



Republic of Namibia
Annotated Statutes

Prescription Act 68 of 1969 (RSA)

(RSA GG 2421)

brought into force in South Africa and South West Africa
on 1 December 1970 by RSA Proc. R.284/1970 (RSA GG 2922)
(see section 21 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: Section 21 states “This Act and any amendment thereof which may be made from time to time, shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section 38(5) of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968).”

TRANSFER TO SOUTH WEST AFRICA: Although this Act makes no reference to any minister, because of its subject matter it probably fell under the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. Support for this assumption can be found in the fact that this Act is one of the laws listed in the South African *Justice Laws Rationalisation Act 18 of 1996* (RSA GG 17129). If this assumption is correct, the only South African amending act after the date of transfer and prior to Namibian independence – the *Prescription Amendment Act 11 of 1984* (RSA GG 9087) – did not apply to South West Africa because it was not made expressly so applicable.

as amended by

General Law Amendment Act 62 of 1973 (RSA) (RSA GG 3947)

deemed to have come into force in relevant part
on 1 December 1970 (section 41(2) of Act 62 of 1973)

General Law Amendment Act 57 of 1975 (RSA) (RSA GG 4760)

came into force in relevant part (section 31) on date of publication: 20 June 1975

Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898)

deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979)

Married Persons Equality Act 1 of 1996 (GG 1316)

brought into force on 15 July 1996 by GN 154/1996 (GG 1340)

ACT

To consolidate and amend the laws relating to prescription.

(English text signed by the State President)
(Assented to 23rd May, 1969)

ARRANGEMENT OF SECTIONS

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BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:-

CHAPTER I

ACQUISITION OF OWNERSHIP BY PRESCRIPTION

Acquisition of ownership by prescription

1. Subject to the provisions of this Chapter and of Chapter IV, 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 an uninterrupted period of thirty years or for 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.

Involuntary loss of possession

2. The running of prescription shall not be interrupted by involuntary loss of possession if 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 if possession is lawfully regained in any other way within one year after such loss.

Completion of prescription postponed in certain circumstances

3. (1) If -

(a) the person against whom the prescription is running is a minor or is insane, or is a person under curatorship, or is prevented by superior force from interrupting the running of prescription as contemplated in section 4; or

[paragraph (a) amended by Act 1 of 1996]

(b) the person in favour of whom the prescription is running is outside the Republic (including the territory of South-West Africa), 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; and

(c) the period of prescription would, but for the provisions of this subsection, be completed before or on, or within three years after, the day on which the relevant impediment referred to in paragraph (a) or (b) has ceased to exist,

the period of prescription shall not be completed before the expiration of a period of three years after the day referred to in paragraph (c).

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

Judicial interruption of prescription

4. (1) The running of prescription shall, subject to the provisions of subsection (2), be interrupted by the service on the possessor of the thing in question of any process whereby any person claims ownership in that thing.

(2) Any interruption in terms of subsection (1) 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 does not successfully prosecute his claim under the process in question to

final judgment or if he does so prosecute his claim but abandons the judgment or the judgment is set aside.

(3) If the running of prescription is interrupted as contemplated in subsection (1), a new period of prescription shall commence to run, if at all, only on the day on which final judgment is given.

(4) For the purposes of this section “process” includes a petition, a notice of motion, a rule *nisi* and any document whereby legal proceedings are commenced.

Application of this Chapter to a prescription not completed at the commencement of this Act

5. A prescription which has not been completed at the commencement of this Act, shall be governed by the provisions of this Chapter in respect of the course of the unexpired portion of the period of prescription.

CHAPTER II

ACQUISITION AND EXTINCTION OF SERVITUDES BY PRESCRIPTION

Acquisition of servitudes by prescription

6. Subject to the provisions of this Chapter and of Chapter IV, 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 has a right to such servitude is entitled to exercise, for an uninterrupted period of thirty years or, 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.

Extinction of servitudes by prescription

7. (1) A servitude shall be extinguished by prescription if it has not been exercised for 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.

Application of certain provisions of Chapter I to the acquisition and extinction of servitudes by prescription

8. (1) The provisions of sections 2, 3, 4 and 5 shall apply *mutatis mutandis* to the acquisition of a servitude by prescription.

(2) The provisions of sections 3, 4 and 5 shall apply *mutatis mutandis* to the extinction of a servitude by prescription.

(3) For the purposes of the application of the provisions of section 4(1) in relation to the acquisition or extinction of a servitude by prescription, any reference therein to the possessor of the thing shall be construed as a reference to the person in whose favour the prescription is running; and any reference therein to 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.

