



MONTSERRAT

## CHAPTER 6.12

# REGISTRATION AND RECORDS ACT

### Revised Edition

showing the law as at 1 January 2019

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—

### REGISTRATION AND RECORDS ACT

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Act 5 of 1881 .. in force 23 November 1881

Amended by Acts: 9 of 1922

9 of 1932

9 of 1933

13 of 1941

2 of 1943

Amended by S.R.O.: 15/1956

Amended by Acts: 23 of 1961

8 of 1966

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4 of 1978

Amended by Montserrat Stat. Instrument 2/1991

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

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**CHAPTER 6.12**

**REGISTRATION AND RECORDS ACT**

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## CHAPTER 6.12

### REGISTRATION AND RECORDS ACT

*(Acts 5 of 1881, 9 of 1922, 9 of 1932, 9 of 1933, 13 of 1941, 2 of 1943, S.R.O. 15/1956, Acts 23 of 1961, 8 of 1966, 6 of 1969, 7 of 1971, 10 of 1975, 4 of 1978, 8 of 1991, Montserrat S.I. 2/1991, Acts 5 of 1992, 9 of 2011 and 14 of 2013)*

#### Commencement

*[23 November 1881]*

#### Short title

1. This Act may be cited as the Registration and Records Act.

#### Interpretation

2. In this Act—

“**deed**” includes every document in writing affecting or relating to lands, tenements, or hereditaments in Montserrat, but does not include—

- (i) any document evidencing a transaction registerable under the Registered Land Act;
- (ii) any document registerable under the Registration of Records (Special Provisions) Act<sup>1</sup>;

“**indices**” includes all indices, abstract books, and catalogues in the Record Office in Montserrat relating to public records, registered deeds and writings, or registers;

“**public records**” includes all documents of any kind of a public nature deposited in the Record Office in Montserrat;

“**registered deeds and writings**” includes all instruments and writings whatever recorded in the Record Office in Montserrat before and after the commencement of this Act;

“**registers**” includes all records and enrolments of registered deeds and writings in the Record Office in Montserrat;

“**Registrar**” means the Registrar of Deeds;

“**will**” includes every last will and testament, codicil, or exemplification thereof, and the proof or probate of the same required to be recorded.

*(Amended by Acts 4 of 1978 and 4 of 1992)*

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<sup>1</sup> relates to Offshore Companies

## PART 1

## RECORDING OF DEEDS

**Unregistered deeds void as against subsequent purchasers**

3. Every deed shall be absolutely void as against any subsequent purchaser for valuable consideration, or mortgagee, unless such deed shall have been duly registered before the registration of the deed under which the subsequent purchaser, or mortgagee, shall claim, and within the time limited for the registration of deeds after their execution.

**Unregistered deeds not to be received in evidence**

4. No deed shall be received in evidence in any proceeding whatever, whether at law or equity, in Montserrat, unless such deed shall have been duly registered.

**Wills of realty to be proved and registered**

5. No will, whereby any estate or interest in realty within Montserrat is devised, shall be admitted in evidence in any proceeding whatever, either at law or at equity, within Montserrat, until such will shall have been duly proved and registered.

**Time after execution within which deeds are to be registered**

6. Every deed shall be lodged in the Record Office of Montserrat, for registration, within the time hereinafter limited, that is to say—

- (a) if executed within Montserrat within three months after execution;
- (b) if executed anywhere out of Montserrat, within twelve months after execution:

Provided that, any Judge may, on cause shown, order any deed to be registered notwithstanding its not having been presented for registration within the time hereinbefore limited; and, in such case, a copy of the order of the Court shall be attached to the deed and registered therewith. In the case of deeds executed before the coming into operation of this Act, the same shall be received for registration without the Judge's order required by this section.

**Every deed to be attested by a witness**

7. Every deed shall be executed in the presence of at least one witness, who shall attest the same with his or her signature. Where the sole attesting witness to the execution of a deed is a person, before whom, but for this section, the deed might be acknowledged as hereinafter provided, such person shall be disqualified from taking the acknowledgment.

### **Proof of deeds executed in Montserrat and registrable therein**

8. All deeds executed in Montserrat and intended for registration therein shall be proved by the oath or affirmation of one of the witnesses, or acknowledged by the grantor, before the Registrar, and such proof or acknowledgment shall be indorsed on the deed, and attested by the Registrar.

### **Proof of deeds may be affixed instead of indorsed**

9. When under this Act any deed is proved by the oath or affirmation of one of the witnesses, such proof may be by affidavit or declaration affixed to the said deed and attested by the Registrar.

