

**ANTIGUA AND BARBUDA**



**BARBUDA LAND (AMENDMENT) BILL, 2017**

**NO.        OF 2017**



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**CLAUSES**

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**ANTIGUA AND BARBUDA**  
**BARBUDA LAND (AMENDMENT) ACT, 2017**  
**NO. OF 2017**

**AN ACT** to amend the Barbuda Land Act 2007, No. 23 of 2007.

**ENACTED** by the Parliament of Antigua and Barbuda as follows:

**1. Short title**

This Act may be cited as the Barbuda Land (Amendment) Act 2017.

**2. Interpretation**

In this Act, “principal Act” means the Barbuda Land Act 2007, No. 23 of 2007

**3. Repeal and replacement of the long title of the principal Act**

The long title to the principal Act is repealed and replaced by the following:

“An Act to restate the law relating to the ownership of all lands within the island of Barbuda as embodied in the Barbuda Act, 1904 Chapter 42 of the Revised Edition of the Laws of Antigua and Barbuda 1993, to provide for Barbudans to have equal rights to purchase the freehold interest in land situate in the island of Barbuda, the right to own a leasehold interest in such land, to provide for the management, administration and development control of land in the island of Barbuda, to provide for the confirmation or otherwise of certain leases of land in Barbuda and for incidental and connected purposes.”

**4. Amendment of section 2 – Interpretation**

Section 2 of the principal Act is amended –

- (a) by repealing the definition “Barbudan” and substituting the following:
  - “Barbudan” means:
    - (i) a person born in Barbuda;

- (ii) a person, though not born in Barbuda, one or both of his or her parents was/were born in Barbuda;
- (b) by deleting the definition of “Land Registry of Barbuda;”
- (c) by deleting the definition of “the people of Barbuda”; and
- (d) by inserting in its proper alphabetical order the following new definition;  
“management” includes, the selling of parcels of land ;

### **5. Insertion of Section 2A**

The principal Act is amended by adding after section 2 the following new section as section 2A:

“2A Purpose and construction

(1) The fundamental purpose of the Act is to grant to Barbudans the right to purchase the freehold interest in land situate in Barbuda, or to obtain a leasehold interest therein in the context of the unitary state of Antigua and Barbuda.

(2) The principal Act must therefore be given such large and liberal construction in order to give effect to the true intent and purpose of the Parliament of Antigua and Barbuda, in this regard.”

### **6. Repeal and replacement of Part II of the principal Act**

Part II of the principal Act is repealed in its entirety and replaced by the following:

#### **“PART II: THE OWNERSHIP OF FREEHOLD AND LEASEHOLD INTEREST IN LAND AT BARBUDA**

##### **3. Tenure of Lands by Inhabitants of the Island of Barbuda**

(1) All lands within the Island of Barbuda are hereby vested in the Governor General on behalf of the Crown and shall be dealt with in accordance with the provisions of this Act.

(2) All persons inhabiting the Island of Barbuda shall be and are hereby declared to be tenants of the Crown; and such persons shall neither hold nor deal with any land situate within the said island save and except as hereinafter appears by the provisions of this Act and subject to any by-law made by the Council in that behalf.

(3) Notwithstanding the provisions of any other law, no person shall acquire the ownership of any piece or parcel of Crown land within Barbuda by prescription.

(4) If an inhabitant of Barbuda can show to the satisfaction of the Crown that a grant by the Crown to any other person of any interest in or over any piece or parcel of land within Barbuda has caused him any material loss in respect of any use that he has been making of that piece or parcel of land by virtue of the provisions of subsection (2) of this section, that inhabitant shall be entitled to fair compensation in respect of that loss within a reasonable time.

(5) An inhabitant of Barbuda to whom subsection (5) of this section applies shall have the right of access to a tribunal appointed by the Chief Justice to determine the amount of any compensation to which that inhabitant is entitled under this section and for the purposes of obtaining payment of that compensation.

(6) A tribunal appointed under subsection (6) of this section shall consist of a chairman who shall be a barrister or solicitor of not less than ten years standing and two other members being persons appearing to the Chief Justice to be qualified for appointment by virtue of their knowledge of and experience in Barbuda Affairs.

(7) An appeal shall lie to the High Court from any decision of a tribunal appointed under subsection (6) of this section; such appeal shall be exercisable as of right at the instance of any party to the proceedings before the tribunal and shall be final and conclusive for all intents and purposes whatsoever.

(8) The Chief Justice may make rules with respect to the practice and procedure of the High Court and a tribunal in relation to the jurisdiction conferred upon the High Court by this section or exercisable by a tribunal for the purposes of this section (including rules with respect to the time within which applications to the High Court or a tribunal may be brought).

#### 4. Procedure for the acquisition of land in Barbuda

(1) A Barbudan who desires to own a parcel of land in Barbuda may must apply to the Council in the prescribed Form in Part I of the First Schedule.

(2) The selling price for a parcel of land shall be in such amount as the Council determines after consultation with the Cabinet.

