



MONTSERRAT

## CHAPTER 8.07

# LAND ADJUDICATION ACT and Subsidiary Legislation

### Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

### LAND ADJUDICATION ACT

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Act 5 of 1978 .. in force 1 September 1978 (S.R.O. 17/1978)

Amended by Acts: 10 of 1978 .. in force 29 September 1978

6 of 1979 .. in force 14 June 1979

4 of 1998 .. in force 1 February 1999 (S.R.O. 5/1998)

8 of 1999 .. in force 10 November 1999

9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

### DECLARATION – Section 3

S.R.O. 21/1978 .. in force 8 November 1978

(Footnote to section 3)





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## CHAPTER 8.07

### LAND ADJUDICATION ACT

*(Acts 5 of 1978, 10 of 1978, 6 of 1979, 4 of 1998, 8 of 1999 and 9 of 2011)*

AN ACT TO PROVIDE FOR THE ADJUDICATION OF RIGHTS AND INTERESTS IN LAND AND FOR PURPOSES CONNECTED THEREWITH AND INCIDENTAL THERETO.

#### Commencement

*[1 September 1978]*

#### PART 1

##### PRELIMINARY AND APPLICATION

#### Short title

1. This Act may be cited as the Land Adjudication Act.

#### Interpretation

2. In this Act, unless the context otherwise requires—

“**adjudication area**” means an area to which this Act has been applied under section 3;

“**Adjudication Officer**” means an Adjudication Officer appointed under section 4;

“**adjudication record**” means the Adjudication Record prepared in accordance with the provisions of section 18 in respect of an adjudication section;

“**adjudication section**” means an adjudication section declared under section 5;

“**Court**” means the Eastern Caribbean Supreme Court established by the Supreme Court Order 1967;

“**Court of Appeal**” means the Court of Appeal constituted under the Supreme Court Order 1967;

“**Demarcation Officer**” means a Demarcation Officer appointed under section 4;

“**demarcation map**” means a demarcation index map prepared under section 13 in respect of an adjudication section;

“**Governor**” means the Governor acting on the advice of Cabinet;

*(Amended by Act 9 of 2011)*

“**guardian**” means any person responsible for protecting the interests of any person who is under a disability, whether by reason of age, unsoundness of mind or any cause;

“**interest in land**” means any right or interest in or over land which is capable of being recorded under the provisions of this Act;

“**land**” includes land covered with water, all things growing on land, buildings and other things permanently affixed to land;

“**parcel**” means a piece of land separately shown on the demarcation map and given a number;

“**Recording Officer**” means a Recording Officer appointed under section 4;

“**Registrar**” means the Registrar of Lands appointed under the Registered Land Act;

“**Survey Officer**” means a Survey Officer appointed under section 4.

### **Application**

**3. (1)** The Governor may by order declare that it is intended to effect the adjudication and registration of rights and interests in land within such area as is defined in the order.\*

**(2)** The Governor may by order amend or revoke any order made under this section.

**(3)** Every order made under this section shall be published in the *Gazette*.

*(Amended by Act 9 of 2011)*

## **PART 2**

### **OFFICERS**

#### **Appointment and general powers of officers**

**4. (1)** On or after publication of an order made under section 3, the Governor shall appoint an Adjudication Officer for the adjudication area, and the Adjudication Officer may appoint such Demarcation Officers, Recording Officers and Survey Officers as may be necessary for performing the duties and exercising the powers imposed and conferred upon them by this Act.

**(2)** The Adjudication Officer shall be in charge of the adjudication and may issue such general or special directions as he thinks necessary to the officers appointed by him under subsection (1) and may himself

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\* By S.R.O. 21/1978 such a declaration was made with respect to the whole Island of Montserrat.



perform and exercise all or any of the duties and powers given under this Act to the officers appointed by him.

(3) The Adjudication Officer shall be competent to administer oaths and take affidavits in any enquiry made by him and to issue summonses, notices or orders requiring the attendance of such persons or production of such documents as he may consider necessary for carrying out the adjudication.

(4) A Demarcation Officer or Survey Officer may at any reasonable time enter upon any land within the adjudication area for the purpose of demarcating or surveying any parcel therein and may summon any person who can give information regarding the boundaries of any such parcel to point out the boundaries.

### PART 3

#### CLAIMS AND DEMARCATION

#### **Adjudication sections**

5. The Adjudication Officer shall divide the adjudication area into two or more adjudication sections or declare the whole area to be a single adjudication section, and shall give each adjudication section a distinctive name and/or number.

