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GRENADA

**ACT NO. 22 OF 2016**

I assent,

20th July, 2016.

CÉCILE E. F. LA GRENADE  
*Governor-General.*

AN ACT to facilitate the obtaining of possessory title to land  
by persons claiming through adverse possession.

[ By Order ].

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Grenada, and by the authority of the same as follows—

**PART I****PRELIMINARY**

1. This Act may be cited as the

**POSSESSORY TITLES ACT, 2016**

Short title and  
commencement.

and shall come into effect on a date to be fixed by the Governor-General by Order published in the *Gazette*.

Interpretation.

**2. In this Act—**

“adverse possession” means factual possession of an exclusive and undisturbed nature of a piece or parcel of land in Grenada for a continuous period not less than twelve years immediately preceding the claim, accompanied by the requisite intention to possess the said land as owner thereof;

“applicant” means a person who claims to have adverse possession of a piece or parcel of land in Grenada and who makes an application under section 3 for declaration of possessory title to the land;

“Court” means the West Indies Associated States Supreme Court;

“Crown Lands” means lands vested in the Governor-General pursuant to the Crown Lands Act, Chapter 73, and all other lands which may, from time to time, be vested in the Governor-General for the public uses of Grenada;

“Deeds and Land Registry” means the Deeds and Land Registry pursuant to the Deeds and Land Registry Act, Chapter 79;

“land” includes all corporeal hereditaments, and also to any share, estate, or interest in them or any of them, whether freehold or chattel interest, and whether freehold or held according to any other tenure;

“Minister” means the Minister responsible for legal affairs;

“month” means a calendar month;

“Registrar” means the Registrar of the Court;

“Registry” means the Registry of the Court.

## PART II

### APPLICATION AND SERVICE

**3.—**(1) Where a person claims to be in adverse possession of a piece or parcel of land in Grenada, the person may make an application in accordance with section 4 to the Court for a declaration of possessory title to the said land. Application for declaration of possessory title.

(2) Without prejudice to the provisions of the Limitation of Actions Act, Chapter 173, an application for declaration of possessory title shall not be made in respect of Crown Lands.

(3) Notwithstanding subsection (1), where a person claims to be in adverse possession of a piece or parcel of land in Grenada and dies in factual possession of the land, an application for declaration of possessory title may be made by a person claiming in the capacity of executor, administrator, trustee or other person in a fiduciary capacity for the estate or for the beneficiaries of the deceased person, as the case may be, but not in breach of the duties as executor, administrator, trustee or fiduciary.

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

Content of application.

**4.** An application for declaration of possessory title shall be made in accordance with Form I of Schedule I and shall include—

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

Affidavits to accompany application.

**5.—(1)** An application for declaration of possessory title shall be accompanied by—

- (a) an affidavit of the applicant; and
- (b) one affidavit each of at least two individuals with knowledge of the applicant's adverse possession of the piece or parcel of land.

(2) An individual is disqualified as a deponent of an affidavit for the purposes of subsection (1) (b), if the individual is—

- (a) the spouse;
- (b) a child or step-child;
- (c) a parent, step-parent or parent-in-law;
- (d) a sibling, half-sibling or step-sibling;
- (e) a grandparent or grandchild;
- (f) an uncle, aunt, nephew or niece; or
- (g) a dependant,

of the applicant.

(3) The affidavit of an applicant under subsection (1) (a) shall attest the truth of the facts set out in the application for declaration of possessory title.

(4) An affidavit under subsection (1) (b) shall set out—

- (a) any facts known to the deponent that may prove the facts referred to in section 4 (b);
- (b) that the deponent has no direct or indirect interest relating to the piece or parcel of land; or
- (c) that the deponent is not disqualified pursuant to subsection (2),

and the deponent shall attest to the truth of those facts.

(5) Where an application for declaration of possessory title is not accompanied by two affidavits in accordance with subsections (1) and (2), notwithstanding subsection (1)–

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

Plan to accompany application.

**6.**—(1) An application for declaration of possessory title shall be accompanied by a plan of the piece or parcel of land authenticated by the signature of a Land Surveyor licensed pursuant to the Land Surveyors Act, Chapter 162.