### **Proof of deeds executed in Great Britain or Northern Ireland**

10. All deeds intended for registration in Montserrat which shall be executed in Great Britain or Northern Ireland, shall be proved by the oath or affirmation of one of the witnesses, or shall be acknowledged by the grantor, before the Mayor, Deputy Mayor, or other Chief Magistrate of any city, borough, or town corporate in Great Britain or Northern Ireland, and certified under the common seal of such city, borough, or town corporate.

### **Proof of deeds executed in any other Overseas Territory**

11. All deeds intended for registration in Montserrat, which shall be executed in any of the dominions, territories, colonies, dependencies, or possessions of the Crown of Great Britain, Northern Ireland and of the British Dominions beyond the seas, except Montserrat, shall be proved by the oath or affirmation of one of the witnesses, or shall be acknowledged by the grantor, before the Governor, or person exercising the functions of Governor, or before the Commander in Chief, of any of the said dominions, territories, colonies, dependencies, or possessions, or before a Judge of any Court, or before the Mayor or Chief Magistrate of any city or town, or before any Notary Public, or any officer, civil or military, holding a commission under the Crown, either under the Imperial or Colonial Government, and certified under the hand and public or official seal of such Governor or person exercising the functions of Governor, Commander-in-Chief, Judge, Mayor, Notary Public, or officer, and, where a seal is not appropriated to his office, under the private seal of such functionary, the certificate, in such case, stating that no official seal exists.

### **Proof of deeds executed in any Foreign State**

12. All deeds intended for registration in Montserrat, which shall be executed in any Foreign State whatsoever, shall be proved by the oath or affirmation of one of the witnesses, or shall be acknowledged by the grantor, before a British Consul, Vice Consul, Acting Consul or Consular Agent of Her Majesty, exercising his functions in such Foreign State, and certified under the hand seal of such officer used in his public capacity; or if the witness or the grantor aforesaid resides in a place where there may be

no such official as above indicated within a radius of twenty miles of such place of residence, then the affidavit or acknowledgement may be sworn or made before a Notary Public or a Judge or Magistrate or other person who, by the law of such place, is authorised to administer oaths, and the affidavit or acknowledgement aforesaid shall be signed by and sealed with the official seal of such Notary Public, Judge, Magistrate or other person aforesaid.

*(Inserted by Act 7 of 1971)*

### **Persons authorised to take acknowledgments of deeds, etc., executed out of Montserrat**

**13. (1)** All acknowledgments of deeds, affidavits, declarations and affirmations to be used, under the authority of any law in force in Montserrat, before any Registrar of Deeds, for any purpose connected with the registration of deeds or wills or other documents or things executed out of Montserrat, may be sworn and taken in England, Scotland, or Northern Ireland, the Isle of Man, or the Channel Islands, or in any British Overseas Territory, island, plantation, or place under the dominion of Her Majesty in foreign parts, other than Montserrat, before any Court, Judge, Notary Public, or other person lawfully authorised to administer oaths in such country, British Overseas Territory, island, plantation or place, respectively, or before any of Her Majesty's Consuls or Vice Consuls in any place out of Her Majesty's dominions; and every Registrar of Deeds shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, Notary Public, person, Consul, or Vice Consul, which shall be attached, appended, or subscribed to any such affidavit, declaration, or affirmation, or any other document. *(Amended by Act 9 of 2011)*

**(2)** If any person shall forge the signature, or the official seal, of any such Court, Judge, Notary Public, person, Consul, or Vice Consul lawfully authorised to administer oaths under this Act as aforesaid; or shall tender in the Record Office of Montserrat, for the purpose of the registration of any deed, or will, or other document or thing, any affidavit, declaration, or affirmation, or other judicial or official document, with a false or counterfeit signature or seal of any such Court, Judge, Notary Public, person, Consul or Vice Consul, authorised as aforesaid, attached or appended thereto, knowing the same signature or seal to be false or counterfeit; every such person shall be guilty of felony, and shall be liable to be imprisoned for any term of two years.

*(Amended by Act 8 of 1966)*

**(3)** Any deed which shall be executed out of Montserrat, and shall be intended for registration in Montserrat, may be proved by the oath, declaration, or affirmation of a witness to the execution thereof, or may be acknowledged by the grantor, in the country or place wherein the same shall be executed, before any Court or person authorised by this Act to swear and take acknowledgments, affidavits, declarations and affirmations in such country or place, to be used for any purpose connected with the registration of deeds, wills, documents, or other things executed out of

Montserrat; and such proof or acknowledgment as aforesaid shall be as good and effectual for all purposes of registration as if the said deed had been proved or acknowledged in accordance with sections 10, 11 and 12.

