

ANTIGUA AND BARBUDA



THE BARBUDA LAND ACT, 2007

No. of 2007

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ARRANGEMENT

Sections

PART I: PRELIMINARY

1. Short title
2. Interpretation

PART II: THE OWNERSHIP OF LAND IN BARBUDA

3. Barbuda land is owned in common by Barbudans
4. Land held for public purposes
5. No sale or prescription
6. Leases of land for major developments

PART III: THE RIGHTS OF THE PEOPLE OF BARBUDA

7. Rights of Barbudans over land
8. Conversion of rights into leases
9. Cutting timber and burning charcoal
10. Acquisition and loss of rights as a Barbudan

PART IV: THE POWERS AND DUTIES OF THE COUNCIL

11. Administration and development of land
12. Designation of areas
13. Areas published
14. Regulations and by-laws

PART V: RESIDENTIAL LAND

15. Allotment of residential land

PART VI: FUTURE DEVELOPMENT OF LAND IN BARBUDA

16. Development plan
17. Major developments
18. Obtaining the consent of the people of Barbuda
19. Time limits on development

PART VII: EXISTING LEASES

20. Existing leases confirmed
21. Rent payable to the Council
22. Deposit and inspection of leases
23. Assignment of leases
24. A commission of inquiry into purported leases

PART VIII: LAND REGISTRY FOR BARBUDA

25. Creation of Land Registry for Barbuda

PART IX: MISCELLANEOUS

26. Application
27. Amendment
28. Repeals
29. Repeals of by-laws
30. The Crown
31. Entrenchment

Schedules

- | | |
|-----------------|---------------------------|
| FIRST SCHEDULE | Existing leases confirmed |
| SECOND SCHEDULE | Amendments |

ANTIGUA AND BARBUDA
THE BARBUDA LAND ACT, 2007
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AN ACT to confirm that all land in Barbuda is owned in common by the people of Barbuda, to provide for the administration and development control of land in Barbuda, to provide for the confirmation or otherwise of certain leases of land in Barbuda, and for incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I: PRELIMINARY

1. Short title

This Act may be cited as the Barbuda Land Act, 2007 and shall come into force on a date fixed by Notice published in the Gazette.

2. Interpretation

In this Act, unless the context otherwise requires

“Barbudan” means

- (a) a person born in Barbuda of whose grandparents at least one was born in Barbuda; or
- (b) the child, wherever born, of parents at least one of whom is a Barbudan within the meaning of paragraph (a).

“Council” means the Barbuda Council;

“land” includes an interest in land;

“Land Registry for Barbuda” means the division of the Land Registry established under Part VIII;

“lease” includes a sub-lease;

“major development” means

- (a) a development which will cost in excess of five million four hundred thousand dollars; or
- (b) a development which in the view of the Council or of the Cabinet will have a significant impact on the economy, environment or infrastructure of Barbuda;

“Minister” means the Minister with responsibility for Barbuda;

“the people of Barbuda” means all Barbudans.

PART II: THE OWNERSHIP OF LAND IN BARBUDA

3. Barbuda land is owned in common by Barbudans

- (1) All land in Barbuda shall be owned in common by the people of Barbuda.
- (2) Subject to sections 4 and 20, the title to all land in Barbuda shall vest in the Crown on behalf of the people of Barbuda.

4. Land held for public purposes

(1) All land used for public purposes at the date that this Act comes into force shall continue to be used as the Council sees fit in accordance with this section.

(2) Subject to subsection (3), the Council may either use land referred to in subsection (1) for the benefit of the people of Barbuda or permit the Government or another statutory body to use it on the terms agreed upon in order that public services can be maintained and provided.

(3) Where the Government has funded the construction of any public building the Council shall grant the Government a lease of the building at a nominal rent for a term of 50 years.

5. No sale or prescription

- (1) No land in Barbuda shall be sold.
- (2) No person shall acquire the ownership of any land by prescription or otherwise.

