

Zimbabwe

Prescription Act

Chapter 8:11

Legislation as at 31 December 2016

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Prescription Act (Chapter 8:11)

Contents

Part I – Preliminary	1
1. Short title	1
2. Interpretation	1
3. Application of Act	1
Part II – Acquisition of ownership of things by prescription	1
4. Acquisition of things by prescription	1
5. Involuntary loss of possession	1
6. When completion of prescription delayed	2
7. Judicial interruption of prescription	2
8. Prescription uncompleted at 1st January, 1976	2
Part III – Acquisition and extinction of servitudes by prescription	3
9. Application of Part III	3
10. Acquisition of servitudes by prescription	3
11. Extinction of servitudes	3
12. Application of portion of Part II to this Part	3
Part IV – Prescription of debts	4
13. Debts to which Part IV applies	4
14. Extinction of debts by prescription	4
15. Periods of prescription of debts	4
16. When prescription begins to run	5
17. When completion of prescription delayed	5
18. Prescription interrupted by acknowledgment of liability	6
19. Judicial interruption of prescription	6
Part V – General	7
20. Prescription to be raised in pleadings	7

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Prescription Act Chapter 8:11

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AN ACT to provide for the acquisition of ownership of things by prescription, the acquisition and extinction of servitudes by prescription and the extinction of debts by prescription; and to make provision for matters connected therewith.

Part I – Preliminary

1. Short title

This Act may be cited as the Prescription Act *[Chapter 8:11]*.

2. Interpretation

In this Act—

“**debt**”, without limiting the meaning of the term, includes anything which may be sued for or claimed by reason of an obligation arising from statute, contract, delict or otherwise.

3. Application of Act

- (1) This Act shall bind the State.
- (2) In so far as any right or obligation of any person in relation to any other person is governed by customary law this Act shall not apply.

Part II – Acquisition of ownership of things by prescription

4. Acquisition of things by prescription

Subject to this Part and Part V, a person shall by prescription become the owner of a thing which he has possessed openly and as if he were the owner thereof for—

- (a) an uninterrupted period of thirty years; or
- (b) a period which, together with any periods for which such thing was so possessed by his predecessors in title, constitutes an uninterrupted period of thirty years.

5. Involuntary loss of possession

The running of prescription shall not be interrupted by involuntary loss of possession if—

- (a) possession is regained at any time by means of legal proceedings instituted within six months after such loss for the purpose of regaining possession; or

- (b) possession is lawfully regained in any other way within one year of such loss.

6. When completion of prescription delayed

(1) If—

- (a) the person against whom the prescription is running is a minor or is insane or is a woman whose separate property is controlled by her husband by virtue of his marital power or is a person under curatorship or is a person whose behaviour or physical or mental condition justifies his being placed under curatorship or who is prevented by superior force or any enactment or order of court from interrupting the running of prescription in terms of section seven; or
- (b) the person in favour of whom the prescription is running is outside Zimbabwe or is married to the person against whom the prescription is running or is a member of the governing body of a juristic person against whom the prescription is running; or
- (c) the person against whom or in favour of whom the prescription is running is deceased and an executor of the estate in question has not yet been appointed;

and the period of prescription would, but for this subsection, be completed before or on, or within three years after, the date on which the relevant impediment referred to in paragraph (a), (b) or (c) has ceased to exist, the period of prescription shall not be completed before the expiration of the period of three years which follows that date.

- (2) Subject to subsection (1), the period of prescription in relation to fideicommissary property shall not be completed against a fideicommissary before the expiration of the period of three years which follows the date on which the right of that fideicommissary to that property vested in him.

7. Judicial interruption of prescription

(1) In this section—

“process” includes—

- (a) a petition; or
 - (b) a notice of motion; or
 - (c) a rule nisi; or
 - (d) any document whereby legal proceedings are commenced.
- (2) The running of prescription shall, subject to subsection (3), be interrupted by the service on the possessor of the thing in question of any process whereby any person claims ownership in that thing.
- (3) Any interruption in terms of subsection (2) shall lapse, and the running of prescription shall not be deemed to have been interrupted, if the person claiming ownership in the thing in question—
- (a) does not successfully prosecute his claim under the process in question to final judgment; or
 - (b) successfully prosecutes his claim under the process in question to final judgment, but abandons the judgment or the judgment is set aside.
- (4) If the running of prescription is interrupted in terms of subsection (2), a new period of prescription shall commence to run, if at all, only on the date on which final judgment is given.