This Chapter not applicable to public servitudes

9. The provisions of this Chapter shall not apply to public servitudes.

CHAPTER III

PRESCRIPTION OF DEBTS

Extinction of debts by prescription

10. (1) Subject to the provisions of this Chapter and of Chapter IV, a debt shall be extinguished by prescription after the lapse of the period which in terms of the relevant law applies in respect of the prescription of such debt.

(2) By the prescription of a principal debt a subsidiary debt which arose from such principal debt shall also be extinguished by prescription.

(3) Notwithstanding the provisions of subsections (1) and (2), payment by the debtor of a debt after it has been extinguished by prescription in terms of either of the said subsections, shall be regarded as payment of a debt.

Periods of prescription of debts

11. The periods of prescription of debts shall be the following:
- (a) thirty years in respect of -
 - (i) any debt secured by mortgage bond;
 - (ii) any judgment debt;
 - (iii) any debt in respect of any taxation imposed or levied by or under any law;
 - (iv) any debt owed to the State in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances;
 - (b) fifteen years in respect of any 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 in question in terms of paragraph (a);
 - (c) six years in respect of a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract, unless a longer period applies in respect of the debt in question in terms of paragraph (a) or (b);
 - (d) save where an Act of Parliament provides otherwise, three years in respect of any other debt.

When prescription begins to run

12. (1) Subject to the provisions of subsections (2) and (3), prescription shall commence to run as soon as the debt is due.

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(2) If the debtor wilfully prevents the creditor from coming to know of the existence of the debt, prescription shall not commence to run until the creditor becomes aware of the existence of the debt.

(3) A debt which does not arise from contract shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.

[Section 12(3) was amended in South Africa prior to Namibian independence by the *Prescription Amendment Act 11 of 1984 (RSA GG 9087)* which was not made expressly applicable to South West Africa. This amendment removed the phrase “which does not arise from contract” from section 12(3). This amendment does not appear to have been applicable to South West Africa, but it should be noted that two Namibian High Court cases have assumed (without discussion) that the version of section 12(3) applicable in Namibia is the one amended by the *Prescription Amendment Act 11 of 1984*:

- *Seaflower Whitefish Corporation v Namibian Ports Authority 1998 NR 316 (HC) at 322B-E states*: “The relevant section of the Prescription Act 68 of 1969, is s 12 and the relevant portions of that section are as follows:
 ‘(1) Subject to the provisions of ss (2) and (3), prescription shall commence to run as soon as the debt is due.
 . . .
 (3) A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.’”
- *Wellman v Hollard Insurance Co of Namibia Ltd 2013 (2) NR 568 (HC) at paragraph 78 applies section 12(3) to a contractual debt, which would be possible only if the court was assuming that section 12(3) applies as amended by Act 11 of 1984.*

In contrast, a Namibian Supreme Court case assumes (also without discussion) that section 12(3) as it applies in Namibia was *not* amended by the *Prescription Amendment Act 11 of 1984*:

- *Van Straten NO & Others v Namibia Financial Institutions Supervisory Authority & Others 2016 (3) NR 747 (SC) at paragraph 127 states that section 12(3) of the Prescription Act “remains applicable in its unamended form in Namibia”.*]

Completion of prescription delayed in certain circumstances

13. (1) If -
- (a) the creditor is a minor or is insane or is a person under curatorship or is prevented by superior force including any law or any order of court from interrupting the running of prescription as contemplated in section 15(1); or
 - (b) the debtor is outside the Republic (including the territory of South-West Africa); or
 - (c) the creditor and debtor are married to each other; or
 - (d) the creditor and debtor are partners and the debt is a debt which arose out of the partnership relationship; or
 - (e) the creditor is a juristic person and the debtor is a member of the governing body of such juristic person; or
 - (f) the debt is the object of a dispute subjected to arbitration; or
 - (g) the debt is the object of a claim filed against the estate of a debtor who is deceased or against the insolvent estate of the debtor or against a company in liquidation or

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against an applicant under the Agricultural Credit Act, 1966 (Act No. 28 of 1966), or the Farmers' Assistance Ordinance, 1962 (Ordinance No. 11 of 1962, of the territory of South-West Africa); or

[The Agricultural Credit Act 28 of 1966 (RSA) was repealed by the Agricultural Bank Amendment Act 27 of 1991 (RSA). The Farmers' Assistance Ordinance 11 of 1962 (SWA) was repealed by the Agricultural Credit Amendment Act 66 of 1970 (RSA).]

- (h) the creditor or the debtor is deceased and an executor of the estate in question has not yet been appointed; and
- (i) the relevant period of prescription would, but for the provisions of this subsection, be completed before or on, or within one year after, the day on which the relevant impediment referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h) has ceased to exist,

the period of prescription shall not be completed before a year has elapsed after the day referred to in paragraph (i).