### **Deeds to be fully stamped and indorsed with name of draftsman**

**14. (1)** No deed shall be admitted to registration, unless duly stamped with the amount required by any law in that behalf for the time being in force in Montserrat.

**(2)** Whenever any deed offered for registration purports to have been prepared by any person, other than a barrister, solicitor or other person authorised to prepare legal documents, the Registrar before admitting such deed to registration, shall require an affidavit from that person proving that he did not draw or prepare the said deed either directly, or indirectly, for or in expectation of any fee, gain or reward, and a further affidavit from the party bearing the cost of the preparation or registration of the said deed, that no such fee, gain or reward was offered, paid, or was to be paid by him to the person for drawing or preparing the said deed.

Further, the Registrar, in his discretion, is hereby authorised to retain custody of such deed so offered for the purpose of being registered pending the production of the aforesaid affidavit.

### **Declaration *in lieu* of oath**

**15.** Where, by any law in force in any part of the United Kingdom of Great Britain and Northern Ireland, or its dependencies, a declaration is, or shall be, substituted for an oath or affirmation, it shall be sufficient for the subscribing witness to any such deed to prove the execution thereof by such declaration, in lieu of his oath or affirmation.

### **Acknowledgment of deeds by Registrar**

**16.** Whenever it shall be necessary, under the provision of any Act for the Registrar as Provost-Marshal or in any other capacity, to acknowledge any deed, he may acknowledge such deed before a Judge, or before the First Clerk for the time being in the Registrar's office, or in the absence or incapacity of the First Clerk, such acknowledgment may be made before the Second Clerk.

### **Time of receipt to be deemed time of registration**

**17.** The time at which a deed or will is received in the Registrar's office for registration is deemed to be the time of registration of such deed.

## PART 2

## MODE OF REGISTERING DEEDS

**Copies of deeds for registration to be supplied**

**18. (1)** Every person presenting any deed or writing of whatever kind (wills excepted) for registration, which may be legally registered, shall, at the time of presentation, supply the Registrar with a true and exact copy thereof, and the Registrar shall, instead of copying such deed or writing into a book as heretofore, after having examined the same and after having satisfied himself as to its correctness, deposit such copy in its proper order in a safe place to be kept for that purpose, and such copy is thereupon deemed to be the proper record of such deed or other writing.

**(2)** Every such copy shall be written on paper of a size, quality and kind to be from time to time prescribed by the Chief Justice, and shall be duly bound in book-form in such manner, and at such times, as the said Chief Justice shall direct; and the Registrar shall not accept any copy which is not written on the prescribed paper, or which is, in his opinion, improperly or illegibly written, or which is written in any way which would be likely to impair its usefulness as a record.

## PART 3

## RECORD OFFICERS

**Chief Justice to be Keeper of the records**

**19.** The Chief Justice for the time being shall be *ex officio* Keeper of public records, and of registered deeds and writings in Montserrat.

**Registrar of Deeds**

**20.** The Registrar of the High Court shall be the Registrar, and shall under the direction of the Chief Justice, act as Record Keeper.

## PART 4

## DUTIES OF RECORD OFFICERS

**Registrar to give certificate of receipt of deed**

**21.** On receiving any deed for registration, the Registrar shall give to the party depositing the same a certificate acknowledging the receipt thereof; and such certificate shall be received as evidence of the registration of the deed described therein.

### **Indorsement of time Registrar not to part with deed until recorded**

22. At the time of the presentation of any deed for registration, the Registrar shall indorse thereupon a memorandum of the hour, day, month, and year when such deed was presented for registration, and shall sign the same; and, after such indorsement, the Registrar shall not part with such deed until it shall have been duly recorded.

### **Entry in register books of time of registration**

23. The Registrar shall enter in the register books the hour, day, month, and year when each deed shall have been presented for registration, corresponding to that prescribed to be indorsed on the deed.

### **Chief Clerk to act in absence of Registrar**

24. In the absence from the office of the Registrar, the Chief Clerk in the Record Office shall execute all the duties pertaining to the office of Registrar.

### **Reports**

25. (1) The Registrar shall, whenever called upon to do so, furnish a report to the Chief Justice as to all proceedings under this Act, and such report shall be in such form, and contain such particulars, as shall be prescribed by rules.

