



MONTSERRAT

## CHAPTER 8.18

# SPANISH POINT SUBDIVISION (DEVELOPMENT) ACT

### 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—

### SPANISH POINT SUBDIVISION (DEVELOPMENT) ACT

Act 7 of 1983 .. in force 1 November 1983

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

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## **CHAPTER 8.18**

### **SPANISH POINT SUBDIVISION (DEVELOPMENT) ACT**

#### **ARRANGEMENT OF SECTIONS**

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## CHAPTER 8.18

### SPANISH POINT SUBDIVISION (DEVELOPMENT) ACT

*(Acts 7 of 1983 and 9 of 2011)*

AN ACT FOR THE REMOVAL OF CERTAIN DIFFICULTIES WHICH HAVE ARISEN IN RESPECT OF THE DEVELOPMENT AND SALE OF LAND IN THE SPANISH POINT AREA AND FOR PURPOSES CONNECTED THEREWITH.

#### Commencement

*[1 November 1983]*

#### Short title

1. This Act may be cited as the Spanish Point Subdivision (Development) Act.

#### Interpretation

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

“**claimant**” means a person who claims that he is a party to an agreement with Leeward Islands Development Limited under which he is entitled to be registered as the proprietor with absolute title in respect of any part of the land in the Development Area, which agreement has not yet been performed;

“**Development Area**” means the land registered with absolute title in the name of Leeward Islands Development Limited and more particularly described in section 14;

“**Judge**” means a Judge of the High Court;

“**Leeward Islands Development Limited**” means the company of that name incorporated under the laws of Ontario, Canada, and has carried on business as Caribbean Development Company;

“**Public Trustee**” means the person appointed as such under section 3;

“**Register**”, “**registered**” and “**Registrar**” have the meanings given to those expressions in the Registered Land Act.

#### Appointment of Public Trustee

3. (1) The Governor acting on the advice of Cabinet may appoint a fit person to be the Public Trustee for the purposes of this Act, and may also from time to time appoint a person to act as Public Trustee during the absence, illness or incapacity of the substantive holder of that office.

(2) If the person appointed as Public Trustee under subsection (1) is not a public officer, the Governor acting on the advice of Cabinet may determine the terms or his remuneration.

*(Amended by Act 9 of 2011)*

### **Land to vest in Public Trustee**

4. (1) It is hereby declared that any land in the Development Area which, immediately before the date of commencement of this Act, was registered as being held with absolute title by Leeward Islands Developments Limited shall, with effect from that date, vest in the Public Trustee with absolute title free from all encumbrances, and the Registrar shall amend the Register accordingly.

(2) Any land which vests in the Public Trustee under subsection (1) shall be held by him on trust to be disposed of in accordance with the provisions of this Act.

(3) Any person who, immediately before the date of commencement of this Act, held any interest, whether legal or equitable, under any mortgage or other charge created by Leeward Islands Development Limited over any of the land to which this section applies shall be deemed, at the date when such mortgage or charge was created to have had actual or construed prior notice of the rights and interest in such land of all persons who establish their rights as claimants, as hereafter in this Act, provided, and the rights or such claimants shall be deemed to have priority over the rights of any such mortgagee or chargee notwithstanding that the interests of such claimants were not registered, and no action by any such mortgagee or chargee shall lie in any court against the Public Trustee or against any such claimant in respect of any claim founded upon any such mortgagee or chargee:

Provided that, nothing in this section shall be construed as affecting or derogating from any other right or legal remedy, not involving title to, rights over or possession of any land to which this section applies, which any person entitled as such mortgagee or chargee may have against Leeward Islands Development Limited or any other person for the recovery of any sums advanced on the security of any part of the land in the Development Area.

### **Prospective purchases of plots – claims to Public Trustee**

5. Any person who claims that, immediately before the date of commencement of this Act, he was a party to an agreement with Leeward Islands Development Limited, under which agreement—

- (a) he was or has become entitled to be registered as the proprietor with an absolute title in respect of any part of land in the Development Area registered in the name of Leeward Islands Development Limited; or



- (b) he would be entitled to be so registered in respect of any part of such land upon the fulfilment of any condition of such agreement or the payment by him to Leeward Islands Development Limited of one or more instalments of the purchase price or of any other sum due under such agreement, and that he is able and willing to comply with such condition or to pay such instalment or other sum (as the case may be);

may apply in writing to the Public Trustee, in such form (if any) as may be prescribed by the Public Trustee, for the conveyance to himself of the absolute title to such part of such land.

### **Claim to be invited by advertisement**

6. The Public Trustee shall invite interested parties to submit claims under section 5, and for the purpose of ensuring wide publicity for the provisions of this Act shall publish notices, inviting claims in the *Gazette* and in such newspapers or other publications, whether circulating within or without Montserrat, as he considers desirable.