6. Leases of land for major developments

(1) The Council, with the approval and on the advice of Cabinet and having obtained the consent of a majority of the people of Barbuda, may grant leases of land for major developments in accordance with this section and Part VI.

(2) A person proposing to develop land in Barbuda shall apply to the Council in accordance with the regulations and pay the application fee set out in the regulations.

(3) Before the Council grants a lease under subsection (1) it shall obtain the consent of a majority of the people of Barbuda.

(4) The Council may grant a lease of land in Barbuda for a major development for a maximum period of 50 years, or the longer period that the Council may, by regulation fix, in accordance with this Act.

(5) Leases granted under this section may be used as security for loans.

(8) Full details of any mortgage or other security referred to in subsection (5) shall be registered with the Council and in the Land Registry for Barbuda.

PART III: THE RIGHTS OF THE PEOPLE OF BARBUDA

7. Rights of Barbudans over land

Barbudans of the age of 18 years and over shall, subject to availability, be entitled

- (a) to the grant of an exclusive right of occupation of a plot of land for a dwelling in the areas of land in Barbuda designated by the Council for residential development;
- (b) to graze animals in the areas of land in Barbuda designated by the Council for grazing;
- (c) to the grant of an exclusive right of occupation of a plot or plots of land in Barbuda for cultivation in the areas in Barbuda designated by the Council for cultivation; and
- (d) to the grant of an exclusive right of occupation of land in the areas in Barbuda designated by the Council for commercial purposes other than major developments.

8. Conversion of rights into leases

(1) The Council shall, on the application of a person to whom an exclusive right of occupation has been granted, grant a lease to that person for the purposes set out in the lease and for a maximum term of ten years.

(2) The lease may be renewed for additional periods of ten years.

(3) A lease granted under this section may be used as security for loans.

(4) Full details of any mortgage or other security referred to in subsection (3) shall be registered in the Land Registry for Barbuda.

9. Cutting timber and burning charcoal

(1) A person shall not:

- (a) cut or fell any growing timber; or
 - (b) burn charcoal,
- within Barbuda without having first obtained a permit in writing for such purpose from the Council.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of three thousand dollars.

10. Acquisition and loss of rights as a Barbudan

A person who is not a Barbudan who has been married to a Barbudan for a period of five years shall be deemed, for the purposes of this Act, to be a Barbudan unless he or she is living apart from the spouse under a decree of a competent court or a deed of separation.

PART IV: THE POWERS AND DUTIES OF THE COUNCIL

11. Administration and development of land

(1) It shall be the responsibility and duty of the Council to administer land and the development of land in Barbuda.

(2) The Council shall grant an exclusive right of occupation to a Barbudan who wishes to exercise his or her rights under section 7, and may grant leases of land in accordance with section 6.

(3) It shall be lawful for the Council to close or divert any road or path in Barbuda.

12. Designation of areas

(1) The Council shall designate areas of land in Barbuda for

- (a) residential use;
- (b) agriculture use including land for both grazing and cultivation;
- (c) forestry;
- (d) public purposes;
- (e) commercial use;
- (f) development;
- (g) fisheries; and
- (h) subject to section 27, national parks.

(2) The Council may designate areas of land in Barbuda for all other purposes as the Council, with the consent of the Cabinet, may decide.

(3) The Council shall designate land for public purposes under subsection (1) so as to promote the health, comfort and security of the inhabitants, reserving such portions for roads, path or otherwise as it shall consider desirable.

13. Areas published

(1) On designation of land in accordance with section 12, the Council shall cause it to be delineated on a plan which it shall maintain up to date, a copy of which shall be deposited at the Council's office.

(2) Members of the public shall be entitled to inspect the deposited plan and have copies made of it during normal office hours, on payment of the fee specified in the regulations.

14. Regulations and by-laws

(1) The Council may make regulations and by-laws respecting the administration and development of land in Barbuda.

(2) Regulations and by-laws made under this section may

- (a) make different provision in relation to different cases or circumstances;
- (b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases, and define a class by reference to any circumstances whatsoever; and
- (c) contain such transitional, consequential, incidental or supplementary provisions as appear to the Council to be necessary or expedient for the purposes of the regulations.

