Guidelines to Hearing – appearing before the Registrar of Lands

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A short guide for users appearing before the Registrar of Lands in Land Dispute

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Introduction

These guidelines are being issued to give individuals who appear before the Registrar of Lands for a Hearing as to procedural matters and what is required of them during the process. Persons are also reminded that they may at any time seek professional assistance, such as the use of an attorney if they are unsure or require assistance in preparing for a hearing.

Contact Information

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Our office hours are Mondays to Fridays from 9:00 am to 5:00 pm.

Land Registry Advisory Policy

We offer advice to our customers through our publications and enquiry services and the day-to-day handling of applications. We provide factual information including official copies of registers, title plans and documents, searches and details of our forms and fees.

We provide procedural advice to explain how the land registration system works and how to make applications correctly. This includes here an application is defective, advice as to the nature of the problem and what options, if any, are available to put it right

There are limits to the advice that we will provide. We will not provide legal advice - This means that we will not approve the evidence to be produced in support of a registration application before we receive the application apart from procedural advice. We will not advise on what action to take and we will not recommend a professional adviser but can explain how to find one.

We provide advice only about real cases, not about theoretical circumstances. We will not express a view on questions where the law is complex or unclear except where the question arises on a live registration application. In providing this factual information and procedural advice, we will:
— be impartial;
— recognise that others may be affected by what we say; and,
— avoid any conflict of interest.

The question often arises whether or not a person appearing before the Registrar requires professional representation. Some types of case are relatively straightforward, and you can conduct the actual proceedings without professional assistance. On the other hand, some cases involve technical areas of law and require careful legal and factual analysis. Examples of technical areas of law are claims for prescriptive easements or adverse possession. Should a case be presented unsuccessfully, there may well be an award of expenses made in favour of a party. So it may be useful to get legal advice to check that your case — or defence to a case — is well-founded. If you are satisfied that you have a sound case, you can take it through yourself.

Governing Law

The Registered Land Act 2018 Revision, which will be referred to in this Guide as the "RLA"

Types of cases

Section 155 of the RLA gives the Registrar the power to conduct hearings and refer matters to the court.

No rules, however, exist governing the operation of those powers. In practice, the Land Registry has endeavoured by correspondence to clarify and narrow the issues in dispute so that the matters to be determined by the Registrar are clearly defined and recorded in advance of the hearing.

Although this informal approach has worked over the years, there has been an increasing number of cases where this has caused difficulties, for example, the parties may be uncooperative in producing evidence or simply unsure what they are required to do.

This new guideline seeks to address this.

In certain cases, under the RLA where a dispute has arisen, and it cannot be resolved by agreement, the Registrar of Lands is obliged to hold a hearing to determine the questions in dispute and issue a decision.

The Start of the Hearing Procedure

Section 155 of the RLA requires the Registrar to send a formal notice to the parties of his decision to hear the matter and inform the parties of the date and venue for the hearing. Under this section, the Registrar is given the power, in the absence of either party, to hear and determine the matter or adjourn the hearing.

When the hearing has been concluded the Registrar will give written reasons for his decision. Persons not in agreement with the decision of the Registrar can appeal to that decision to the Grand Court. The appeal should be made within 30 days of the decision and notice given to the Registrar of their intention to appeal the matter.

In relation to hearings, the Land Registry staff can advise as to administrative matters only and play no part in the decision. Although they give guidance when they can, they cannot offer any comments on matters of legal principles. So applicants should bear in mind that the scope of their advice is very limited. They are not able to advise you on whether or not you have a good case, and any advice offered will not bind the Registrar when it comes to making a decision. The staff will try to ensure that the proper procedures are followed and that the hearing is held as efficiently and quickly as possible.

At the hearing, it is the Registrar who will make the decision. One or two members of staff will attend as clerks for the purposes of swearing-in participants and making

records of the hearing. However, it is the job of the Registrar, after hearing both parties present their evidence both orally and in writing to make a decision.

It is the responsibility of the participants to ensure that all materials that they need to rely on is presented at the hearing. The hearing will be conducted based on the material submitted and the evidence of witnesses.

The Hearing Notice

This is a formal letter fixing a hearing. We will send the notice to everyone who we are aware is involved in the case at least thirty (30) days before the hearing. It will give you the details of the time and place of the hearing. It may also give you other instructions, such as the time for parties to exchange evidence through the Registrar. Pay careful attention to the dates and times in the letter.

