***

TAKE NOTICE that *(full name of Claimant)* of *(full address and description of Claimant)* has applied to the High Court for a declaration of his ownership and a certificate of the title in respect of the property described above.

Any person having any adverse claim, lien or charge or right or interest against the said property should submit the claim duly authenticated on oath

FIRST SCHEDULE – *Cont'd*

to the Registrar of the Supreme Court, Bridgetown, on or before the day of
20 .

Any other person who has any information relating to the ownership of the said property is invited to give such information in writing to the Registrar of the Supreme Court, Bridgetown, on or before the day of 20 .

Dated the day of 20 .

Attorney-at-law for the Claimant, whose
place of business and address for
service is

FIRST SCHEDULE – *Cont'd**(Section 9)*

Land (Title Proceedings) Act, 2011
(Act 2011 – 7)

FORM 4**AFFIDAVIT VERIFYING SERVICE OF NOTICE FOR CLAIM
IN RESPECT OF**

(description of property)

**SUPREME COURT OF BARBADOS
IN THE HIGH COURT OF JUSTICE**

CLAIM NO.

**IN THE MATTER OF THE LAND
(TITLE PROCEEDINGS) ACT, 2011
(section 3);**

**AND IN THE MATTER OF ALL THAT
*(full description of property)***

I, *(full name)*of *(full address and description)***MAKE OATH AND SAY** as follows:

1. I was duly appointed to serve a Notice for Claims in this matter.
A copy of the Notice is annexed hereto as Exhibit AA.

FIRST SCHEDULE – *Cont'd*

2. I have served the said Notice on the following households on the above property on the dates and times stated.

(1) On the household of *(name)* by leaving the said Notice with
(name) on the day of 20 at o'clock.

At about the same time I affixed a copy of the said notice on the dwelling-house of the said household.

(2) *(Repeat as necessary for each household served)*

3. I have been informed and verily believe that the claimant is registered as the owner of the property in the records of the Land Tax Department.

or

3. I have also served the notice on the following person being the person who is registered as owner of the property in the records of the Land Tax Department.

(Names and addresses of the person (if different from the Claimant) who is registered as owner of the property).

SWORN by *(full name of*)
deponent))
 at the Law Courts, Bridgetown,) _____
 the day of ,)
 20 , before me)

SENIOR CLERK/LEGAL ASSISTANT

FIRST SCHEDULE – *Cont'd**(Section 9)*

Land (Title Proceedings) Act, 2011
(Act 2011 – 7)

FORM 5

**AFFIDAVIT VERIFYING ADVERTISEMENT FOR CLAIMS
 IN RESPECT OF**

(description of property)

**SUPREME COURT OF BARBADOS
 IN THE HIGH COURT OF JUSTICE**

CLAIM NO.

**IN THE MATTER OF THE LAND
 (TITLE PROCEEDINGS) ACT, 2011
 (section 3);**

**AND IN THE MATTER OF ALL THAT
*(full description of property)***

I, *(full name)* of *(full address and occupation)*
MAKE OATH AND SAY as follows:

1. I have caused a Notice for Claims to be advertised in the newspaper on the following dates, viz.,
2. Copies of the said newspaper for the said dates are annexed hereto and marked respectively "P1", "P2", "P3", "P4", "P5" and "P6".
3. I have also caused a Notice for Claims to be advertised in the *Official Gazette* on the following dates, viz.

FIRST SCHEDULE – *Cont'd*

4. Copies of the *Official Gazette* for the said dates are annexed hereto and marked respectively "G1", "G2", "G3", "G4", "G5" and "G6".

SWORN by (*full name of deponent*))

at the Law Courts, Bridgetown,) _____

the day of ,)

20 , before me,)

SENIOR CLERK/LEGAL ASSISTANT

FIRST SCHEDULE – *Cont'd**(Section 10)*

Land (Title Proceedings) Act, 2011
(Act 2011 – 7)

FORM 6**FURTHER NOTICE FOR ADVERSE CLAIMS IN RESPECT OF**

(description of property)

SUPREME COURT OF BARBADOS
IN THE HIGH COURT OF JUSTICE

CLAIM NO.

IN THE MATTER OF THE LAND
(TITLE PROCEEDINGS) ACT, 2011
(section 3);

AND IN THE MATTER OF ALL THAT
(full description of property)

TAKE NOTICE that *(full name of Claimant)* of *(full address and description)* has applied to the High Court for a declaration of ownership and a certificate of title in respect of the property described above.

Any person having any adverse claim, lien or charge against the said property should submit the claim duly authenticated on oath to the Registrar of the Supreme Court, Bridgetown, on or before the day of , 20 and immediately thereafter serve a true copy on the undersigned.

