

HC

HALSBURY CHAMBERS BULLETIN



Quieting Title: Frequently Asked Questions



1. What is Quieting Title?

An action to quiet title is a law suit brought in a court having jurisdiction over land disputes in order to establish a party's title to real property against anyone and everyone and thus "quiets" any challenges or claims to the title. In The Bahamas all such actions must be brought in the Supreme Court which has jurisdiction.

2. What is possession?

On the family Islands many families live or occupy a parcel of land all of their lives and 'everyone' in the settlement is aware of such occupation and acknowledges such ownership. In many situations these families have occupied or been in possession of this parcel commencing with their ancestors and hence the familiar term "generation land".

3. Is there any advantage or benefit of obtaining a Certificate of Title?

A Certificate of Title is a document that equates to what we refer to as a good and marketable documentary title. An example of such document is referred in a conveyance which is a basis for what is called a 'root of title'.

4. What is the disadvantage of not obtaining a Certificate of Title?

Without obtaining a Certificate of Title persons will face problems should they wish to sell the parcel or try to obtain a mortgage from a local bank as they are unable to produce a document that equates to what we refer to as a good and marketable documentary title as noted above.

5. What information is required to commence a Petition for a Certificate of Title?

The person that applies to the court for a Certificate of Title is called the Petitioner and the onus is on him or her to prove their possession to a particular piece of land. The Petitioner must produce such information by way of sworn Affidavit (or Statement of Facts) that provides details of their possession to the property. Other supporting information include Affidavits by two (2) persons or witnesses, a survey plan produced by a Registered Licenced Surveyor, and an Abstract of Title.

6. Why is it important to hire or use the services of a Registered Land Surveyor?

As Registered Licenced Surveyor is an expert in surveying, the court will only accept a survey plan prepared or produced by a person with such qualification. If required the court may require the surveyor to attend the proceedings to be questioned or examined on the filed plan.

7. What must be shown on the survey plan?

It is important to clearly state to the Registered Land Surveyor that the plan is required for a Quieting Title Action in court. The surveyor must show on the plan identifiable objects such as concrete or wooden structures, fresh water wells, stone walls, fences, steel poles, large trees, roads and even footpaths etc which may support the Petitioner's possession on the property. In other words the surveyor must show what is 'on the ground'.

8. Why is it important for two (2) supporting Witnesses?

It is required that two (2) persons or witnesses provide facts by way of sworn Affidavits that support the Petitioner's possession. The evidence by these persons may differ slightly however their conclusions will support that the Petitioner would have been 'in quiet and undisturbed possession without adverse interference.'

9. Will the court require any additional information?

The court can require additional information for example a Photogrammetrist report particularly when the Petitioner is claiming possession of a large tract of land. The Photogrammetrist is also an expert and will examine Aerial Surveys filed at the Land and Surveys Department and produce a report for the court proceedings on completion. As an expert the Photogrammetrist can also be required to attend court to be questioned on his report.

10. Will the court revoke a Certificate of Title once it is issued?

The court can revoke a certificate of title if it is later revealed that fraud took place to obtain it. There are specified procedures that must be followed from start to finish and if it is proven that these procedures were compromised the court will entertain an action to set the Certificate of Title aside.

Halsbury Chambers