(2) The Registrar shall, once in every year, report to the Governor acting on the advice of Cabinet upon all proceedings under this Act, and such report shall be published in the *Gazette* and laid before the Legislative Assembly. (*Amended by Act 9 of 2011*)

## **PART 5**

### **RECORD OFFICES**

#### **Record office**

26. The Registrar's Office shall be the Record Office; and the Governor acting on the advice of Cabinet may, from time to time, cause suitable provision to be made for the safe keeping of all the records, which, under this Act, shall be in the legal custody of the Chief Justice, and for the convenient transaction of the business of the record office.

(*Amended by Act 8 of 1966*)

#### **Branch offices**

27. Every office and place in which public records, which, by authority of law, are placed under the charge of the Chief Justice, are deposited, is deemed, so long as such records remain therein, to be a part of the Record Office.

### **Public records, records of Superior Courts, etc., to be under charge of Chief Justice**

28. The public records, the records of the High Court, Magistrate's Court and Patent Office, all registered deeds and writings, and all registers which now are, or ought to be, deposited in the Record Office or which now are, or ought to be in the custody of the Officers of the Courts to which they belong, in whatsoever office or place they may be deposited, shall be under the charge and superintendence of the Chief Justice in the name and on the behalf of Her Majesty. The persons now having the care of any such record shall continue to have the charge of them, subject to such orders as the Chief Justice is herein empowered to give concerning the same.

### **Other records may be placed under charge of Chief Justice**

29. The Governor acting on the advice of Cabinet may, from time to time, order that public records deposited in any particular place or custody, other than hereinbefore mentioned, shall be thenceforth under the charge and superintendence of the Chief Justice, and, thereupon, this Act shall apply in relation to such records, and their custody, in the same way as if they had been placed under the charge and superintendence of the Chief Justice by this Act. *(Amended by Act 9 of 2011)*

### **Removal of records**

30. The Chief Justice, with the approval of the Governor acting on the advice of Cabinet, shall have full power to make such orders as he may think fit for cleaning, repairing, preserving and arranging all the public records under his charge and superintendence, and for making calendars, catalogues, and indices to the same, and, for such purposes, to cause any of the said records to be, from time to time, removed from their present place of custody and deposited in such safe place or places as he may order by warrant under his hand, directed to the person then having the same under his care; and every such warrant shall be kept among the public records in the custody of the Chief Justice, and shall be a sufficient warrant for the removal of such records as shall be specified therein, to the place named in the warrant, and such removal of any record by authority of the Chief Justice shall not in any manner affect the legal authority of such record, but the place where any such record shall be deposited and kept, from time to time, under the authority of the Chief Justice shall be taken to be, for the time, its legal place of deposit; and every such record shall, after removal under this Act, and in its new place of deposit, be of the same legal validity, and be received or rejected in evidence in all Courts and proceedings in the same manner as if such record had remained in the custody in which it is at the time of the passing of this Act. *(Amended by Act 9 of 2011)*

### **Power to make rules as to disposal of valueless documents**

31. (1) The Chief Justice, with the approval of the Governor acting on the advice of Cabinet, and such further approval in the case of certain

documents as is hereinafter mentioned, may, if he sees fit, from time to time make, and when made, revoke, add to, and vary rules respecting the disposal by destruction, or otherwise, of documents which are deposited in, or can be removed to, the Record Office, and which are not of sufficient public value to justify their preservation in the Record Office. Such rules shall, so far as they relate to documents of any Court or Office mentioned in section 28, be made with the further approval of the Judges, or the principal officers, of such Court or Office.

(2) Before the power of disposal given by this section shall be exercised, the Chief Justice shall cause a schedule to be prepared of the documents proposed to be disposed of, containing a list of the documents, and such particulars as to their character and contents as may be calculated to enable the Legislative Assembly to judge of the expediency of disposing of such documents in the proposed manner; but where there shall be several documents of the same class or description, it shall be sufficient to classify them, as far as practicable, according to their nature and contents, instead of specifying each document separately; and the power of disposal given by this section shall not be exercised in respect of any documents, until the schedule relating to such documents, before required, has been submitted to the Legislative Assembly for a whole session.

(3) No rule made under this section shall provide for the disposal of any document of older date than the year 1750.

(4) Every rule made under this section shall be laid before the Legislative Assembly, and, when the same has lain not less than one session before the said Assembly, the Governor acting on the advice of Cabinet may, by order, declare his approbation of any rule from which he has not been prayed by an address of the Legislative Assembly to withhold his approbation.