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

Notice and advertisement.

**7.** Upon filing an application for declaration of possessory title, the applicant shall–

- (a) publish a notice in accordance with Form 2 of Schedule I in the *Gazette*;
- (b) publish a notice in accordance with Form 2 of Schedule I in two issues of at least two newspapers circulating in Grenada, the second issue of each newspaper being published not less than two months after the first issue; and
- (c) between the dates of the first and last publications in the newspapers, post or cause to be posted a copy of that notice in a conspicuous place at the Registry and in a conspicuous place in the



Magistrate's court in the district in which the piece or parcel of land is situated.

**8.—**(1) The applicant shall, not later than twenty-one days after filing the application for declaration of possessory title, cause a copy of the notice pursuant to section 7—

Service on adjoining owners.

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

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

- (a) the provisions of section 7 and this section are complied with; and
- (b) not less than six weeks have passed since the service or posting of the notice referred to in subsection (1) above.

**9.—**(1) A person may enter an appearance in response to a notice pursuant to section 7 not later than two months after the date of the last publication of the notice in the newspapers.

Appearance and written claim.

(2) A person who enters an appearance in response to a notice pursuant to section 7 shall, not later than twenty-one days after the date of entry of the appearance, file in the Registry a written claim setting out the name of the person

who has the title to the piece or parcel of land and a statement of the facts on which the claim is founded.

(3) For the avoidance of doubt, an entry of appearance may be filed by the person who intends to oppose an application for declaration of possessory title or by an authorised agent on the behalf of the person.

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

### PART III

#### PROCEEDINGS

Duty of Registrar  
in respect of  
proceedings.

**10.**—(1) Where no appearance has been entered pursuant to section 9, the applicant may make an application for the Registrar to issue a certificate of non-appearance.

(2) Upon an application made under subsection (1), the Registrar shall issue a certificate of non-appearance and fix a day and time for the hearing of the application.

(3) Where a person enters an appearance pursuant to section 9, the Registrar shall, at the expiration of the time fixed for appearance enter an application in his or her cause book as a suit in the name of the applicant and of the person who has appeared as the respondent.

Proceedings by  
Court.

**11.**—(1) The Court shall hear every application for declaration of possessory title in open Court.

(2) Every affidavit and written claim filed with respect to an application for declaration of possessory title shall stand as pleadings, and no further pleadings shall be filed without the leave of the Court.

(3) Where at the hearing of an application for declaration of possessory title the Court requires further evidence, the Court may take such evidence orally or by affidavit as it sees fit.

**12.**—(1) An applicant may obtain judgment without trial, where in respect of the application for declaration of possessory title—

Default judgment or *ex parte* proceedings.

- (a) no person enters an appearance within the prescribed time; or
- (b) no person files a written claim within the prescribed time.

(2) Where a person who has entered an appearance pursuant to section 9 fails to file a written claim within the prescribed time, the Court may proceed *ex parte* and the Court may make an order or give a decision as it sees fit.

**13.** Where more than one person enter appearances and file claims in opposition to the application for declaration of possessory title or to any respondents, the Court shall adjudicate the opposing claims and may make a declaration of possessory title in favour of any of the parties as it thinks fit.

Procedure where more than one person claim ownership.

**14.** The applicant may, with the leave of the Court, withdraw his or her application for declaration of possessory title at any time before the judgment is entered, subject to any order for payment of costs that the Court may make.

Withdrawal of application.

Person who has information may file affidavit.

**15.**—(1) A person who has information in relation to the possession of the piece or parcel of land that is the subject of an application for declaration of possessory title or another claim under this Act may file an affidavit, whether or not he or she has an interest in the said piece or parcel of land and whether or not he or she intends to file an opposing claim.

(2) An affidavit referred in subsection (1) shall—

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

(3) At the hearing of an application for declaration of possessory title, the Court may—

- (a) require the attendance of a person who files an affidavit pursuant to this section; and
- (b) if the person fails to attend, make any order or give any decision as it sees fit.

Where any party is a minor or of unsound mind.