PART V: RESIDENTIAL LAND

15. Allotment of residential land

(1) Residential land shall be laid out in plots of such dimensions and areas as the Council shall direct with a view to the exercise of rights under section 7.

(2) A Barbudan may apply to the Council for a grant of exclusive rights of occupation over a plot of residential land.

(3) Exclusive rights of occupation granted under this Act over residential land may not be sold but the grantee may permit another person to occupy all or part of the land comprised in the grant on a weekly or monthly basis at a full commercial rate.

(4) On the death of a Barbudan, the exclusive rights of occupation of residential land which have been granted to him or her shall pass by operation of law, or by will, to his or her next of kin or heirs, provided that they are Barbudans.

(5) If a Barbudan has died intestate without leaving next of kin or if the heirs or next of kin are not Barbudans, any exclusive rights of occupation granted to him or her shall immediately expire and the land shall be vested unencumbered in the Crown on behalf of the people of Barbuda.

(6) If the tenant under a lease granted under section 8 is in breach of any term of the lease including the obligation to pay rent when due and payable the Secretary to the Council may serve a notice to quit on the tenant.

(7) Where a tenant does not comply with a notice to quit, the Secretary of the Council may take eviction proceedings under the Small Tenements Act (Cap. 406) and the Council shall pay the tenant compensation for any improvements he or she has made to the land in an amount to be determined by the Council.

(8) The tenant shall have a right of appeal to the High Court on a point of law as to the amount payable under subsection (7).

PART VI: FUTURE DEVELOPMENT OF LAND IN BARBUDA

16. Development plan

The Council shall prepare a development plan in accordance with this Act.

17. Major developments

(1) Major developments in Barbuda shall not take place without the agreement of the Cabinet and the Council and the consent of the people of Barbuda in accordance with this Part.

(2) The procedure for considering whether consent should be given to major development proposals for Barbuda shall be that

- (a) firstly, the Council shall obtain the consent of the people of Barbuda to the principle of the proposal;
- (b) secondly, the proposal shall be considered and approved in detail by the Council;
- (c) thirdly, if the proposal is approved in detail by the Council the proposal shall be considered by the Cabinet;
- (d) fourthly, if the Cabinet agrees to the proposal, the Council shall then obtain the consent of the people of Barbuda.

(3) The Council, with the consent of the Cabinet, shall have power to raise and collect a tax on major developments in Barbuda in accordance with regulations made by the Minister after consulting the Council.

18. Obtaining the consent of the people of Barbuda

(1) The Council shall be responsible for consulting the people of Barbuda and obtaining their consent under this Act either by a meeting of the people of Barbuda or by a vote of the people of Barbuda.

(2) The Council shall make regulations to provide for the manner in which the consent of the people of Barbuda under this Act is obtained.

(3) Regulations made under subsection (2) shall prescribe

- (a) the notice that shall be given for each proposal so that Barbudans may understand what is proposed;
- (b) that the quorum for a meeting to consider such a proposal shall be 50 Barbudans who are aged 18 or over;

- (c) that the matter shall be decided by a ballot of the people of Barbuda if the Council so decides, or if a ballot is required by a majority of those present and voting at a meeting;
- (d) that a certificate signed by the Chairperson and Secretary of the Council of the result of a vote, either at a meeting or by ballot, shall be conclusive evidence of the decision of the people of Barbuda;
- (e) the people entitled to vote on a ballot under paragraph (c); and
- (f) any other matters that the Council considers necessary.

(2) Consent to a proposed major development shall be signified by a majority of persons present at a meeting or by a majority of persons voting on a ballot.

19. Time limits on development

(1) A lease granted for the development of land in Barbuda shall specify a time within which the tenant must begin to develop the land and complete the development.

(2) If the development is not commenced and completed within the time specified, or the further time that the Council in its absolute discretion may decide,

- (a) the lease shall immediately determine;
- (b) the land shall revert to the Crown unencumbered to hold on behalf of the people of Barbuda; and
- (c) the developer shall be compensated for any improvements he or she has made to the land.