FIRST SCHEDULE – *Cont'd*

Any other person who has any information relating to the ownership of the said property is invited to submit that information in writing to the Registrar of the Supreme Court, Bridgetown, on or before the day of 20 .

Dated the day of 20 .

Attorney-at-law for the Claimant, whose place of business and address for service is

FIRST SCHEDULE – *Cont'd**(Section 14(2))*

Land (Title Proceedings) Act, 2011
(Act 2011 – 7)

FORM 7**REFEREE'S REPORT TO THE HIGH COURT****SUPREME COURT OF BARBADOS
IN THE HIGH COURT OF JUSTICE****CLAIM NO.**

**IN THE MATTER OF THE LAND
(TITLE PROCEEDINGS) ACT, 2011
(section 3);**

**AND IN THE MATTER OF ALL THAT
*(full description of property)***

To the High Court:

I respectfully submit this report on the claims, adverse claims against the above property and conditions found.

1. An affidavit has been made and filed by or on behalf of the Claimant, in which he deposes that he has inserted in the newspaper the prescribed notices calling upon any person having any adverse claim, lien or charge against the above property to submit such claim duly authenticated on oath to the Registrar of the Supreme Court, Bridgetown, on or before the day of 20 and immediately thereafter to serve a true copy on the said attorney-at-law. I have verified that the advertisements comply with the requirements of the Act and the Rules.

FIRST SCHEDULE – *Cont'd*

2. An affidavit has also been made and filed by or on behalf of the Claimant, in which he deposes that he has served the said notice or caused the same to be served on the following persons:

(1) All households who are in occupation of the said land or any part thereof;

(2) The person (*if different from the Claimant*) whose name appears in the records of the Land Tax Department as the owner of the property.

3. No successful claims have been submitted to me pursuant to the said advertisements

or

3. The following claims have been submitted to me and have been admitted by the Claimant or upheld by the court:

(Successful claims to be set out here)

4. My findings in respect of the information requested by the Court from the referee are as follows:

(State findings)

Dated the day of 20 .

Referee

(Section 15)



FORM 8

(description of property)

**SUPREME COURT OF BARBADOS
IN THE HIGH COURT OF JUSTICE**

IN THE MATTER OF THE LAND
(TITLE PROCEEDINGS) ACT, 2011
(section 3);

AND IN THE MATTER OF ALL THAT
(full description of property)

Before the Honourable
Judge of the High Court.

On the day of 20 .

Entered the day of 20

This matter having come before the Court on the above date;
And the Judge having read the Referee's Report and having heard the
attorney-at-law for the Claimant;

FIRST SCHEDULE – *Cont'd***THE COURT HEREBY DECLARES** that the Claimant

_____ of _____
(full name) *(full address and description)*

is the owner of the legal estate in respect of property described in the heading of this order, that is, an estate in fee simple in absolute possession freed and absolutely discharged of and from all claims, estates, rights, interests, liens and encumbrances of all other persons, including the Crown, save and except as follows:

(Set out successful claims, if any)

(Set out any existing rights or covenants over the property)

(Set out any existing rights that were modified after the creation of building estates/developments)

AND THE COURT FURTHER DECLARES that the property described is

- (a) not registered land nor land within a registration district;
- (b) is/is not subject to any rights, interests, liens and encumbrances;
- (c) is subject to such rights the rights are those set out in Part I of the Schedule to this Order;
- (d) that the plot or surveyors plan is set out in Part II of the Schedule to the Order.

AND THE COURT FURTHER DECLARES that the certificate of title so **granted** constitutes a good root of title to the property.

AND THE COURT FURTHER APPROVES AND DIRECTS the grant of a certificate of title by the Registrar of the Supreme Court to the Claimant.

JUDGE OF THE HIGH COURT

FIRST SCHEDULE – *Cont'd**(Section 18)*

Land (Title Proceedings) Act, 2011
(Act 2011 – 7)

FORM 9**CERTIFICATE OF TITLE OF**

(description of property)

SUPREME COURT OF BARBADOS
IN THE HIGH COURT OF JUSTICE

CLAIM NO.

IN THE MATTER OF THE LAND
(TITLE PROCEEDINGS) ACT, 2011
(section 3);

AND IN THE MATTER OF ALL THAT
(full description of property)

I, _____ Registrar of the Supreme Court
 of Judicature, do hereby certify that the High Court of the Supreme Court of
 Judicature has granted a declaration that _____ *(full name)* of
 _____ *(address)*

is the owner of the legal estate in respect of the property described in Part I of
 the Schedule and has approved and directed the issue of this Certificate of
 Title.