#### **Notice of Adjudication Officer**

6. (1) The Adjudication Officer shall prepare a separate notice in respect of each adjudication section, and in each such notice shall—

- (a) specify as nearly as possible the situation and limits of the adjudication section;
- (b) declare that all interests in land will be ascertained and recorded in accordance with the provisions of this Act;
- (c) declare that any interest in land within the adjudication section which is registered under the Title by Registration Act, will be carried forward to the new register established under the Registered Land Act;
- (d) require any person who claims any interest in land within the adjudication section to make a claim either in writing or in person or by his agent duly authorised according to law, within the period and at the place and in the manner specified in the notice:

Provided that, any person whose name appears in a schedule prepared in accordance with subsection (3) of this section need not make a claim in respect of the parcel of land shown against his name.

*(Amended by Act 10 of 1978)*

(2) Any person having a claim to ownership of land within the adjudication section shall, whether or not his name appears on a schedule prepared in accordance with subsection (3) of this section mark or indicate the boundaries of the land claimed in such manner and before such date as may be required by the Demarcation Officer. (*Amended by Act 10 of 1978*)

(3) The Adjudication Officer shall examine such registers kept under the Title by Registration Act, as he considers relevant to land in the adjudication section and may, if he considers it advisable to do so prepare for publication with the notice issued under subsection (1) of this section a schedule showing the name of any person having an interest in any parcel registered under the Title by Registration Act, the parcel of land concerned and the nature of the interest.

(4) The Adjudication Officer shall—

- (a) cause such notices and schedule, if any, to be published at the office of the Registrar and such other offices within Montserrat as he thinks fit; and
- (b) cause the substance of such notice and schedule, if any, to be made known throughout the adjudication area and elsewhere in such manner as he considers to be most effective for the purpose of bringing it to the attention of all persons affected thereby.

### Staying of land suits

7. (1) Except with the consent in writing of the Adjudication Officer, no action concerning land or rights to land in an adjudication section shall be begun in any civil court until proceedings under this Act have been completed.

(2) The hearing of any such action which was begun before the publication of the notice mentioned in section 6 shall, where practicable, be determined before the adjudication of the land affected by the action is commenced.

(3) Any such hearing which has not been completed before such adjudication is commenced shall, unless the Adjudication Officer otherwise directs be stayed.

### Claims and attendance

8. (1) Every person claiming any land or interest in land within an adjudication section shall make his claim in the manner and within the period fixed by the notice given under section 6.\*

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\* The Crown Title Act 2006 (Act 43 of 2006) provided, in section 4, that a claim to land must be made by 31<sup>st</sup> December 2020 or forfeit his claim.

(2) Every person whose presence is required by the Adjudication Officer, Demarcation Officer or Recording Officer, as the case may be, shall attend in person or by agent at the time and place specified.

(3) If any such person fails to attend in person or by agent, the demarcation, recording or other proceeding may continue in his absence.

### **Safeguarding of rights of absent persons and minors**

9. (1) If the Adjudication Officer, Demarcation Officer or Recording Officer is satisfied that any person who has not made a claim has a claim to any interest in land within the adjudication section the Adjudication Officer, Demarcation Officer or Recording Officer may proceed as if a claim had been made, and may call upon the Registrar of Deeds to supply him with a certified copy of any documents of title relevant thereto.

(2) If the Adjudication Officer, Demarcation Officer or Recording Officer is satisfied that a claim might be established by a minor and no person has been appointed to represent the minor, he shall appoint a person to represent the minor and shall proceed as if a claim had been made.

### **Notice of Demarcation and recording**

10. (1) Not less than seven clear days before the demarcation of land in an adjudication section is begun, the Demarcation Officer shall give notice of the intended demarcation in that section, and of the time and place at which it will begin, in such manner as the Adjudication Officer shall deem to be most likely to bring the matter to the knowledge of the persons to be effected by that demarcation.

(2) Such notice shall require every claimant to indicate the boundaries of the land affected by his claim in the manner specified in the notice.

### **Indication of land claimed**

11. Subject to any general or particular directions issued by the Adjudication Officer, the Demarcation Officer shall within each adjudication section—

- (a) see that the boundaries of each piece of land, which is the subject of a claim, are indicated or demarcated in accordance with the requirements of the notice given under section 10;
- (b) indicate or cause to be indicated the boundaries of—
  - (i) public roads, public rights of way and other Crown land, and
  - (ii) unclaimed land.