(3) A developer to whom subsection (2) applies shall have the right of access to a tribunal with a legally qualified chairperson appointed by the Chief Justice in accordance with regulations that the Minister may make, to determine the amount of any compensation to which the developer is entitled and for the purpose of obtaining payment of that compensation.

(4) An appeal

- (a) shall lie to the High Court from any decision of a tribunal appointed under subsection (3);
- (b) shall be exercisable as of right at the instance of any party to the proceedings before the tribunal; and
- (c) shall be final and conclusive.

(5) A lease granted for the development of land in Barbuda may be assigned only with the assent of the Cabinet, the Council and the people of Barbuda.

PART VII: EXISTING LEASES

20. Existing leases confirmed

The leases which are extant on the coming into force of this Act, which have been agreed to or recognized by the Cabinet and the Council and which are listed in the First Schedule, shall continue in force, but the freehold shall be vested in the Crown to hold on behalf of the people of Barbuda.

21. Rent payable to the Council

Rent payable under the leases listed in the First Schedule shall be paid to the Council and the Council shall have the right to enforce the terms of the leases.

22. Deposit and inspection of leases

(1) Copies of the leases listed in the First Schedule shall be deposited with the Attorney General and the Secretary of the Council by the lessees and shall be registered at the Land Registry for Barbuda.

(2) The Registrar of Lands for Barbuda shall make amendments necessary to the register consequent upon the registration effected under subsection (1) in all cases where the lease had been registered prior to the coming into force of this Act.

23. Assignment of leases

Leases of land in Barbuda may only be assigned or sublet to Barbudans and only with the consent of the Cabinet, the Council and the people of Barbuda.

24. A commission of inquiry into purported leases

A Commission of Inquiry, under a legally qualified chairperson, shall be appointed by the Cabinet and the Council to investigate and determine the validity and extent of all leases and purported leases of land in Barbuda extant on the coming into force of this Act which are not listed in the First Schedule, and the material facts relevant to the granting of such leases.

PART VIII: LAND REGISTRY FOR BARBUDA

25. Creation of Land Registry for Barbuda

(1) There is established a Land Registry for Barbuda, whose offices shall be located in Barbuda and which shall contain all deeds, registers and documents relating to land in Barbuda that would otherwise be located at the Registry referred to in the Registered Land Act, Cap. 374.

(2) The Public Service Commission shall, with the consent of the Council, appoint a Registrar of Lands for Barbuda, who shall be a public servant and who shall be responsible for the proper functioning of the Land Registry for Barbuda.

(3) The Registrar of Lands for Barbuda shall create the registers he or she considers necessary to ensure that the Registry of Lands for Barbuda serves the needs of the people of Barbuda.

(4) The provisions of the Registered Land Act apply to the Land Registry for Barbuda to the extent that they are not inconsistent with this Act.

PART IX: MISCELLANEOUS

26. Application

The Beach Control Act (Cap 45) and the Rent Restriction Act (Cap 378) shall not apply to Barbuda.

27. Amendment

The amendments specified in the Second Schedule to this Act shall be made, and in the case of the amendment to the Barbuda Local Government Act set out in paragraph 1 of that Schedule, with the consent of the Council under section 123 of the Constitution.

28. Repeals

Sections 4 to 11 of the Barbuda Act, Cap. 42 are repealed.

29. Repeals of by-laws

The following by-laws are repealed:

- (a) The Barbuda (Lease of Government Buildings, and Cutting of Firewood) By-Law;
- (b) The Barbuda (Working and Upkeep of Provision Grounds) By-Law;
- (c) The Barbuda (Codrington Village) Building By-Law; and
- (d) The Barbuda (Bell Village) By-Law.

30. The Crown

This Act shall bind the Crown.