**16.**—(1) Where a person, but for his or her disability by reason of being a minor or of unsound mind, could have made an application, given consent, done an act, or been party to proceedings under this Act, the guardian of the person may make such application, give such consent, do such act, and be party to such proceedings, as the person may do had the person been free from disability, and the guardian shall otherwise represent the person for the purposes of this Act.

(2) Where a person, but for his or her disability by reason of being a minor or of unsound mind, could have made an application, given consent, done an act, or been party to proceedings under this Act and the person has no guardian, the Court may appoint a person to act on behalf of the person being a minor or of unsound mind.

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

Security for costs.

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

Payment of costs.

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

Procedure for making applications under this Act.

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

Proceedings not void for want of form.

**21.—**(1) Where a declaration of possessory title is voidable by virtue of section 31, a person may apply for the declaration to be set aside by an order of the Court.

Setting aside or varying orders.

(2) A person who seeks to claim in opposition to an application for declaration of possessory title may, not later than sixty days after the order of the Court has been published in the *Gazette* pursuant to section 23, apply for the judgment to be set aside or varied, where—

(a) the judgment was obtained without trial;

- 
- (b) the person entered an appearance but failed to file a written claim within the prescribed time and the judgment was obtained in *ex parte* proceedings.

(3) Upon an application pursuant to subsection (2), the Court may set aside or vary the judgment obtained without trial, if it considers it appropriate by any reason, including—

- (a) a person otherwise claims in opposition to the applicant and gives a good explanation for failure to enter an appearance, or to file a written claim, within the prescribed time;
- (b) a person claims to have legal title to the land that the person acquired less than twelve years before the date of the application for declaration of possessory title; or
- (c) a person has a real prospect of successfully opposing the application for declaration of possessory title, on a fact other than the fact referred in paragraph (b).

Appeal.

**22.**—(1) A person aggrieved by an order or decision of the Court made or given under this Act may appeal to the Court of Appeal not later than three months after the order or decision is made or given.

(2) The Court of Appeal shall be the final court of appeal for the purposes of this Act.

**PART IV****REGISTERS**

**23.** The Registrar shall, by Notice in the *Gazette*, and in one issue of a newspaper circulating in Grenada, publish particulars of every order made by the Court containing a declaration of possessory title within one month of the making of the order.

Registrar to publish particulars of order.

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

Registrar may issue certificate.

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

Register of orders.

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

Register of Possessory Titles.

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

(2) The Registrar of the Deeds and Land Registry shall keep and maintain the Register of Possessory Titles in accordance with the Deeds and Land Registry Act, Chapter 79.

Stamp duty.

**27.**—(1) There shall be charged and collected, in respect of every deed registered as a result of the making of an order containing a declaration of possessory title, the stamp duty specified in Schedule III.

(2) The stamp duty shall be paid by the person in whose favour an order containing a declaration of possessory title is made.

(3) The Minister may by Order amend the stamp duty specified in Schedule III.

## PART V

### MISCELLANEOUS

Fee simple interest.

**28.** A person who obtains a declaration of possessory title under this Act shall be deemed to have a fee simple interest in the land.

Indefeasible title.

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



- (a) where there is no appeal or application for the judgment to be set aside or varied, three months after the date of publication of particulars of the order pursuant to section 23;
- (b) where an application for the judgment to be set aside or varied is made within the prescribed time, upon determination of the application;
- (c) where an appeal is made within the prescribed time, upon determination of the appeal.

**30.**—(1) If, in the course of any proceedings under this Act, a person— Declaration by fraud.

- (a) knowingly makes or assists in the making of any material false statement or representation; or
- (b) with intent to deceive, suppresses or refuses to disclose, or assists in the suppression or non-disclosure of, any material document or information,

any declaration or title obtained as a result of the making of the material false statement or representation, or the suppression or non-disclosure of the material document or information, shall be null and void, except as against a *bona fide* purchaser for valuable consideration without notice or a second or subsequent mortgagee in respect of that piece or parcel of land.

(2) A person who swears, or assists in the making of, an affidavit in support of an application for declaration of possessory title, knowing the contents of the affidavit

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to be false, commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding two years or both.

Declaration  
obtained by  
mistake.

**31.** Where a declaration of possessory title is obtained as a result of a material mistake in the application thereof, the declaration shall be voidable and may be set aside by an order of the Court.