8. Prescription uncompleted at 1st January, 1976

A prescription which has not been completed at the 1st January, 1976, shall be governed by this Part in respect of the course of the unexpired portion of the period of prescription.

Part III – Acquisition and extinction of servitudes by prescription

9. Application of Part III

This Part shall not apply to public servitudes.

10. Acquisition of servitudes by prescription

Subject to this Part and Part V, a person shall acquire a servitude by prescription if he has openly and as though he were entitled to do so exercised the rights and powers which a person who had a right to such a servitude would be entitled to exercise—

- (a) for an uninterrupted period of thirty years; or
- (b) in the case of a praedial servitude, for a period which, together with any periods for which such rights and powers were so exercised by his predecessors in title, constitutes an uninterrupted period of thirty years.

11. Extinction of servitudes

A servitude shall be extinguished by prescription if it has not been exercised—

- (a) for an uninterrupted period of thirty years; or
 - (b) in the case of a praedial servitude, for a period which, together with any periods for which such servitude has not been exercised by the predecessors in title of the owner of the dominant tenement, constitutes an uninterrupted period of thirty years.
- (2) For the purposes of subsection (1), a negative servitude shall be deemed to be exercised as long as nothing which impairs the enjoyment of the servitude has been done on the servient tenement.

[Please note: numbering as in original.]

12. Application of portion of Part II to this Part

- (1) Sections five, six, seven and eight shall apply, *mutatis mutandis*, to the acquisition of a servitude by prescription.
- (2) Sections six, seven and eight shall apply, *mutatis mutandis*, to the extinction of a servitude by prescription.
- (3) For the purposes of the application of subsection (2) of section seven to the acquisition or extinction of a servitude by prescription, any reference therein to—
 - (a) the possessor of the thing, shall be construed as a reference to the person in whose favour the prescription is running;
 - (b) a claim to the ownership in the thing, shall be construed as a reference to a claim for the termination of the exercise of the rights and powers or of the breach of the servitude, as the case may be, by virtue of which the prescription is running.

Part IV – Prescription of debts

13. Debts to which Part IV applies

- (1) This Part shall, save in so far as it is inconsistent with any enactment which—
 - (a) provides for a specified period within which—
 - (i) a claim is to be made; or
 - (ii) an action is to be instituted;in respect of a debt; or
 - (b) imposes conditions on the institution of an action for the recovery of a debt;apply to any debt arising on or after the 1st January, 1976.
- (2) Any law which immediately before the 1st January, 1976, applied to the prescription of a debt which arose before that date shall continue to apply to the prescription of such debt in all respects as if this Act had not come into operation.

14. Extinction of debts by prescription

- (1) Subject to this Part and Part V, a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant enactment applies in respect of the prescription of such debt.
- (2) A subsidiary debt which arose from a principal debt or a debt which is dependent upon a principal debt shall be extinguished by the prescription of the principal debt.
- (3) Notwithstanding subsections (1) and (2)—
 - (a) payment by the debtor of a debt after it has been extinguished by prescription in terms of this section shall be deemed to be payment of the debt;
 - (b) an agreement made by the debtor to pay a debt after the debt has been extinguished by prescription shall be enforceable;whether or not the debtor knew at the time that he made the payment or the agreement that the debt had been extinguished by prescription.

15. Periods of prescription of debts

The period of prescription of a debt shall be—

- (a) thirty years, in the case of—
 - (i) a debt secured by mortgage bond;
 - (ii) a judgment debt;
 - (iii) a debt in respect of taxation imposed or levied by or under any enactment;
 - (iv) a debt owed to the State in respect of any tax, royalty, tribute, share of the profits or other similar charge or consideration payable in connection with the exploitation of or the right to win minerals or other substances;
- (b) fifteen years, in the case of a debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State to the debtor unless a longer period applies in respect of the debt concerned in terms of paragraph (a);

- (c) six years in the case of—
 - (i) a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract;
 - (ii) a debt owed to the State;unless a longer period applies in respect of the debt concerned in terms of paragraph (a) or (b);
- (d) except where any enactment provides otherwise, three years, in the case of any other debt.

16. When prescription begins to run

- (1) Subject to subsections (2) and (3), prescription shall commence to run as soon as a debt is due.
- (2) If a debtor wilfully prevents his creditor from becoming aware of the existence of a debt, prescription shall not commence to run until the creditor becomes aware of the existence of the debt.
- (3) A debt shall not be deemed to be due until the creditor becomes aware of the identity of the debtor and of the facts from which the debt arises:

Provided that a creditor shall be deemed to have become aware of such identity and of such facts if he could have acquired knowledge thereof by exercising reasonable care.