### **Special powers of Demarcation Officer**

12. (1) The Demarcation Officer may—

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- (a) divide the adjudication section into blocks which shall be given distinctive numbers or letters or combinations of numbers and letters;
- (b) with the consent of the owners concerned adjust the boundaries of any land in the adjudication section or real lot the same to ensure the more beneficial occupation thereof or to effect a more suitable subdivision thereof;
- (c) make any reservations he considers necessary for the purposes of defining existing roads and paths or for the better drainage of any land;
- (d) make a declaration of such existing rights of way over any land in the adjudication section and may direct the manner in which such rights of way are to be exercised and in such case he shall direct that such rights of way be recorded in the adjudication record in respect of the dominant land and the servient land;
- (e) award such compensation as may to him appear just to any person who has suffered loss of land as the result of any adjustment of boundaries or the partition or re-allotment of any land or the declaration of any rights of way and may make an order directing by whom such compensation shall be paid:  

Provided that, any award may be the subject of an objection under section 20;
- (f) determine the proportion in which the expenses of any partition shall be borne by the persons interested therein and make an order accordingly;
- (g) make an order as to costs not exceeding \$100.

(2) Any order for the payment of compensation, expenses or costs made against the owner of any land shall create a debt to be charged on such land which shall have priority over all other debts whatever except debts due to the Crown.

### Duties of Survey Officer

13. Subject to any general or particular directions issued by the Adjudication Officer, the duties of the Survey Officer shall be—

- (a) to carry out such survey work as may be required in the execution of the adjudication process;
- (b) to prepare or cause to be prepared a demarcation index map of the adjudication section which shall be compiled from survey data or aerial photographs on which shall be shown every separate parcel of land identified by a distinguishing

number, except that public roads shall not be required to be identified by a number.

### **Duties of Recording Officer**

**14.** The Recording Officer shall consider all claims to any interest in land and after such investigation as he considers necessary shall prepare in accordance with the provisions of section 18 a record in respect of every parcel of land shown on the demarcation map.

### **Disputes**

**15. (1)** If in any case—

- (a) there is a dispute as to any boundary whether indicated to the Demarcation Officer or demarcated or readjusted by him, which the Demarcation Officer is unable to resolve; or
- (b) there are two or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them,

the Demarcation Officer or the Recording Officer as the case may be shall refer the matter to the Adjudication Officer.

**(2)** The Adjudication Officer shall adjudicate upon and determine any dispute referred to him under subsection (1), having due regard to any law which may be applicable:

Provided that, nothing in this section shall empower the Adjudication Officer to vary any interest in land registered under the Title by Registration Act.

## **PART 4**

### **PRINCIPLES OF ADJUDICATION AND PREPARATION OF ADJUDICATION RECORD**

### **Principles of Adjudication**

**16. (1)** In preparing the adjudication record—

- (a) if the Recording Officer is satisfied that a person—
  - (i) is in open and peaceable possession of a parcel, and has been in such possession by himself or his predecessors in title for the same period as that which under the Limitation Act would be required to bar an action for recovery of the same parcel in the same circumstances between the same parties; or
  - (ii) has a good documentary title to the parcel and that no other person has acquired or is in the course of acquiring

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a title thereto under any law relating to prescription or limitation, and that he would succeed in maintaining and defending such possessions or title against any other person claiming land or any part thereof;

the Recording Officer shall record that person as the owner of the parcel and declare his title to be absolute:

Provided that, nothing in subparagraph (i) of this paragraph shall apply to any interest in land registered under the Title by Registration Act at the time when the person claiming by virtue of sub-paragraph (i) of this paragraph makes his claim in respect of the parcel concerned under section 8(1) in the manner and within the period fixed by the notice given under section 6(1)(d);

*(Inserted by Act 6 of 1979)*

- (b) if the Recording Officer is satisfied that any land is entirely free from private rights, or that the rights existing in or over it do not amount to full ownership and are not such as to enable him to proceed under paragraph (d) of this subsection, he shall record the land as Crown land;
- (c) if the Recording Officer is satisfied that any land is subject to any right which is registrable as a lease, charge, easement, profit or restrictive agreement under the Registered Land Act, he shall record such particulars as shall enable the right and the name of the person entitled to the benefit thereof to be registered, and if such right is registered under the Title by Registration Act, he shall record such particulars as appear in that register;
- (d) if the Recording Officer is satisfied that a person is in possession of or has a right to a parcel but is not satisfied that such person is entitled to be recorded under paragraph (a) of this subsection as the owner of the parcel with absolute title, the Recording Officer may nevertheless record that person as the owner of the parcel and declare his title to be provisional and shall record—
  - (i) the date on which the possession of that person shall be considered to have begun;
  - (ii) particulars of any deed, instrument or other document by virtue of which some estate, right or interest adverse to or in derogation of the title of that person might exist; or
  - (iii) any other qualification which affects the title.