(3) Where a Barbudan has become the owner of the freehold interest in a parcel of land under this Act, no further land may be conveyed to such person, except with the approval of the Council after consultation with the Cabinet

#### 5. Leaseholds

The Cabinet may, on the recommendation of the Council grant leases to such persons who qualify for such a grant.

6. Leases for major development

(1) A person who desires land in Barbuda for the purpose of a major development, may apply to the Council for a lease in the Form prescribed by the Council.

(2) The Council may consider every application received under subsection (1) and forward same to the Cabinet with its recommendations.

(3) The Cabinet may, after consultation with the Council, grant a lease for a maximum term of 50 years or for such longer period as the Cabinet may subject to such terms and conditions as the Cabinet may deem fit.

(4) Any vesting of such a lease shall be of no legal effect, unless an application for the purpose is first submitted to the Council.

(5) An application for a lease under subsection (1), for the purpose of a major development must be accompanied with a detailed outline of the proposed major development as prepared by a quantity surveyor, architect, or any other like person.

(6) Every application made under this section shall be accepted with such fee as may be prescribed by the Minister, by regulation.”

**7. Amendment of Part III of the principal Act**

Part III of the principal Act is amended as follows –

(a) by repealing and replacing the Part heading with the following:

**“PART III: THE RIGHTS OF THE BARBUDANS”**

(b) by deleting subsection (4) of section 8.

**8. Amendment of Part IV**

Part IV of the principal Act is amended as follows –

(a) in section 11 (1)(a) by deleting the words “the administration” and substituting the words “the management and administration”.

(b) in Section 12 (1) (h) by deleting the words “Subject to section 27”.

(c) in Section 14 by the repeal of subsection (1) and replacing it with the following:

“(1) The Council may make by-laws with respect to the management, administration and development of land in Barbuda”.

**9. Amendment of Part V of the principal Act**

Part V of the principal Act is amended in Section 15 (5) by deleting the words appearing after the word “Crown” on the last line thereof and substituting a full stop.

**10. Amendment of Part VI of the principal Act**

Part VI of the principal Act is amended as follows –

(a) by repealing section 17 in its entirety and replacing it as follows:

“17. Major developments

(1) Any person seeking to carry out a major development in Barbuda shall, as a condition for the approval of his application submit to the Minister responsible for the administration of the Environmental Protection and Management Act, an environment impact assessment report in accordance with the Environmental Protection and Management Act.

(2) The Council may, with the consent of the Minister, make by-laws to levy and collect tax on major developments in Barbuda.”

(b) by repealing Section 18 in its entirety;

(c) by amending Section 19 as follows -

(i) by deleting in paragraph (b) of subsection 2 all the words appearing after the word unencumbered and placing a full stop after the said word;

(ii) by deleting paragraph (c) of subsection (2); and

(iii) by deleting subsections (3) and (4).

**11. Amendment of Part VII of the principal Act**

Part VII of the principal Act is amended as follows –

(a) in Section 20 by –

(a) inserting the words “Part 2 of “ after the words “listed in” appearing in line two; and

(b) deleting all the words appearing after the word “Crown” and substituting a full stop.

(b) in Section 21 by inserting the words “Part 2 of” after the words “listed in” appearing in line one.

(c) in Section 22(1) by-



- (i) inserting the words “Part 2 of” immediately after the words “listed in” appearing in line one thereof;
- (ii) deleting the words “for Barbuda” after Registry at the end of line 2 and placing a full stop after the said word;
- (iii) subsection (2) by deleting the words “for Barbuda” after lands at the first line thereof.

(d) in Section 24 by inserting the words “Part 2 of” immediately after the words “listed in” appearing in line three.

**12. Repeal and replacement of Part VIII of the principal Act**

Part VIII of the principal Act which comprises Section 25 is repealed and replaced by the following:

“25. Land Registry

The Land Registry established pursuant to section 4 of the Registered Land Act, Cap 374 shall have an office in Barbuda, which shall contain all deeds, registers and documents relating to land in Barbuda”.

**13. Amendment of Part IX of the principal Act**

Part IX of the principal Act is amended as follows –

- (a) by repealing Sections 26, 27, 28, and 31 in their entirety;
- (b) by repealing Section 30 in its entirety and replacing it as follows –

**“30. This Act shall bind the Crown”**

**14. Repeal and replacement of the First Schedule to the principal Act.**

This First Schedule to the principal Act is repealed and replaced by the following:

**“FIRST SCHEDULE**

Sections 4(1) and 20

**PART I**

**APPLICATION TO PURCHASE FREEHOLD**

1. I/We \_\_\_\_\_  
Name or names of applicant(s)

of \_\_\_\_\_  
address in Barbuda

make application to purchase a the freehold of a parcel of land situated in and bounded as follows:

- (a) To the north by:
- (b) To the south by:
- (c) To the east by:
- (d) To the west by:

2. The parcel contains square feet by admeasurement or square feet by estimation.

3. The Parcel is required for –

Dated this day of 20

Signature(s).....  
.....  
.....