17. When completion of prescription delayed

- (1) If—
 - (a) the creditor is a minor or is insane or is a person under curatorship or is a person whose behaviour or physical or mental condition justifies his being placed under curatorship or is prevented by superior force or any enactment or order of court from interrupting the running of prescription in terms of subsection (2) of section nineteen or is a juristic person and the debtor is a member of the governing body of such juristic person; or
 - (b) the creditor and the debtor are married to each other or are partners and the debt is a debt which arose out of the partnership relationship; or
 - (c) the debtor is outside Zimbabwe; or
 - (d) the debt is the subject matter of a dispute submitted to arbitration, or is the subject matter of a claim filed against the estate of a debtor who is deceased or against the insolvent estate of a debtor or against a company in liquidation or against an applicant under the Agricultural Assistance Scheme set out in the Third Schedule to the Agricultural Finance Corporation Act [Chapter 18:02]; or
 - (e) the creditor or the debtor is deceased and an executor of the estate in question has not yet been appointed;

and the period of prescription would, but for this subsection, be completed before or on, or within one year after, the date on which the relevant impediment referred to in paragraph (a), (b), (c), (d) or (e) has ceased to exist, the period of prescription shall not be completed before the expiration of the period of one year which follows that date.

- (2) A debt which arises from a contract and which would, but for this subsection, become prescribed before a reciprocal debt which arises from the same contract becomes prescribed, shall not become prescribed before the reciprocal debt becomes prescribed.
- (3) A debt arising out of an advance or loan made by an insurer, whether in respect of a life policy as defined in section 3 of the Insurance Act [Chapter 24:07] issued by that insurer or secured solely by the cession of such a life policy to the insurer, shall not become prescribed before the debt arising out of such life policy becomes prescribed.

18. Prescription interrupted by acknowledgment of liability

- (1) The running of prescription shall be interrupted by an express or tacit acknowledgment of liability by the debtor.
- (2) If the running of prescription is interrupted in terms of subsection (1), prescription shall commence to run afresh—
 - (a) from the date on which the interruption takes place; or
 - (b) if at the time of the interruption or at any time thereafter the parties postpone the due date of the debt, from the date upon which the debt again becomes due.

19. Judicial interruption of prescription

- (1) In this section—

“process” includes—

 - (a) a petition;
 - (b) a notice of motion;
 - (c) a rule *nisi*;
 - (d) a pleading in reconvention;
 - (e) a third party notice referred to in any rule of court;
 - (f) any document whereby legal proceedings are commenced.
- (2) The running of prescription shall, subject to subsection (3), be interrupted by the service on the debtor of any process whereby the creditor claims payment of the debt.
- (3) Unless the debtor acknowledges liability, the interruption of prescription in terms of subsection (2) shall lapse and the running of prescription shall not be deemed to have been interrupted, if the creditor—
 - (a) does not successfully prosecute his claim under the process in question to final judgment; or
 - (b) successfully prosecutes his claim under the process in question to final judgment, but abandons the judgment or the judgment is set aside.
- (4) If—
 - (a) the running of prescription is interrupted in terms of subsection (2); and
 - (b) the debtor acknowledges liability; and
 - (c) the creditor does not prosecute his claim to final judgment;

prescription shall commence to run afresh from the date on which the debtor acknowledges liability or, if at the time when the debtor acknowledges liability or at any time thereafter the parties postpone the due date of the debt, from the date upon which the debt again becomes due.
- (5) If—
 - (a) the running of prescription is interrupted in terms of subsection (2); and
 - (b) the creditor successfully prosecutes his claim under the process in question to final judgment; and

(c) the interruption does not lapse in terms of subsection (3);

prescription shall commence to run afresh on the date on which the judgment of the court becomes executable.

- (6) If any person is joined as defendant on his own application, the process whereby the creditor claims payment of the debt shall be deemed to have been served on such person on the date of such joinder.

Part V – General

20. Prescription to be raised in pleadings

- (1) No court shall of its own motion take notice of prescription.
- (2) A party to litigation who invokes prescription shall do so in the relevant documents filed of record in the proceedings:

Provided that a court may allow prescription to be raised at any stage of the proceedings.