

What you must prove to get Prescriptive title:

You must convince the court that for a period longer than 12 years:

- you have occupied and controlled the whole piece of land you claim; and
- you have excluded the legal owner from the land; and
- you are not occupying it with the legal owner's permission, as their tenant, family, friend, or otherwise; and
- you have treated the land as your own and done things on it like an owner would; and
- that the owner or anyone passing by could see that you are on the land and treating it like it is yours.

Note: Documents showing you occupied the land for more than 12 years may be helpful to your case.

Is it Transport or Certificate of Title Land?

Lands in Guyana are controlled under either the Deeds Registry System or the Land Registry System. People who own land may have an official document to prove they own it - a Transport or 999 year lease, or a Certificate of Title. Which one they have depends on where the land is. If the land is in a Deeds Registry system area, the owner would have a *Transport or a Lease*. If the land is in a Land Registry system area the owner would be given a *Certificate of Title*. Lands held by Transport or Lease and lands held by Certificate of Title can be claimed by prescription but the ways and rules of applying for them are different.

How to apply for Lands held by Transport:

Title to Land (Prescription and Limitation) Act Cap.60:02
The Rules of the High Court (Declaration of Title) 1923

If the land you are claiming is land owned by a transport, or by a Lease then with a lawyers help, you must:

- file a document called a 'petition' at the High Court. In the petition you set out your history in relation to the land, including how you got onto the land and all the things you have done that entitle you to claim it by prescription.
- get affidavits from people in the area confirming that you have been in open occupation for more than 12 years.
- attach a plan showing the boundaries of the land and what you have on it (an occupational survey).
- attach any documents that show you have been occupying the land for a long time.

What happens next:

You must :

- give copies of your petition to the legal owner of the land, to all occupiers of the land, and to all the owners and occupiers of the neighbouring lands (this is called service).
- You must also publish a notice that you are applying for the land. That notice must appear in both the Official Gazette (the government newspaper) and another popular newspaper three Saturdays in a row. This is to allow the neighbours to ensure that you aren't claiming portions of their land, and for the legal owner to know you are claiming their land and to come to court to defend their ownership.
- If the owner wishes to defend their title they may file an 'opposition' in which they set out their story about how you came to be on the land and why you should not be given legal title to it.

The Court Hearing:

Your application will likely be heard at Land Court by a Commissioner of Title who is by law the Judge of the Land Court. You will attend Court and tell your story to the Judge. The Judge will listen to you, read your story set out in your petition, look at the documents you have presented that help show you have been occupying the land for more than 12 years and treating it like it was your own. The Judge may visit the land to see for herself how you occupy it. If the Judge is satisfied that it is more likely than not that you have been in sole open possession of the land for more than 12 years without the owner's consent or agreement, she may order that you get legal title to it.

If the owner has objected and filed an opposition the Judge will also listen to the owner's story before deciding. It is the Judge's job to determine the truth. The Judge in coming to a decision whether you have occupied openly without consent for more than 12 years must look at both parties, assess whether they are telling the truth and assess the evidence and documents they have handed to the court.

If the Judge orders that you get legal title to the land, you may then use that court order to apply to the Registrar of Deeds for a Transport or a Lease (the official document that says who owns the land) in your name.

GAWL 2021 Revised Factsheet

You will find copies of this factsheet at :

- Guyana Association of Women Lawyers Facebook page
- Supreme Court website : <https://supremecourt.gy>
- Legal Aid Clinic website - <https://www.legalaid.org.gy>

How to apply for lands held by Certificate of Title:

Title to Land (Prescription and Limitation) Act Cap. 60:02
The Land Registry Act Cap. 5:02

If the land you are claiming is held by a Certificate of Title you must:

- file an application and an affidavit at the Land Registry. In the affidavit you set out your history in relation to the land, including how you got onto the land and all the things you have done that entitle you to claim it by prescription.
- you must also get affidavits from people in the area confirming that you have been visibly and openly in occupation for more than 12 years.
- with the application you attach a plan showing the boundaries of the land and what you have on it (an occupational survey); and
- attach any documents that show you have been occupying the land for a long time.

What happens next:

Your application will be heard at Land Court by a Commissioner of Title who is by law the Judge of the Land Court. You will attend Court and tell your story to the Judge. The Judge will listen to you, read your story set out in your application, look at the documents you have presented that help show you have been occupying the land for more than 12 years and treating it like it was your own. The Judge may visit the land to see for herself how you occupy it.

If the Judge believes that you have been in sole open possession of the land for more than 12 years without the owner's consent or agreement, she will do two things.

First, she will order that you publish a notice that you are applying for the land. That notice must appear in one Saturday issue of both the Official Gazette (the government newspaper) and another popular newspaper. Second, she will order that you give copies (this is called service) of your application to the legal owner of the land, all occupiers of the land, and all the owners and occupiers of the neighbouring lands. This is to allow other people who may be on the land with you and the neighbours to ensure that you aren't claiming portions of their land, and for the legal owner to know you are claiming their land and to come to court to defend their ownership. You must wait one full year after the publication for the application to be heard.

If the owner wishes to defend their title they may file an objection and attach proof of their ownership. If the legal owner objects and proves to the Judge that they have a Certificate of Title to the land you claim the Judge *must* dismiss your application. Your application must be dismissed even if it is true that you have occupied and used the land as if it were yours for more than 12 years.

If the owner does not appear and object, *and* if you prove to the Judge that you have occupied the land openly without consent for more than 12 years, then the Judge may order that you get legal title to the land.

If the Judge orders that you get legal title to the land, you must publish a notice of that order in the newspaper. If no one contests that order within 28 days then the Land Court will give you a stamped court order directing the Registrar of Lands to record you as the legal owner. You may then apply to the Land Registry for a Certificate of Title naming you the legal owner – the Registered Proprietor.

GUYANA ASSOCIATION OF WOMEN LAWYERS



Women Supporting Justice and Equality

PRESCRIPTIVE TITLE

A person who has occupied someone else's land (or house and land) for more than 12 years, without the owner's permission, may be able to become the legal owner of that land.

The law giving this right is the *Title to Land (Prescription and Limitation) Act, Chapter 60:02*. You may find that act on Ministry of Legal Affairs website [<https://mola.gov.gy>] under the tab 'Guyana's Laws'.

Getting legal title is not automatic, you must go to the Court to claim the land and convince the Court you are entitled to it. The law setting out how to apply for legal title to the land is set out in:

The Rules of the High Court (Declaration of Title) 1923,
The Land Registry Act, Chapter 5:02

This factsheet gives you a summary of what the law is, how to apply, what you must prove, and what is likely to happen at Court. It gives general information only and does not take the place of legal advice.