Declaration  
obtained prior to  
commencement  
of Act.

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

Restriction  
on obtaining  
possessory title.

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

Fees.

**34.—**(1) For the purposes of this Act, fees shall be charged and collected in relation to the exercise of the functions under this Act, as set out in Schedule II.

(2) The Minister may by Order amend the fees specified in subsection (1).

(3) Without prejudice to subsections (1) and (2), the fees charged and collected pursuant to section 27 of the Deeds and Land Registry Act, Chapter 79 shall apply for the purposes of this Act.

Regulations.

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

**SCHEDULE I**

**FORMS**

**FORM I**

(Sections 4 & 7)

**IN THE SUPREME COURT OF GRENADA AND  
THE WEST INDIES ASSOCIATED STATES  
HIGH COURT OF JUSTICE**

In the matter of an application for a  
declaration of possessory title to land

**APPLICATION FOR DECLARATION OF POSSESSORY TITLE**

The applicant .....  
(name)

Address .....

Occupation .....

declares as follows:

1. The applicant is in possession of a piece or parcel of land in the said State and bound as follows ..... and shown on the plan drawn by ..... Licensed Surveyor, filed with this application and approved and lodged at the Surveys Department and bearing Registration Number .....
2. The said land is of the extent of ..... and with the appearances, is so far as the applicant can estimate, of the value of \$ .....
3. There are (no) claims affecting the land.
4. There are (no) other persons claiming to be owner of the land.
5. The applicant (or the applicant and his or her predecessor in title) has (have) been in exclusion and undisturbed possession of the land for twelve years, as appears by the

following facts: .....  
.....

- 6. The applicant claims to be owner of the said land in his or her own right.
- 7. Immediately before adverse possession began to run the applicant’s favour (or in favour of the applicant and his or her predecessors in title) the said land was registered in the name of .....
- 8. The applicant has not knowingly withheld any fact concerning the said land which has been disclosed in this application, and has truly and honestly, to the best of his or her knowledge and belief, represented the truth concerning the title of the land.

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

Dated ..... 20 .....

.....  
(Signature of applicant or his or her Legal Practitioner)

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

FORM 2

(Section 7)

IN THE SUPREME COURT OF GRENADA AND  
THE WEST INDIES ASSOCIATED STATES  
HIGH COURT OF JUSTICE

In the matter of an applicant for a  
declaration of possessory title of land

**APPLICATION FOR DECLARATION OF POSSESSORY TITLE  
NOTICE**

Whereas .....  
(name, address and occupation of applicant)

by his or her application filed in the High Court on ..... claims to  
(date)

have acquired title by twelve years adverse possession of the land described in the  
Schedule to this Notice and has applied to the Court for a declaration of possessory title.

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

\_\_\_\_\_

SCHEDULE

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

.....  
Registrar

FORM 3

(Section 9)

IN THE SUPREME COURT OF GRENADA  
AND THE WEST INDIES ASSOCIATED STATES  
HIGH COURT OF JUSTICE

In the matter of an application for a  
declaration of possessory title to land

APPLICATION FOR DECLARATION OF POSSESSORY TITLE  
ENTRY OF APPEARANCE

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

Dated this ..... day of ..... 20 .....

.....  
Registrar

FORM 4

(Section 24)

IN THE SUPREME COURT OF GRENADA  
AND THE WEST INDIES ASSOCIATED STATES  
HIGH COURT OF JUSTICE

CERTIFICATE OF DECLARATION OF POSSESSORY TITLE

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

Date .....

.....  
Registrar

**SCHEDULE II**

(Section 34)

**FEES**

Solicitor's fees for uncontested applications	[\$1, 000.00]
Certificate of declaration of possessory title	[\$ 10.00]

**SCHEDULE III**

(Section 27)

**STAMP DUTY**

Stamp duty of one per centum of the value of the real estate.

—————  
Passed by the House of Representatives this 11th day of May, 2016.

WILLAN A. THOMPSON  
*Clerk to the House of Representatives.*

—————  
Passed by the Senate this 3rd day of June, 2016.

WILLAN A. THOMPSON  
*Clerk to the Senate.*

GRENADA

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