(2) A debt which arises from a contract and which would, but for the provisions of 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.

Interruption of prescription by acknowledgement of liability

14. (1) The running of prescription shall be interrupted by an express or tacit acknowledgement of liability by the debtor.

(2) If the running of prescription is interrupted as contemplated in subsection (1), prescription shall commence to run afresh from the day on which the interruption takes place or, 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.

Judicial interruption of prescription

15. (1) The running of prescription shall, subject to the provisions of subsection (2), be interrupted by the service on the debtor of any process whereby the creditor claims payment of the debt.

(2) Unless the debtor acknowledges liability, the interruption of prescription in terms of subsection (1) shall lapse, and the running of prescription shall not be deemed to have been interrupted, if the creditor does not successfully prosecute his claim under the process in question to final judgment or if he does so prosecute his claim but abandons the judgment or the judgment is set aside.

(3) If the running of prescription is interrupted as contemplated in subsection (1) and the debtor acknowledges liability, and the creditor does not prosecute his claim to final judgment, prescription shall commence to run afresh from the day 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 day upon which the debt again becomes due.

(4) If the running of prescription is interrupted as contemplated in subsection (1) and the creditor successfully prosecutes his claim under the process in question to final judgment

and the interruption does not lapse in terms of subsection (2), prescription shall commence to run afresh on the day on which the judgment of the court becomes executable.

(5) If any person is joined as a 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.

(6) For the purposes of this section, “process” includes a petition, a notice of motion, a rule *nisi*, a pleading in reconvention, a third party notice referred to in any rule of court, and any document whereby legal proceedings are commenced.

Application of this Chapter

16. (1) Subject to the provisions of subsection (2)(b), the provisions of this chapter shall, save in so far as they are inconsistent with the provisions of any Act of Parliament which prescribes a specified period within which a claim is to be made or an action is to be instituted in respect of a debt or imposes conditions on the institution of an action for the recovery of a debt, apply to any debt arising after the commencement of this Act.

(2) The provisions of any law -

(a) which immediately before the commencement of this Act applied to the prescription of a debt which arose before such commencement; or

(b) which, if this Act had not come into operation, would have applied to the prescription of a debt which arose or arises out of an advance or loan of money by an insurer to any person in respect of an insurance policy issued by such insurer before 1 January 1974,

shall continue to apply to the prescription of the debt in question in all respects as if this Act had not come into operation.

[section 16 substituted by Act 62 of 1973 and amended by Act 57 of 1975]

CHAPTER IV

GENERAL

Prescription to be raised in pleadings

17. (1) A court shall not of its own motion take notice of prescription.

(2) A party to litigation who invokes prescription, shall do so in the relevant document filed of record in the proceedings: Provided that a court may allow prescription to be raised at any stage of the proceedings.

Laws prohibiting acquisition of land or any right in land by prescription not affected by this Act

18. The provisions of this Act shall not affect the provisions of any law prohibiting the acquisition of land or any right in land by prescription.

This Act binds the State

19. This Act shall bind the State.

Prescription Act 68 of 1969 (RSA)**This Act not applicable where Black law applies**

20. In so far as any right or obligation of any person against any other person is governed by Black law, the provisions of this Act shall not apply.

[terminology amended by AG 3 of 1979]

Application to South-West Africa

21. This Act and any amendment thereof which may be made from time to time, shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel referred to in section 38(5) of the South-West Africa Constitution Act, 1968 (Act No. 39 of 1968).

Repeal of laws

22. Subject to the provisions of section 16(2), the laws mentioned in the Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule.

Short title and commencement

23. This Act shall be called the Prescription Act, 1969, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

Schedule

LAWS REPEALED

No. and year of Law.	Title.	Extent of Repeal.
Act No. 18 of 1943	Prescription Act, 1943	The whole.
Act No. 46 of 1945	Finance Act, 1945	Sections 27, 28, 29 and 30.
Act No. 62 of 1955	General Law Amendment Act, 1955	Section 23.
Act No. 50 of 1956	General Law Amendment Act, 1956	Section 16.
Act No. 80 of 1964	General Law Amendment Act, 1964	Section 6.
Proclamation No. 13 of 1943 of the Administrator of South-West Africa	Prescription Proclamation, 1943	The whole.
Proclamation No. 17 of 1944 of the Administrator of South-West Africa	Prescription Amendment Proclamation, 1944	The whole.
Ordinance No. 36 of 1965 of South-West Africa	General Law Amendment Ordinance, 1965	Section 3.