31. Entrenchment

(1) It is the Government's intention to:

- (a) amend Article 123(3) of the Constitution to specify this Act with the Barbuda Local Government Act in that Article and in the Second Schedule to the Constitution, so that both Acts can only be amended in the way specified in Articles 123(4) to (7) of the Constitution and in no other way.
- (b) amend Article 47 of the Constitution to provide that a bill to amend Article 123 or the Second Schedule of the Constitution shall not be submitted to the Governor General for his assent unless the bill has been approved on a separate referendum of the people of Barbuda by no less than two-thirds of all the votes cast on that referendum.

(2) Until the Constitution is amended in accordance with subsection (1) no amendment shall be made to this Act without the consent given in a referendum of the people of Barbuda, by not less than two-thirds of all the votes cast on that referendum.

Section 20

FIRST SCHEDULE

Existing leases confirmed (Section 20)

1. Coco Point Barbuda
2. Impresa Guffanti Costruzioni Edili SRL
3. Sunset Hotel
4. Dulcina
5. Palm Beach Holding Company Ltd.
6. Haylandale Ltd.

SECOND SCHEDULE

Amendments (Section 27)

Local Government in Barbuda

1. The Barbuda Local Government Act (Cap.44) shall be amended:

- (a) in section 4(1)(b) by inserting the words "and was appointed under Article 28(5) of the Constitution of Antigua and Barbuda by the Governor General acting in accordance with the advice of the Barbuda Council" after the words "subsection (1) of section 6";

- (b) in section 4(2) by inserting at the end of the subsection the words “The member referred to in paragraph (a) of subsection (1) shall be responsible for calling the first meeting after that election which shall be held within 14 days of the election.”;
- (c) in section 4(3) by inserting the words “and shall have an additional casting vote” after “meeting of the Barbuda Council”;
- (d) in section 18(2) by adding at the end “(f) to administer land in Barbuda including the development of land as set out in the Barbuda Land Act, 2007”;
- (e) in section 19(1) by inserting after the words “The Barbuda Council shall have power to make” the words “regulations and”;
- (f) in section 19(1) by adding at the end a new sub-paragraph “(xxxx) the administration and development of land in Barbuda.”;
- (g) in section 19(3) by adding at the end the words “and the Government Printer shall be bound to print such By-Laws in the Gazette without delay at the request of the Secretary. The Government Printer shall print a new edition of the By-Laws for Barbuda every two years at the request of the Secretary.”;
- (h) by deleting subsection 21(1);
- (i) in section 24(2) [*Add further Acts under which the Barbuda Council is to collect taxes and other dues for its own benefit*];
- (j) in section 24(3)(a) by deleting the words “except with the consent of the Cabinet” from the proviso;

- (k) by deleting subsection 29(2) and substituting the following:

“(2) All land held for public purposes shall be held by the Barbuda Council under the Barbuda Land Act, 2007 and all other land belonging to the Barbuda Council shall be vested in the Barbuda Council”;

- (l) in section 40(1) by inserting the words “and collect for its own use” after the words “The Barbuda Council may by by-laws impose”;
- (m) by deleting section 40(2) and substituting the following subsection:

“(2) The said taxes shall be paid by the persons who exercise rights over such houses and land, and if the identity of such persons is not known to the Barbuda Council, by the tenants or occupiers of the said houses or land.”.

Intestacy

- 2. The Intestates Act shall be amended in section 4(6) by inserting at the end the words “subject to section 15(5) of the Barbuda Land Act, 2007”.

Prescription

- 3. The Prescription Act (Cap. 338) shall be amended by inserting at the end the following section

“Act not to apply to Barbuda

“10. This Act shall not apply to land in Barbuda.”.

Land Registry in Barbuda

- 4. The Registered Land Act (Cap. 374) shall be amended by inserting at the end of section 3 the following subsection:

“Act not to apply to Barbuda

(3) The provisions of this Act do not apply to land in Barbuda, except to the extent set out in the Barbuda Land Act, 2007.”

