

**21 GCA REAL PROPERTY
CH. 39 MARKETABLE TITLE ACT**

**CHAPTER 39
MARKETABLE TITLE ACT**

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§ 39101. Title.

This Chapter may be cited as the *Marketable Title Law*.

SOURCE: CC §1218.

§ 39102. Unbroken Chain of Title of Record Since January 1, 1935.

Any person having the legal capacity to own land in the Territory of Guam, who has an unbroken chain of title to any interest in land by himself and his immediate and remote grantors since January 1, 1935, and is in possession of such land, shall be deemed to have a marketable record title to such interests, subject only to such claims thereto and defects of title as are not extinguished or barred by the application of the provisions of this Chapter and instruments which have been recorded since January 1, 1935.

SOURCE: CC §1218.1.

COURT DECISIONS: Guam Marketable Title Act does not require title holder who is in undisputed possession of much of the tract in issue actually to possess every square foot of the property in order to have marketable title. *Aguon et al. v. Calvo et al.*, CA9 (1991) 951 F.2d 1131.

§ 39103. Definitions.

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(a) A *person* shall be deemed to have the unbroken chain of title to an interest in land as such term is used in this Chapter when the official public records in the possession of the recorder of the Territory of Guam disclose a conveyance or other title transaction dated and recorded prior to January 1, 1935, which conveyance or other title transaction purports to create such interest in such person or his immediate or remote grantors, with nothing appearing or record purporting to divest such person and his immediate or remote grantors of such purported interest.

(b) *Title transaction* as used herein means any transaction affecting Title to real property, including the issuance of a certificate of title or certificate of guaranteed claim, title by will or descent from any person who held title of record at the time of his death, title by a decree or order of any court, title by tax deed, and title by trustee's, referee's, guardian's executor's, master's in chancery, and marshal's or similar officer's deed, as well as by direct conveyance.

SOURCE: CC §1218.2.

§ 39104. Notice of Claim: Limitation.

Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of all interest, claims and charges whatsoever, the existence of which depends in whole or in part upon any act, transaction, event or omission that occurred prior to January 1, 1935, whether such interest, claim or charge be evidenced by a recorded instrument or otherwise, and all such interests, claims and charges affecting such interest in real property shall be barred and not enforceable in law or in equity, unless any person making such claim or asserting such interest or charge shall, on or before August 1, 1960, file for record a notice in writing, duly verified by oath, setting forth the nature of his claim, interest or charge; and no disability or lack of knowledge of any kind on the part of anyone shall operate to extend his time for filing such notice of claim beyond August 1, 1960.

SOURCE: CC §1218.3.

§ 39105. Notice of Claim:

Who May File. The notice of claim mentioned in § 39104 may be filed for record by the claimant of any interest therein described or by any other person acting on behalf of a claimant who is under disability, unable to assert a claim on his behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such claim for record.

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SOURCE: CC §1218.4.

§ 39106. Notice of Claim: Requisites; Recorded.

The notice of claim must be filed for record with the recorder and must set forth the legal description of the land affected by such claim, together with a state of the nature of the claim, charge or interest asserted, which description shall be set forth in particular terms and not by general inclusions.

SOURCE: CC §1218.5.

§ 39107. Recorder: Notices; Recording.

The recorder shall accept all such notices and shall enter, index and record such notices in the same manner as notices of lis pendens.

SOURCE: CC §1218.6.

§ 39108. Possession: Affidavit; Recording.

For the purpose of this Chapter, the fact of the possession of real property referred to in § 39102 may be shown of record by one or more affidavits which shall contain the legal description of the real property referred to and show that the record title holder is upon the date thereof in possession of such real property. The recorder shall record such affidavit or affidavits in the same manner as other instruments affecting real property. No such affidavits of possession shall be filed as to any lands prior to August 1, 1960, nor after that date as to any lands as to which a notice of claim under the provision of this Chapter shall have been filed.

SOURCE: CC §1218.7.

§ 39109. Limitation of Actions: Affidavits; Prima Facie Evidence.

Nothing contained in this Chapter shall be construed to extend the period for bringing any action or doing any act required under any existing statute of limitations, nor to affect the operation of any existing laws governing the recording or the failure to record any instrument affecting lands. When an affidavit of possession pursuant to § 39108 has been filed and recorded as herein provided, the record thereof, or the record of a duly certified copy thereof, shall be prima facie evidence of the facts therein stated, for the purposes of this Chapter.

SOURCE: CC §1218.8.

§ 39110. Notices: Slander of Titles; Damages.

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No person shall use the privilege of filing notices of claims hereunder for the purposes of slandering the title to land and in any action brought for the purpose of quieting title to land, or to register land under the Land Title Registration Law, if the court shall find that any person has filed a notice of claim for the purpose only of slandering title to such land, he shall award the plaintiff or petitioner all the costs of such action, including attorney's fees to be fixed and allowed to the plaintiff or petitioner by the court, and all damages the plaintiff or petitioner may have sustained as the result of such notice of claim having been filed for record.

SOURCE: CC §1218.9.

