

Marketable Titles Act

CHAPTER 9 OF THE ACTS OF 1995-96

as amended by

2001, c. 6, s. 116; 2014, c. 35, s. 28



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CHAPTER 9 OF THE ACTS OF 1995-96
amended 2001, c. 6, s. 116; 2014, c. 35, s. 28

**An Act Respecting
Marketable Title to Land**

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Short title

1 This Act may be cited as the *Marketable Titles Act*. 1995-96, c. 9, s. 1.

Purpose of Act

2 The purpose of this Act is to

(a) remove uncertainties respecting the determination of marketable titles to land in the interests of all present and future landowners and facilitate the development of the Province; and

(b) remove uncertainties respecting the validity of past and future tax deeds. 1995-96, c. 9, s. 2.

Interpretation

3 In this Act,

(a) “chain of title” means a chain of title as described in subsection 4(2);

(b) “instrument” means a conveyance or other document by which the title to land is changed or in any way affected, including a will or other testamentary instrument, a grant from the Crown, a court order, a certificate of title under the *Quieting Titles Act* or the *Land Titles Clarification Act* or a report of commissioners appointed to make partition;

(c) “registered” means registered or filed in the registry of deeds for the registration district within which the land is situate. 1995-96, c. 9, s. 3.

Marketable title

4 (1) A person has a marketable title at common law or equity or otherwise to an interest in land if that person has a good and sufficient chain of title during a period greater than forty years immediately preceding the date the marketability is to be determined.

(2) A chain of title commences with the registered instrument, other than a will, that conveys or purports to convey that interest in the land and is dated most recently before the forty years immediately preceding the date the marketability is to be determined.

(3) A chain of title may commence before or after the coming into force of this Act.

(4) Nothing in this Section extinguishes any interest in land.

(5) *repealed 2001, c. 6, s. 116.*

1995-96, c. 9, s. 4; 2001, c. 6, s. 116.

Extinguishment of interest in land

4A Notwithstanding the *Descent of Property Act* and the *Intestate Succession Act*, but subject to Section 5, an interest in land, whether arising before or after the coming into force of this Act, that has not vested pursuant to an instrument that is registered pursuant to the *Land Registration Act* or the *Registry Act*, is extinguished by a registered instrument other than a will that conveys or purports to convey that interest in the land and that is executed by a person with a marketable title to that interest, upon the expiry of

(a) the twenty-year period immediately following the vesting of the interest;

(b) the five-year period immediately following the attainment of the age of majority by the person with the interest; or

(c) where the person with the interest is of unsound mind, the five-year period immediately following the person ceasing to be of unsound mind or the twenty-five year period immediately following the vesting of the interest, whichever is earlier. 2001, c. 6 s. 116.

Preservation of interests otherwise extinguished

5 (1) A person may preserve an interest in land that, but for this Section, could be extinguished by Section 4A by filing a notice of claim.

(2) A notice of claim shall be in the form prescribed by the regulations.

- (3) A notice of claim shall include
- (a) the name of the claimant;
 - (b) the names of the owners of all interests in the land known to the claimant;
 - (c) the address of the claimant;
 - (d) a description of the land in which the interest is claimed;
 - (e) the nature of the interest in the land claimed;
 - (f) a summary of the basis of the claim, including the recording particulars of every instrument constituting the chain of title on which the claim is based; and
 - (g) such other information as the regulations prescribe.

(4) A notice of claim does not validate or extend an interest that has been extinguished by subsection 4(4) or that has expired or is invalid.

(5) A new notice of claim may be registered pursuant to this Act and, for that purpose, an earlier notice of claim is the instrument on which the claim is based.

(6) For greater certainty, lack of knowledge or absence from the Province on the part of any person does not extend the period during which a notice of claim may be registered. 1995-96, c. 9, s. 5; 2001, c. 6, s. 116.

Tax deeds

6 (1) In this Section, “tax deed” means

(a) a certificate that has or purports to have the effect of vesting land that was to be sold for non-payment of taxes in a city, town, municipality of a county or district, regional municipality, village commissioners or service commission as defined by the *Municipal Affairs Act*; or

(b) a deed from a city, town, municipality of a county or district, regional municipality, village commissioners or service commission as defined by the *Municipal Affairs Act* to land sold or purportedly sold for non-payment of taxes.

(2) A tax deed may not be set aside for any reason whatsoever except during the six years following registration of the tax deed, and thereafter the tax deed is binding and conclusive upon all persons and is not liable to be attacked or impeached at law by any person, and the tax deed conveys an absolute and indefeasible title in fee simple to the land described in the tax deed and is conclusive evidence, with respect to the purchaser and every person claiming through the purchaser, that every requirement for the proper assessment and sale of the land has been met.

(3) Notwithstanding subsection (2), a court may exclude from a tax deed all or part of the lands described in the tax deed that the court finds were assessed to a person, other than the person to whom the property was assessed when the lands were sold for arrears of taxes, who has an interest in the lands or part thereof and in respect of which taxes were not in arrears for more than one year at the time of the sale.

(4) Subsection (2) does not apply where a court finds that the current owner of the land participated in a fraud or breach of trust with respect to the sale.

(5) Subsection (2) applies whether the tax deed was registered before or after the coming into force of this Act.

(6) Subsection (2) does not deprive any person of any cause of action that person may have for damages for the wrongful sale of land for taxes. 1995-96, c. 9, s. 6.

Exceptions to Act

7

- (1) This Act does not apply to
- (a) any interest in land created or preserved by a statute;
 - (b) the interest of a municipal government in a public street, road, highway or road reserve;
 - (c) a right of way or easement in favour of a public utility or a municipal government;
 - (d) mineral rights; or
 - (e) an easement or right of way that is being used and enjoyed.

- (2) Subsections 4(1) and (2) do not apply to
- (a) land in respect of which a certificate of title has been issued under the *Quieting Titles Act*;
 - (b) land registered under the *Land Titles Clarification Act* or the *Land Titles Act*; or
 - (c) any interest in land that a registered owner may no longer recover by reason of the *Real Property Limitations Act*.

(3) Subsection 4(4) does not apply to an adverse interest acknowledged or specifically referred to in the description of land in a deed forming part of the chain of title to the land.

- (4) *repealed 2014, c. 35, s. 28.*

1995-96, c. 9, s. 7; 2014, c. 35, s. 28.

Regulations

- 8** (1) The Governor in Council may make regulations
- (a) prescribing the form of the notice of claim authorized by this Act;
 - (b) prescribing additional information to be included in a notice of claim;
 - (c) prescribing a system of indexing notices of claims;
 - (d) defining any word or expression used in this Act and not defined in this Act;
 - (e) respecting any other matter or thing that the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority in subsection (1) is regulations within the meaning of the *Regulations Act*. 1995-96, c. 9, s. 8.

Crown interests preserved

9 For greater certainty, nothing in this Act affects any interest of Her Majesty in any land. 1995-96, c. 9, s. 9.

Effective date of Act

10 This Act has effect on and after July 1, 1996. 1995-96, c. 9, s. 10.