The Office will always attempt to fix the next available hearing dates, but you can communicate with the Registrar or anyone in the office if you have any difficulty with the date. The office usually prefers that the request to adjourn a hearing is done at least two weeks in advance as putting off a hearing leads to delay and wasted time for all involved in the process.

The hearings are usually held in Grand Cayman at the Lands & Survey Department; however, there could be a consideration in holding a hearing in Cayman Brac having regard to the availability of a suitable venue and location of the parties. If you think that you or your witness may have difficulty getting to the hearing such as for medical reasons, please inform us as early as you can, and if possible suitable arrangements can be made for the taking of evidence such as video conference or site visits.

Time-table

The Hearing Notice will set out a timetable for the submission of evidence for all parties. This is usually a minimum of three weeks before the date of the hearing to allow for the exchange of evidence, and responses if possible. Participants are usually encouraged to submit all documents, correspondence, reports, etc., which they wish to use at the hearing as evidence. If possible, any legal authorities in support should be submitted at least five (5) days before the hearing.

Any party can request an extension of time to comply with the submission of evidence at any point before the hearing and depending on the circumstances the Registrar will grant the extension of time request if it is appropriate to do so. We may contact the other party to see if they have any objections but will usually accommodate these requests to ensure that there is a fair and equitable hearing. The request must be in writing and will not be granted verbally or over the telephone.

It is quite difficult to know how much time is required to give fair notice, but we will make every attempt to ensure that the parties have the opportunity to be fully heard. The Registrar wants to hear all the evidence which will assist in making the right decision.

In some cases, it may not be necessary to present evidence before the hearing, and in some cases, it will be obvious what type of evidence may be presented on the day of the hearing. We will give every opportunity for the parties to be heard.

To allow the proceedings to be as flexible as possible, you can be allowed to produce documents at the hearing. However, please note that if you wish to produce documents, the other side should see these documents in advance. This is because the other party needs time to review and to prepare any answers, and producing these documents at a hearing for the first time could likely lead to delay in concluding the hearing or an adjournment, as it is reasonable for the parties to look at the material in advance.

The Hearing

The purpose of the hearing is to allow all the parties to present their side of the case to the Registrar.

At the date and time specified in the letter, the Registrar intends to have a full hearing to deal with all aspects of the case. The hearing is similar to proceedings in court but much less formal. Evidence of the parties will be taken, and full submissions will also be heard. Any decision made will be based on the evidence and submissions given at the hearing.

After the hearing, no further evidence or argument will be heard.

Witness Evidence

Hearings conducted by the Registrar rely heavily on evidence of witnesses. Witnesses may be necessary to explain a document or primary issues. Witnesses are expected to attend in person and give their evidence on oath or affirmation. It also customary for witnesses to be cross-examined as this allows the evidence to be tested. The Registrar usually wishes to hear what a party has to say, and it would be unlikely or unusual for objections to be taken as it is not a formal procedure as those held in a court of competent jurisdiction.

Affidavits

Parties are entitled to tender their evidence by way of affidavit. This is a written statement of what a witness wishes to say and is sworn before a functionary, such as a justice of the peace. This could save time at the hearing and allow a party to ensure that they have covered all grounds that they wish the Registrar to hear and consider. The other side would still have an opportunity to cross-examine the witness on what was stated in the affidavit.

Legal Issues

Parties can submit documentation before the hearing on any legal issues including, statutory authority and cases which they intend to rely on at the hearing. This will be shared with the other party.

Settlement and mediation

One of our primary goals is to encourage persons to mediate or settle even during a hearing, as the parties could be more flexible than a decision by the Registrar. There is no limit or timetable to achieve a settlement; there is a wide scope to settle at any time. It may well be possible to agree with some arrangements which are beyond the scope of the Registrar.

Unfortunately, it is very common to find that once a dispute has started, parties may no longer be able to have sensible discussions. This can be a particular difficulty with people who are related or who started as friends and now find themselves faced for the first time with a dispute over something important to them both. But in any context, if you are having difficulty in discussing matters, consideration should be given to using mediation or some other form of alternative dispute resolution. The value of mediation is that it provides a way for a sensible discussion of issues at a time when the parties themselves might have real difficulty in broaching the subject. The Registrar would be willing in most cases to assist persons in mediation at no cost. If parties do manage to conclude a settlement even at the last minute, the Registrar will welcome intimation of it.

Please note that mediation is a voluntary process and is only available if all the parties agree to it. No solution can be imposed on any party in any mediation.