§ 39111. Act: Construction.

This Chapter shall be construed to effect the legislative purpose of simplifying the facilitating of land title transactions by allowing persons to deal with the record title owner as defined herein; to rely upon the record title covering a period prior to January 1, 1935, and to that end to bar all claims that affect or may affect the interest thus dealt with, the existence of which claim arises out of or depends upon any act, transaction, event or omission antedating January 1, 1935, unless a notice of such claim as provided in this Chapter shall have been duly filed for record. The claims hereby barred shall mean any and all interests of any nature whatever, however denominated, whether such claims are asserted by a person sui juris or under disability, whether such person is, or has been, within or without the Territory of Guam, and whether such person is natural, corporate or private; except that this Chapter shall not be deemed to affect the right, title or interest of the United States of America or the Territory of Guam to any lands in the Territory of Guam.

SOURCE: CC §1218.10.

§ 39112. Acts Unnecessary to Make Real Estate Title Marketable: Ten-Year Limitation.

It shall not be necessary to perform any of the following acts to correct the record with respect to the title to real estate, in order to make such title marketable, in any instance where the defect or omission in the record has existed of record for a period of more than ten (10) years and recorder's records do not show that any action has been brought with reference thereto, to wit:

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(a) Procure and record, or show on the abstract of title, a release of lis pendens where it appears from the recorder's records that the litigation has been concluded;

(b) Procure and record, or show on the abstract of title, a satisfaction of a real estate mortgage or other lien when the recorder's records show that an action or proceeding to foreclose such mortgage or other lien has been concluded either by a sale and transfer of the affected property pursuant thereto, or that the mortgage or other lien has been paid in full;

(c) Procure and record, or show on the abstract of title, a certificate of authentication as to the official status of a Notary Public or other officer of this territory, including those existing under the Naval Government of Guam, or any other territory, state, country, or the District of Columbia, who as appears from the record has taken an acknowledgment of a deed mortgage, or other instrument affecting the title to real estate; and at all times after ten (10) years from the date of his signature such Notary Public or other officer shall be presumed to have been duly authorized to execute such instrument in the capacity therein stated;

(d) Procure and record, or show on the abstract of title, an affidavit or other showing that a person named in the record as grantee, grantor, or otherwise, constitutes one and the same person as another grantee, grantor, or other person in the chain of title in any of the following instances: where a full first name and middle initial, full middle name and first initial, or full first and middle names of the grantee, distributee, or otherwise, have been used and later, as grantor or otherwise, the initials of one or more of the same names have been used; where the initials of the first and middle names of the grantee, distributee or otherwise have been used and later, as grantor or otherwise, the full first name and middle initial, the full middle name and first initial, or the full first and middle names have been used; where the first or middle or both names of the grantee, distributee or otherwise, is or are abbreviated and later as grantor or otherwise, such name or names is or are spelled in full; or where the first or middle or both names of the grantee, distributee or otherwise is or are spelled in full and later as grantor or otherwise, such name or names is or are abbreviated; and in all the instances mentioned in this paragraph, in the absence of some showing in the recorder's records to the contrary, such names shall be presumed to be that of one and the same person notwithstanding such discrepancies therein;

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(e) Procure and record, or show on the abstract of title, an affidavit of identity where the name in the chain of title are idem sonans, although differently spelled.

SOURCE: CC §1218.11.

§ 39113. Acts Unnecessary to Make Real Estate Title Marketable: Twenty-Year Limitation.

It shall not be necessary to perform any of the following acts to correct the record with respect to the title of real estate, in order to make such title marketable, in any instances where the defect or omission has existed of record for more than a period of twenty (20) years, a missing original instrument was filed more than twenty (20) years previously, and the record does not show that any action has been commenced with reference thereto, to wit:

(a) Make any showing or explanation as to the absence of a corporate, Notary or other official seal of any kind; and after twenty (20) years from the date of the instrument, such person purporting to act as a corporate official, Notary Public or other official shall be presumed to have been authorized to act in the same manner as though the proper seal had been affixed to said instrument;

(b) Make any showing or explanation as to interest or lack of interest of anyone encumbering real estate to which the recorder's records do not show such person to have had title;

(c) Make any showing or explanation where a reference has been made in any instrument to a mortgage, and no mortgage answering such description is shown to have been of record at such time;

(d) Make any showing or explanation as the marital status of a person by reason of the omission of a description of such marital status from either the body of the instrument or the acknowledgment;

(e) Obtain any conveyance, release or explanation by reason of an option which, under its terms, required that it be exercised more than twenty (20) years theretofore;

(f) Undertake any court proceedings or make any showing or explanation for the disappearance, loss or destruction of an original instrument when the entries in the book or books in the possession of the recorder show that the missing instrument was filed, the nature of the instrument, the number of the instrument and the date when filed, the parties

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to the instrument, the interest in real estate affected by the instrument, and a description of the land sufficient for its identification in the chain of title. In such case the recorder's records shall have the same legal effect as the missing instrument would have had.

SOURCE: CC §1218.12.