**PART 2**  
**Existing leases confirmed**

- 1. Coco Point Barbuda
- 2. Impresa Guffanti Costuzioni Edili SRL
- 3. Sunset Hotel
- 4. Dulcina
- 5. Palm Breach Holding Company Ltd
- 6. Haylandale Ltd
- 7. Paradise Found LLC
- 8. PLH (Barbuda) Limited

Passed the House of Representatives this the day of 2017. Passed the Senate this day of 2017

*Speaker*

*President*

*Clerk to the House of Representatives*

*Clerk to the Senate*

### **EXPLANATORY MEMORANDUM**

By the Antigua and Barbuda Constitutional Order No. 1106 of 1981, Antigua and Barbuda became a unitary sovereign democratic state. Indeed, it was declared that the territory of Antigua and Barbuda shall comprise the islands of Antigua, Barbuda, and Redonda. The constitution, it was declared, is the supreme law of Antigua and Barbuda and subject to the provisions of the constitution any other law which is inconsistent with the Constitution, the constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.

Having examined the provisions of the Barbuda Land Act 2017 and having been satisfied that some of the provisions thereof were inconsistent with the provisions of the Constitution, the Government considered it a duty to effect the necessary changes to bring Barbuda Land Act in conformity with the Constitutional provisions in the Antigua and Barbuda Constitutional Order No. 1106 of 1981 and to maintain the status of a Unitary Sovereign Democratic State.

Moreover, the Government recognises its obligations to all citizens of Antigua and Barbuda, and in particular its duty to ensure that all citizens desirous of purchasing freehold property in the state have a fundamental right, and an opportunity to do so. As the law now stands no person has the right to own freehold in Barbuda. This situation is considered untenable in a modern democratic state and should not be allowed to continue.

The Government's position in this regard, is supported by section 5(2) of the Barbuda Act, Cap 42, which was enacted in 1904. It provides as follows:

“Nothing in this section shall be construed as precluding the grant by the Crown of any interest in or over any piece or parcel of land within Barbuda to any person whether or not that person is an inhabitant of Barbuda.”

The fundamental purposes for the enactment of the Barbuda Land (Amendment) Act, 2017 are inter alia:

1. To repeal the provisions of the Barbuda Land Act considered to be unconstitutional and bring it in conformity with the Constitution of Antigua and Barbuda;
2. To create the legal entitlement for Barbudans and as noted in subsection (2) of section 5 of the Barbudan Land Act Cap. 42, to purchase freehold interest in land which complements the existing right to obtain leases;

3. To bring all residents of the unitary State of Antigua and Barbuda on the same footing with respect to the dealing in freehold land.
4. To give all owners of unencumbered land the flexibility to engage in various dealings in land.
5. To give to all residents a type of property (real estate) which universally appreciates over time, especially where other owners are improving their property in the same area.
6. To give to all residents an opportunity to further develop the Unitary State of Antigua and Barbuda in terms of real property.

#### The Clauses

**Clause 1** gives the short title to the Bill, the change in focus as far as Barbuda is concerned.

**Clause 3** deals with the replacement of the long title to the principal Act. In the view of the Government, the existing law relating to ownership of land in Barbuda has never been in doubt to require confirmation. The Barbuda Land Act Cap. 42 passed on 30th April, 1904 is unequivocally clear as to the person or authority to whom the ownership of all land in Barbuda is vested, namely the Governor General on behalf of the Crown. The Barbuda Land Act 2007 does not confirm this situation. It rather deprives the Governor General of the Ownership of the land vested in him on behalf of the Crown by the Barbuda Act of 1904 and, instead vested all such lands in the people of Barbuda to hold in common.

**Clause 4** in amending section 2 of the principal Act seeks to add the important definition of “management”.

**Clause 5** inserts new section 2A. This provision acknowledges the intent of the Parliament, and directs that full effect be given to the fundamental focus of the legislation to enable the purposes of the Act as specified out in the bill to be fulfilled.

**Clauses 6:** Given the new focus of the principal Act, section 4 and 5 of Part II of the Barbuda Act Cap. 42 which was repealed in its entirety are re-enacted with modification.

**Clause 12** recognises the existence of a Unitary State with one Land Registry and a branch office to be established on the island of Barbuda. It seeks to link land transactions in Barbuda into the Land Registry established under section 4 of the Registered Land Act, Cap. 374 for the purpose of enabling land transactions in Barbuda to be registered under the provisions of the Registered Land Act of Antigua and Barbuda.

**Clause 13:** ensures that all laws apply to all areas of Antigua and Barbuda as a Unitary State. It merely reflects the true position in law and its application in the Unitary State of Antigua and Barbuda. It also removes the unconstitutionality of the provisions contained in section 31 of the principal Act.

**Clause 14** involves repealing and replacing the First Schedule to the principal Act. This involves the creation of two parts under the Schedule. Part I prescribes the application to purchase freehold; while Part II of the said Schedule now reproduces the “Existing leases confirmed”, as before with two additions thereto.

Hon. Arthur Nibbs  
Minister of Agriculture, Lands,  
Fisheries and Barbuda Affairs