

AFFIDAVITS OF PRESCRIPTION

Act 27 of 1958 – 22 December 1958
(As at 12 November 2011)

ARRANGEMENT OF SECTIONS

1	Short title	8	Prohibition of transcription of affidavit
2	Interpretation	9	Transcription of affidavit
3	Conditions for transcription of affidavit	10	Deeds to mention transcription of affidavit
4	Application	11	Service of notices
5	Register	12	Effect of transcription of affidavit
6	Objection		FIRST SCHEDULE
7	Disposal of objection		SECOND SCHEDULE

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.

“Register” means the Register of affidavits of prescription kept under section 5.

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;

(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 XXXXXXXXXXXXXXXX (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.

ACT 19/2011 – GN 100/2011

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

[Amended 46/84; 15/88; **20/2009**]

4 Application

(1) Every application for the transcription of an affidavit of prescription shall be in writing in the form specified in the First 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 by a surveyor setting out the situation, description and exact boundaries of the immovable property forming the subject matter of the affidavit.

(2) Notice of the application shall be published once in the *GAZETTE* and on 3 consecutive days in 2 daily newspapers in Mauritius, of which one at least shall be approved by the Conservator.

- (3) The notice shall be in the form specified in the Second Schedule.

[Amended 17/07]

5 Register

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

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) (a) 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.

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

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.

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 Digital Cadastral Database (DCDB) kept and maintained in electronic form by the Ministry responsible for the subject of land surveys.

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

ACT 19/2011 – GN 100/2011

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)]

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 for the transcription 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

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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

SECOND SCHEDULE

[section 4 (3)]

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 or 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