(5) Every rule that has been approved under subsection (4) by the Governor acting on the advice of Cabinet is deemed to be within the power of this Act, and duly made, and has effect as if it were enacted by the Legislative Assembly (*Amended by Act 9 of 2011*)

### **Return of original deeds and writings after registration**

32. The Registrar shall, if required by any person authorised in that behalf, return any deed or writing received into the Record Office for registration, after the same has been registered, and shall obtain from such person a receipt for the same, which receipt shall be entered in a book to be kept for the purpose.

### **Searches**

33. Any person shall be at liberty, at such times and under such restrictions as shall be prescribed by rules, to search and examine the public records, and the registers and indices in the Office, and to take abstracts, or other short notes, of any matters in the same, and to inspect, in the presence

of the Registrar or any of his clerks, any original registered deeds or writings to which reference is obtained in such search.

### **Copies of public records**

**34. (1)** The Registrar may allow copies to be made of any public records in the custody of the Chief Justice, at the request and cost of any person desiring the same.

**(2)** Any copy so made shall be examined and certified as a true copy by the Registrar, and shall be sealed with the seal of the office.

### **Office copies to be evidence**

**35.** Every copy of a record in the custody of the Chief Justice, certified by a Registrar to be a true copy, and purporting to be sealed with the seal of the Office, shall be received in evidence in all Courts of Justice within Montserrat, without further or other proof thereof, in every case in which the original record would have been received as evidence.

### **Records not to be removed from the Record Office**

**36.** No public record, and no original registered deed or writing, shall be taken out of the Record Office, unless under an order of a competent Court, except under section 32.

## **PART 6**

### **RULES OF RECORD OFFICES**

#### **Chief Justice may make rules**

**37.** The Chief Justice may, with the approval of the Governor acting on the advice of Cabinet, make rules in relation to the following matters—

- (a)* the management of the Record Office;
- (b)* the duties to be performed by the Registrar and Clerks;
- (c)* the cleaning, arranging, repairing, and preserving the records under his charge;<sup>2</sup>
- (d)* the registration and enrolment of deeds and writings, and the making of entries;
- (e)* the making and keeping of registers and indices;
- (f)* the admission of the public to the use of the records, calendars, catalogues and indices in the Record Office; and

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<sup>2</sup> Montserrat Statutory Instrument 2 of 1991 repeats that it is the duty of the Registrar to preserve records, and authorises the microfilming of records.

(g) the conduct of searches, and the making and certifying of copies and extracts in the Record Office.

*(Amended by Act 9 of 2011)*

### **Publication of rules**

**38.** Copies of all rules made under section 37 shall be kept in a conspicuous place in the Record Office, and shall be published in the *Gazette*, and shall be laid before the Legislative Assembly at its first session after the making of such rules. *(Amended by Act 9 of 2011)*

## **PART 7**

### **GENERAL**

### **Action for negligence against Registrar**

**39.** If at any time damage shall occur to any person through any default or negligence of the Registrar in his office as such, such damage may be recovered by an action at law, and, in such action, the measure of damages shall be the amount of actual loss by the plaintiff, together with all costs and expenses necessarily to be incurred in remedying the same.

### **Fees**

**40.** The fees hereafter to be charged in the Record Office shall be in accordance with the Schedule.

### **Registered Land Act excluded**

**41.** This Act shall not apply in respect of any document evidencing any transaction registrable under the Registered Land Act.

*(Inserted by Act 4 of 1978)*

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**SCHEDULE***(Section 40)**(Substituted by Act 14 of 2013)***DOCKET OF FEES**

<b>Item No</b>	<b>Description</b>	<b>Fee</b>
1.	For entering, registering and recording any will	\$5 per page
2.	For entering, registering and recording any deed or writing, of whatever kind (wills excepted), presented for registration under section 18	\$5 per page
3.	For an office copy, or extract from, any registered deeds and writings	\$5 per page
4.	For every certificate	\$25
5.	For office seal on any document	\$25
6.	For any search whatsoever, for each year	\$10
7.	For every general search under one name	\$10
8.	For acknowledgment of a signature to any document, or for signing a document, before a Registrar if at his office	\$25
9.	If out of his office (beside hire of conveyance)	\$50
10.	For swearing an affidavit before a Judge	\$100
11.	For a Judge's Order	\$100
12.	For every Apostille	\$50
No fee is payable on the registration of any Bond entered into by any person with the Government with respect to the grant of a scholarship to the person and the entering into or resumption of service with the Government by the person.		