



PRESCRIPTIVE RIGHTS

I. Introduction:

By means of the procedure of Prescriptive Rights one can obtain ownership of a portion of immovable (real estate) property and or movable property. One can acquire property by inheritance, donation or through a special legal title such as a transfer on account of a sale and purchase or by acquiring a title to the land by means of prescriptive rights. The articles of law regulating **Prescriptive Rights** are to be found in Book 3 articles 99-125 of the Civil Code.

The articles of Book 3: 306- 326 also contain relevant information pertaining to the topic of prescriptive rights. Prescriptive Rights is a procedure by which a person can acquire the legal rights and title of ownership of a parcel of land (real estate property) that legally does not belong to him/ her in ownership.

A full title of ownership of land is usually acquired as follows:

Purchase: parties sign sale and purchase agreement, the sale price is deposited at the Notary, the Notary prepares the deed of transfer, this is signed by parties, the deed transferring the ownership is registered at the Office of the Kadaster, ownership is then transferred to the Buyer at the moment of the registration.

Inheritance: if the deceased did not leave a Last Will, the law determines who are the heirs and how the estate shall be divided, if there is a Last Will (Testament) the Notary will execute the will and divide the property and assets accordingly, property is transferred from the name of the deceased to the names of the heir(s), the deed(s), are registered at the Office of the Kadaster

Donation: Donor donates a portion of land to a recipient by means of a Notary Deed, the deed is registered at the Office of the Kadaster. The legal title of ownership is transferred to the recipient at the moment of the registration.

In order to acquire the legal ownership of a parcel of land a deed must be registered in the name of the owner in the Public Registry at the Kadaster. At the moment of registration the legal ownership is transferred from the previous to the new owner. You should be aware that a Certificate of Admeasurement does not give any evidence of ownership, although it might list name(s) of legal title holder(s). Evidence of ownership of real estate property is given by a registered Notarial Deed or a Title Search, issued by the Kadaster.

There are two methods of acquiring ownership by means of prescriptive rights:

II. Acquisition of the title of ownership: One can acquire the ownership of a parcel of land after one has had un-interrupted, undisturbed, public, unambiguous possession in good faith for 20 years or more. (articles 3:99 - 3.104) The law states in Book 3 article 99, a period of 10 years for immovable property, but in most cases the period of 20 years as was regulated in the old Civil Code, is observed. The possession must be not ambiguous and must be considered as possession with the intent to own in accordance with general norms and standards in the community. Based on the actions of the acquirer it will be determined by the Court if there is a question of possession with the intent to own or possession based on a title.

Possession A: If your father bought a parcel of land (many years ago) and did not get a Notary deed that was registered at the Kadaster, or if the person that sold him or yourself the land was not legally authorized to sell, then you may have possession of the land but your legal title may be imperfect. During the 10 or 20 year period you would have acted publicly in good faith as if you are the owner of the land. You would have enclosed the land, built on the land and maintained the land as if it is yours. In such an event the law states you will become the legal owner of that parcel of land after 10 years providing your possession of the land was public, uninterrupted, undisturbed, unambiguous and in good faith. The Court will determine that you have acquired a legal title to the parcel of land by means Prescriptive Rights. With the judgment of the Court the Notary can then prepare the transfer deed and have it registered in your name at the Kadaster.

Possession B: You are renting a house, an apartment unit or leasing a parcel of land and you pay a rental fee monthly or yearly to the owner. You also have possession of this property but your possession is not the same possession as we described in sub A. In sub A you are in good faith thinking the you own the property. In scenario B you know that the property does not belong to you so you have possession based on a title/agreement with the actual owner. You have possession of the property or you are holding the property for another person or entity and not for yourself with the legal intent to own it. Your possession may be public but it is certainly not unambiguous and not in good faith if you intend to enter a claim of ownership. After 20 years you cannot under the law state that you have had uninterrupted, undisturbed, unambiguous possession in good faith. In this case the law states that you cannot claim legal title to the property by means of Prescriptive Rights.

III. Extinction of the title of ownership: Acquisition means the new owner acquires a legal title of ownership which he/she did not have although he/she had possession of the property. Extinction of the title is the situation where the rightful owner loses his/ her

title to the property and the one who is illegally occupying the property becomes the legal owner of the property. Article 3:105 of the Civil Code states: The person who is in the possession (occupying) a parcel of land on which the right to re-claim its possession by the owner expires, will become the owner of the land even if the possession was not in good faith.

In other words if you take possession of a parcel of land knowing that it is not your land you might know the owner of the land or you may not know to whom the land belongs. If you are not removed from the land and it is not re-possessioned by the rightful owner, after a period of 20 years you can claim ownership based on Prescriptive Rights and you will become the rightful owner. Article 306 of Book 3 of the Civil Code states as follows: -“If the law does not determine otherwise, a legal claim expires after 20 years-“. This period of 20 years is called the Statute of Limitations, meaning that if the rightful owner does not interrupt or remove the illegal occupant from his/her property and a period of 20 years elapses, the owner loses his/her right to evict or remove the occupant. By law the owner has the right to a court action article Book 5: article 2, to remove anyone who is illegally occupying his/her property. If this right to start court action to request removal is not enacted it expires after a period of 20 years. In conjunction with article 105 of Book 3, of the Civil Code, the illegal occupant becomes the owner of the property in question although he or she was occupying not in good faith. In a court case the Court will determine that the occupant has acquired ownership by means of **Extinctive Prescriptive Rights**. This means that the original owner can no longer exercise his/her right to re-claim the land and has lost his her ownership rights. The property will then be transferred to the new owner and registered in his /her name at the Office of the Kadaster.

General Remarks:

On Sint Maarten there are a lot of properties that have been acquired by means of prescriptive rights. Acquisition by means of Prescriptive Right does not occur that often. Much more common are the cases of acquiring ownership by means of Extinctive Prescriptive Rights. Many properties remain undivided and the heirs are separated all over the world and oftentimes cannot be found. It is therefore very easy to occupy someone else's land without their knowledge or before they decide to get into action to have you removed or interrupt the Statute of Limitations.

Formerly it was easy to acquire land by means of prescriptive rights. One could go to the Notary with 2 or more witnesses who would declare to the Notary that Mr. X, has been in possession of the land for more than 20 years un-interrupted etc. The Notary would then make a deed, declaring that Mr. X acquired the land by prescriptive rights and have the deed registered at the Office of the Kadaster.

This procedure was found to be in conflict with for instance international law (protection of property) and was discontinued some years ago. Now you have to go via the Court and get a court judgment declaring that you have acquired ownership of the land by means of prescriptive rights.

If someone is on your property you have the right to have them removed legally by obtaining an eviction order. You should also send them a registered letter or have it delivered by a bailiff to interrupt and block the 20 years period coming to completion and

your right to claim their removal expiring. A court proceeding is also considered as a measure to interrupt the Statute of Limitations. Please be aware that if the Statute of Limitations is interrupted and the occupant is not removed but remains on the property, a new period of 20 years begins.

Finally if your parents were occupying a parcel of land for 15 years, when they pass on the right to acquire the land by means of Prescriptive Right is continued by the heir(s). (Book 3 article 102 of the Civil Code) This would mean that after 5 more years the heir(s) can claim the rights to the property by means of Prescriptive Rights.

I hope that this information will give the reader some insight in the legal topic of Prescriptive Rights. This information does not cover the entire subject matter. If you are confronted with a situation, please do not hesitate to consult an attorney at law.

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