*(Amended by Act 6 of 1979)*

(2) For the purpose of this section—

- (a) a person is deemed to be in possession of land if he does not acknowledge the title of any other person to that land and by

himself, his agent, tenant or servant has the use of the land to the exclusion of the public;

(b) “**good documentary title**” means a title registered under the Title by Registration Act or a title evidenced by documents which established that a person is entitled to land in fee simple and commencing with a grant, conveyance, assignment or mortgage which is more than twelve years old.

(3) The Recording Officer shall follow the rules laid down in section 17.

### **Rules to be followed in Adjudication**

17. (1) All unclaimed land shall be deemed to be Crown land until the contrary is proved.\*

(2) The exercise by any person of any rights in or over one or more pieces of land shall not be taken as a presumption in his favour of any rights in or over any greater extent of land than that in or over which such rights are exercised.

(3) Possession or receipt of rents and profits by any person through whom a claimant derives his title shall be deemed to have been the possession or receipt of rents and profits of the claimant.

(4) Where from the relationship of the parties or from other special causes it appears that the person in possession of land is or was in possession on behalf of another, his possession shall be deemed to be or to have been the possession of that other.

(5) Where two or more persons have rights which will entitle them to be registered as joint proprietors or proprietors in common under the Registered Land Act, the Recording Officer shall record such persons as joint owners or owners in common, as the case may be, and if owners in common the share of each such owner.

(6) A receipt shall be given by the Recording Officer for all documents produced by a claimant and retained.

### **Adjudication Record**

18. (1) The adjudication record shall consist of a form in respect of each parcel of land, which form shall show—

(a) the number and approximate area of the parcel as shown in the demarcation map;

(b) either the name and description of the person entitled to be registered as the owner of the parcel with particulars of the manner in which that person acquired that parcel and of any

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\* The Crown Title Act (Act 3 of 2006) provided that land which remained unclaimed on 31st December 2020 would vest absolutely in the Crown.

restriction on his power of dealing with it, or the fact that the parcel is Crown Land;

- (c) such particulars of any right registrable under the Registered Land Act as shall enable it to be registered as a lease, mortgage, charge, easement, profit or restrictive agreement as the case may be, affecting the parcel together with the name and description of the person entitled to the benefit thereof and particulars of any restriction on his power dealing with it;
- (d) if any person shown in the adjudication record is under disability, whether by reason of age, unsoundness of mind or otherwise, the name of his guardian;
- (e) a list of the documents, if any, produced, to the Recording Officer and retained by him for the purpose of adjudication;
- (f) the date on which the form is completed.

(2) When completed the form shall be signed by the Recording Officer and, in the case of privately owned land, shall where possible, include an acknowledgement signed by the owner of the parcel and by any person recorded under the provisions of subsection (1)(c) as having an interest in such parcel that such owner and every such person accepts the record.

### **Notice of completion of Adjudication Record**

19. When the adjudication record in respect of any adjudication section has been completed, the Adjudication Officer shall sign and date a certificate to that effect and shall forthwith give notice of the completion thereof and of the place or places at which the same can be inspected together with the demarcation map.

## **PART 5**

### **OBJECTIONS AND FINALITY**

#### **Petitions against the Adjudication Record**

20. The Crown or any person named in or affected by the adjudication record or demarcation map who considers such record or map to be inaccurate or incomplete in any respect or who is aggrieved by any act or decision of the Demarcation Officer or Survey Officer or by any entry in or omission from the adjudication record by the Recording Officer may, within ninety days of the date upon which notice of completion of the adjudication record is published petition the Adjudication Officer in respect of the act, decision, entry or omission concerned, and the petition shall be heard and determined by the Adjudication Officer. For avoidance of doubt the Adjudication Officer shall not be prevented from hearing and determining a petition under this section by virtue only of the fact that the



petition relates to land or interests in land which were the subject of a dispute referred to and determined by him under section 15:

Provided that, nothing in this section shall empower the Adjudication Officer to vary any interest in land registered under the Title by Registration Act.