Procedure at the Hearing

Procedure follows fairly standard court practice. We try to be as informal as possible, but some formality is necessary to ensure that both sides are treated equally and know what to expect. In the beginning, the Registrar will try to be sure it understands what is truly in issue. Each party should try and make their position as clear as possible.

Each side will have an opportunity of leading any evidence from witnesses. Each witness will first be questioned by the party who has asked him to attend. This stage is known as leading or taking “evidence in chief”. The other party will then have a chance to ask him questions. This is usually referred to as “cross-examination”. The Registrar is also likely to ask questions. After cross-examination there is a stage known as re-examination when you can, if necessary, try to get your witness to clarify or explain matters which have been raised in cross-examination.

It may well make sense to lodge a statement of your witness’s evidence and ask the witness if he or she agrees. This can save a good deal of time. However, for this to work

fairly, it is necessary for these statements to be made available to the Registrar and other parties to have sufficient time. There are no strict rules about this.

After witnesses have been heard, each side will be invited to make a closing submission. This is the stage to put forward the arguments to persuade the Registrar why it should find in your favour in light of the evidence and the law.

Usually, the applicant goes first, being the person who has to establish the case. However, it is sometimes more convenient for the respondent to lead. This is a matter for application of practical common sense. Where the applicant is not legally represented, it may sometimes be helpful for the attorney on the other side to start. This may make it clearer to the applicant what the real issues are and may help show the Registrar precisely what is really in dispute. The applicant can then focus on matters appropriately.

The Registrar will always wish to hear evidence if it is relevant, but it may be difficult to hear evidence on matters where proper notice has not been given when it should have been. If there is a doubt about whether sufficient notice has been given or if there is some reason for lack of notice, the Registrar may grant an adjournment to allow the other side time to think or time to lead further evidence.

Site Visits

It may be necessary for the Registrar to visit the site of the dispute. This will usually be during the hearing, but a practical approach is taken to make the best use of available time. You should consider as to whether you want to attend the site visit or have someone attend on your behalf. If one side attends, then the Registrar would prefer that other parties should also be represented.

Absence from a Hearing

If a party does not attend a hearing and is not represented, the Registrar may elect to continue with the hearing and reach a decision. This is usually done where the Registrar is satisfied that the party was duly notified of the hearing; it is not the first occasion and that it would be in the interest of justice to continue.

Expenses

The Registrar has the power to award expenses under section 6 (e) of the RLA. Two questions arise in relation to expenses: namely, who is to pay and how much is to be paid.

If you have incurred significant expense in presenting your case, you may wish to ask the Registrar to make an award of expenses against your opponent. Such requests should be made at the hearing.

There is a general rule that no award of expenses is to be made unless it has been requested. You will not usually recover every last item of expense, but we will take into account all of the circumstances and try to do what is fair in each case. Once an order has been made, then it could be recovered in the Grand Court under section 157 & 158 of the RLL.

Decision

The Registrar is unlikely to decide at the hearing and, in any event, is obliged to issue a written decision in the event that there is an appeal. This may be within a period of about 6-8 weeks but could on occasion be longer. It depends on how busy the office is and the complexity of the particular case.

Decision without a Hearing

We may issue a decision without a hearing once we have received written statements from all the affected parties and provide notice of our proceedings. If any of the parties objects, we may decide to hold a hearing.

Appeal

If you think the Registrar has reached the wrong decision, you have the right to appeal to the Grand Court. The appeal must be filed within 30 days.

Court Proceedings

One of the parties may want to start court proceedings. If this does occur as the courts are of higher jurisdiction, the Registrar will likely adjourn the proceedings and await the outcome of the court proceedings.

Miscellaneous

It is beyond the scope of this Guidance to give instruction on how to present a case or how to ask questions. However, it may be helpful to remember that the purpose of the hearing is to make sure that the Registrar hears all the facts. Although it is sometimes assumed that the Registrar will make its own enquiries to reach a proper result, that idea is misleading. The Registrar is not carrying out an investigation; an assessment will be made based on the evidence.

It is also important that each party is aware of all the other parties' arguments and evidence. As a result we cannot enter into any confidential discussions. Any communications or supporting documents sent to Land Registry are likely to be disclosed to the other parties even if marked 'confidential'. Where it is apparent that a party is unaware of this policy and has supplied a communication or supporting document 'in confidence', that party will be given an opportunity to withdraw it, but if they do not do so, disclosure may take place irrespective of any confidential marking.