Planning and Detailed Development Control

- 5. The Physical Planning Act 2003 shall be amended:

- (a) in section 2
 - (i) in the definition of “Minister” by adding at the end the words “except in relation to land in Barbuda, when “Minister” means the Barbuda Planning Commission.”; and
 - (ii) in the definition of “Authority” by adding at the end the words “except in relation to land in Barbuda, when “Authority” means the Barbuda Planning Commission.”; and
- (b) in section 5(1) by:
 - (i) inserting after “Authority” the words “and a body corporate, to be known as the Barbuda Planning Commission, whose chairman shall be a qualified architect or town planner” and
 - (ii) by deleting the word “it” and substituting the word “them”;
- (c) in section 5(2) by inserting at the end the words “and in relation to the Barbuda Planning Commission with such modifications as the Barbuda Council, with the agreement of the Government, shall determine by regulations.”;
- (d) in section 6(1) by adding at the end of the proviso the words “and that the functions under this Act of the Town and Country Planner shall be carried out in relation to land in Barbuda by the Chairman of the Barbuda Planning Commission.”; and
- (e) in section 81(3) by:
 - (i) deleting the word “and” where it appears before the words “are deemed”; and
 - (ii) adding at the end the words “and shall apply to Barbuda with such variations as may be agreed by the Barbuda Council and prescribed by the Minister by regulations.”.

National Parks

- 6. The National Parks Act (Cap. 290) shall be amended

- (a) in section 2 in the definition of “Authority” by adding at the end the words “except that in relation to land in Barbuda, when “Authority” means the National Parks Authority for Barbuda established under section 3.”;
- (b) in section 3
 - (i) by adding at the end of subsection (1) the words “and a further body corporate to be adding the National Parks Authority for Barbuda.”, and
 - (ii) by adding at the end of subsection (3) the words “together, in relation to the National Parks Authority for Barbuda, with such modifications as the Barbuda Council with the agreement of the Government shall prescribe by regulations except that the appointed in equal numbers by the Government and the Barbuda Council.”; and
- (c) in section 20, by deleting the words “The Minister may, on the request of the Authority, by Order” and substituting the following

“The Minister may on the request

- (a) of the Authority; and
- (b) in the case of land in Barbuda, of the Barbuda Council and after the consent of the people of Barbuda has been obtained in accordance with the procedure set out in Part VI of the Barbuda Land Act, 2007, by Order”.

Passed the House of Representatives on
the , 2007.

Passed the Senate on the , 2007.

Speaker.

President.

Clerk to the House of Representatives.

Clerk to the Senate.

EXPLANATORY MEMORANDUM

This Bill seeks to confirm that the system of tenure of land in Barbuda and to confirm that all land in Barbuda is owned in common by the people of Barbuda.

Part I contains definitions.

Part II confirms that the land in Barbuda is vested in the Crown on behalf of the people of Barbuda, who own it in common; and that there can be no sale or other acquisition of lands in Barbuda; and also provides for the consent of the people of Barbuda before leases are permitted for major developments in Barbuda.

Part III confirms that Barbudans have rights of occupation of land for residential, cultivation and commercial purposes, and to graze animals. It provides for the possibility of the conversion of rights of occupation into leases, and prohibits cutting timber or burning charcoal without a permit. Finally, it sets out provisions with respect to the acquisition and loss of the rights of as Barbudans or persons married to Barbudans.

Part IV sets out the powers and duties of the Barbuda Council with respect to administration and development of land, designation of certain lands for certain purposes and regulation-making powers.

Part V provides for the allotment of residential land.

Part VI deals with the planning and consents required for future development of land in Barbuda, including the obtaining of the consent of the people of Barbuda at meetings or by ballot, and time limits for major developers to develop lands in accordance with their proposals.

Part VII deals with the confirmation of leases existing when the Act would come into force.

Part VIII deals with a new Land Registry for Barbuda.

Part IX deals with amendments and repeals of other Acts and By-Laws in order to harmonise with the Act for which this is the Bill and provides that the Act would be binding on the Crown. It also sets out the Government’s intention to propose amendments to the Constitution in order to align with the provisions of the Act for which this is the Bill.

Justin L. Simon, Q.C.
Attorney General and
Minister of Legal Affairs