### **Procedure in hearing disputes and petitions**

**21. (1)** In hearing a dispute under section 15 or a petition under section 20 the Adjudication Officer shall so far as is practicable, follow the procedure directed to be observed in the hearing of civil suits save that in his absolute discretion he may admit evidence which would not be admissible in a court of law and may use evidence adduced in any other claim or contained in any official record and may call evidence of his own motion.

**(2)** A record of all proceedings on a dispute or a petition shall be made or caused to be made by the Adjudication Officer and shall be available on appeal.

### **Correction of Adjudication Record**

**22.** At any time before the adjudication record becomes final the Adjudication Officer—

- (a)* may correct in the record any error or omission not materially affecting the interests of any person; and
- (b)* after taking such steps as he thinks fit, to bring to the notice of every person whose interest is affected, his intention to make any material alteration in the record which he considers necessary, and after giving such person an opportunity to be heard, may make such alteration:

Provided that, nothing in this section shall empower the Adjudication Officer to make an alteration which has the effect of varying any interest in land registered under the Title by Registration Act.

### **Finality of the Adjudication Record**

**23.** After the expiry of ninety days from the date of publication of the notice of completion of the adjudication record or on determination of all petitions presented in accordance with section 20, whichever shall be the later, the adjudication record shall become final and the Adjudication Officer shall sign a certificate to that effect and shall deliver the adjudication record and the demarcation map to the Registrar for compilation of the register in accordance with the provisions of the Registered Land Act together with all documents received by him in the process of adjudication.

## Appeal to the Court and to the Court of Appeal

**24. (1)** Any person, including the Crown, who is aggrieved by any act or decision of the Adjudication Officer and desires to question it or any part of it may within ninety days from the date of the certificate of the Adjudication Officer under section 23 or within such extended time as the High Court in the interest of justice may allow, appeal to the High Court in the prescribed form.

**(2)** On any such appeal the Court may, if satisfied that the decision is erroneous in point of law or that the interests of the appellant have been substantially prejudiced by failure to comply with the procedural requirements of the Act, make such order or substitute for the decision of the Adjudication Officer such decision as it may consider just and may under section 140 of the Registered Land Act order rectification of the register.

**(3)** Any person, including the Crown, who is aggrieved by any order or decision of the Court and desires to question it or any part of it may appeal to the Court of Appeal in accordance with the provisions of the Rules of the Supreme Court governing appeals in civil proceedings, and the Court of Appeal may upon such appeal either affirm, reverse or amend the order or decision of the Court or any part of it and may order in such manner as the Court of Appeal may think fit rectification of the register kept under the Registered Land Act, and may also make such order as to costs in the Court, and as to costs in the Court of Appeal as the Court of Appeal thinks proper, and the order or decision of the Court of Appeal shall be final and conclusive and shall not be questioned in any proceedings whatsoever. (*Amended by Act 10 of 1978*)

**(4)** A decision of the High Court on Appeal under subsection (1) and a decision of the Court of Appeal on appeal under subsection (3) shall be in writing and copies of them shall be furnished by the High Court and by the Court of Appeal to the Registrar, to the appellant and to all other parties to the appeals and, by the Registrar, to all other parties who, in his opinion, may be affected by the appeals.

**(5)** Any person, including the Crown, appealing under subsection (1) or subsection (3) shall give notice to the Registrar of his intention to appeal and the Registrar shall enter a restriction under section 132 of the Registered Land Act in every register affected by the appeals.

## PART 6

### MISCELLANEOUS

#### Fees

**25.** Every person who is a party to any proceedings before the High Court or the Court of Appeal shall be required to pay such fees in respect of the proceedings as may be prescribed.

## Offences

26. Any person who—

- (a) after the delivery of a summons issued under the provisions of this Act, wilfully neglects or refuses to attend in pursuance of such summons, or to produce any document which he is required to produce; or
- (b) wilfully neglects or refuses to answer upon oath or otherwise any question which may lawfully be put to him by any officer; or
- (c) without reasonable cause wilfully neglects or refuses to indicate his land or to assist in the demarcation of his land when required to do so by a Demarcation Officer, shall be guilty of an offence and shall on summary conviction be liable to a fine of \$1,500 or to imprisonment for a term of six months, or to both such fine and such imprisonment.

*(Amended by Act 8 of 1999)*

## Indemnity of Officers

27. No officer shall be liable to any action or proceedings for or in respect of any act or matter in good faith done or omitted to be done in exercise or supposed exercise of the powers conferred by this Act or any regulations made thereunder.

## Regulations

28. The Governor may make regulations for the purpose of carrying into effect the provisions and purposes of this Act.

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