Now therefore I do certify that the said property is vested in the said
 _____ *(full name of Claimant)* for an estate in fee simple absolute in
 possession freed and absolutely discharged from all claims, estates, rights,
 interests, liens and encumbrances of all other persons, including the Crown,

FIRST SCHEDULE – *Cont'd*

except such (if any) as are specified in Part II of the Schedule to this certificate. The Property is also described in the Plot/Surveyor's Plan set out in Part III of the Schedule to this Certificate.

SCHEDULE

PART I

PART II

SECOND SCHEDULE

(Section 26)

FEES

FIRST COLUMN	SECOND COLUMN
1. Fee for Application for declaration and Certificate of Title	\$3 500.00
2. Fee for filing of Adverse Claims	\$3 500.00
3. Fee for Application to the Court for Directions pursuant to Section 13 of the Bill	\$1 500.00
4. Fee for referral of claim to a Referee pursuant to Section 14 of the Bill	\$1 500.00

THIRD SCHEDULE

(Section 29)

FIRST COLUMN	SECOND COLUMN
1. <i>Land Registration Act</i> , Cap. 229.	Delete section 122 and substitute the following:
"Transmission by compulsory acquisition or order of court.	<p>122. (1) Subject to subsection (2), where the Crown or a person is entitled to land or a lease or charge under an enactment or by virtue of an order of a court, the Registrar shall, upon receipt of a notice in such form as the Registrar approves, register the Crown or that person as the proprietor of the land, lease or charge.</p> <p>(2) Subsection (1) does not apply to land that is the subject of</p> <p>(a) proceedings brought under Part 55 of the <i>Supreme Court (Civil Procedure) Rules</i>; or</p> <p>(b) a certificate of title issued by the Registrar pursuant to an order made under section 15 of the <i>Land (Title Proceedings) Act, 2011</i>."</p>
S.I. 2008 No. 66.	
Act 2011-7.	

THIRD SCHEDULE – *Cont'd*

FIRST COLUMN

SECOND COLUMN

- | | |
|---|---|
| <p>2. <i>Land (Title Deeds Restoration) Act, Cap. 229C.</i></p> | <ol style="list-style-type: none"> 1. In the long title, delete the words "destroyed by disaster" and substitute the words "destroyed or damaged by disaster or otherwise, lost or stolen". 2. In section 2, <ol style="list-style-type: none"> (a) in subsection (1), insert in alphabetical order the following definition:

 "lost" means, in relation to title deeds, lost by the fee simple owner of the relevant property whether by misplacement by the owner himself or through misplacement, concealment or unreasonable withholding by another; and (b) in subsection (2), delete the words "lost or damaged by disaster" and substitute the words "destroyed or damaged by disaster or otherwise, lost or stolen". 3. In section 3(1), delete the words "by disaster". 4. In section 4, delete the words "by disaster". |
|---|---|

THIRD SCHEDULE – *Cont'd*

FIRST COLUMN	SECOND COLUMN
2. <i>Land (Title Deeds Restoration) Act, Cap. 229C. (Cont'd)</i>	<p>5. Insert immediately after section 5, the following as sections 5A and 5B:</p> <p>"Investi- gation.</p> <p>Cap. 228A.</p> <p>Surrender of recovered deeds.</p> <p>5A. Where in carrying out the functions of the Registrar under this Act the Registrar considers it necessary to inquire into any application made hereunder, the Registrar may invoke the provisions of section 4 of the <i>Lanc' Adjudication of Rights and Interests) Act</i> as if the property in question were situated in the registration district referred to in that section, in order to determine whether title deeds ought to be restored in accordance with the Act.</p> <p>5B. Where an applicant who has had title deeds restored under this Act subsequently recovers the original title deeds in respect of which his application was made, the applicant shall forthwith surrender the original title deeds to the Registrar for destruction."</p>
3. <i>Property Act, Cap. 236.</i>	<p>In section 11,</p> <p>(a) in subsection (1),</p> <p>(i) delete the comma at the end of paragraph (d) and substitute a semi-colon; and</p>

THIRD SCHEDULE – *Concl'd*

FIRST COLUMN	SECOND COLUMN
3. <i>Property Act</i> , Cap. 236. (<i>Cont'd</i>)	(ii) insert after paragraph (d), the following: "(e) every order of the court declaring ownership and approving the grant of a certificate of title in the name of or on behalf of the owner of a legal estate pursuant to section 15 of the <i>Land (Title Proceedings) Act, 2011</i> "; and
Act 2011-7.	
	(b) insert after subsection (3), the following: "(4) The provisions of the <i>Property Transfer Tax Act</i> , the <i>Land Development Duty Act</i> , the <i>Value Added Tax Act</i> and the <i>Stamp Duty Act</i> apply to a certificate of title referred to in paragraph (e) of subsection (1) as they apply to a conveyance executed by an estate owner."
Cap. 84A.	
Cap. 78.	
Cap. 87.	
Cap. 91.	