### **Investigation of claims**

7. The Public Trustee shall enquire into any claim submitted to him under the provisions of section 5, and, for the purpose of such enquiry, shall have the powers of the Magistrate's Court to call witnesses, and he may take evidence on oath either orally or by way of affidavit, but shall not be required to conduct his enquiry in public.

### **Notification of claims to interested parties**

8. (1) Upon being satisfied that a claimant has established a *prima facie* case for the conveyance to him of the absolute title to any land in the Development Area, the Public Trustee shall serve notice of such claim upon Leeward Islands Development Limited and upon any other person who appears, in the circumstances of any particular case, to be likely to be an interested party, and shall specify in such notice a date, not being earlier than one month from the date of the notice, by which notice in writing of any objection to the claim is required to be given to the Public Trustee.

(2) In any case in which no notice of objection to a claim is received by the Public Trustee within the time specified, or any extension of time authorised by the Public Trustee, the claim shall be deemed not to be contested and the Public Trustee shall proceed accordingly.

(3) If any difficulty should arise in effecting service on any person of any notice required to be given under this section, a Judge in Chambers, on the application of the Public Trustee, may give directions as to the mode of service to be adopted either within or without Montserrat.

(4) In any case in which the Public Trustee holds that the claimant has failed to establish a *prima facie* case, as mentioned in subsection (1), he

shall so inform the claimant who may require the Public Trustee to refer the matter to the Magistrate's Court for a decision, and in such event the provisions of section 9 shall apply as if the issue was a contested claim.

### **Procedure where claim is contested**

**9. (1)** Where notice of objection to a claim is given under the provisions of section 8, the Public Trustee shall refer the issue to the Magistrate's Court for determination, and the Magistrate's Court shall have jurisdiction in the matter notwithstanding that the value of the land involved or the amount at issue exceeds any limitation of jurisdiction imposed by the Magistrate's Court Act or any enactment repealing or replacing that Act.

**(2)** For the purpose of the trial of any issue referred to the Magistrate's Court under subsection (1), the Magistrate may give directions as to the procedure to be followed either generally or in any particular case.

**(3)** An appeal shall lie to the Court of Appeal from any decision of the Magistrate's Court given in the exercise of the jurisdiction conferred by this section.

**(4)** Upon the determination of any issue referred to the Magistrate's Court under subsection (1), and after the determination of any appeal or, where no notice of appeal is given, the expiration of the time for the giving of notice of appeal, the Public Trustee shall give effect to the decision of the Magistrate's Court or the Court of Appeal, as the case may be, and shall admit or reject the claim accordingly.

### **Public Trustee to convey land to persons who establish claims thereto**

**10. (1)** Subject to subsection (2), where a claim has been established to the satisfaction of the Public Trustee, and after payment by the claimant of any tax or other imposition due to the Government in respect of the land concerned the Public Trustee shall execute a conveyance of absolute title to the land to the claimant.

**(2)** Where a claim has been established to the satisfaction of the Public Trustee but subject to the payment of any sum due in respect of the land concerned by the claimant to Leeward Island Development Limited or to any person claiming through Leeward Island Development, or to any other person who has established a right to such payment, the claimant shall pay such sum to the Public Trustee to hold on behalf of the person entitled thereto, and the Public Trustee shall not convey the title to the land concerned to the claimant until any such outstanding payment has been made of any tax or other imposition due to the Government in respect of the land concerned, as mentioned in subsection (1).

### **Disposal of unclaimed land**

**11.** Any area of the land which vests in the Public Trustee under the provisions of this Act in respect of which no claim is received by the Public

Trustee, or no claim is upheld, within one year of the date of the commencement of this Act, may be sold by the Public Trustee by tender or public auction or in such other manner as the Governor acting on the advice of Cabinet may direct. (*Amended by Act 9 of 2011*)

### **Disposal of balance of money in the hands of the Public Trustee**

**12. (1)** After payment to the Government of any sums due on account of any tax or other imposition in respect of any land sold under section 11, and of the expenses of the administration of this Act, and after payment to the person entitled thereto of any sum received by the Public Trustee, under section 10(2) for payment to a third party who has established his entitlement thereto, the Public Trustee shall hold the balance on trust to discharge any other liabilities payable by Leeward Islands Development Limited in respect of the installation of services in the Development Area, and thereafter to pay any sum remaining to Leeward Islands Development Limited.

**(2)** For the purpose of this section the cost of the provision in, or for the benefit of, the Development Area of any of the services and facilities, which have not been provided or only partially provided by Leeward Islands Development Limited, which that company was required to provide by the terms of the licence granted in 1960, under which the development was authorised, shall be deemed to be a liability payable by Leeward Islands Development Limited.

### **Forms**

**13.** The Public Trustee may prescribe forms for use by persons submitting claims under section 5, and for any other purpose required for the more convenient administration of this Act.

### **Application of the Act**

**14.** This Act shall apply to all that area of land formerly part of the estate called Tuitts, including lands known as Bethels and Luthers, in the Island of Montserrat and immediately before the date of commencement of this Act registered with absolute title in the name of Leeward Islands Development.



