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# Modernising Conveyancing

Securing Land  
Tenure In The  
Bahamas

MODERNISING  
CONVEYANCING

# LAND ADJUDICATION BILL, 2024



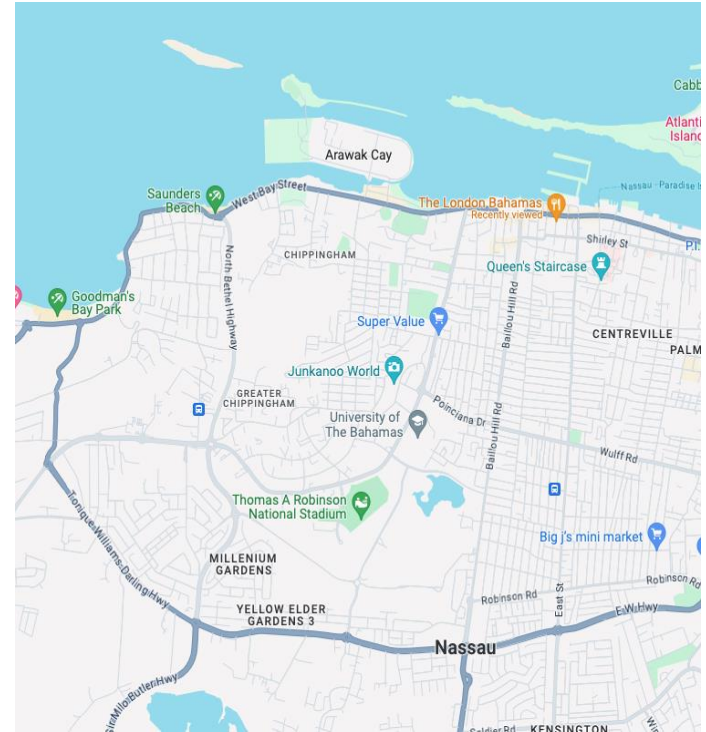
# APPLICATION

- Applies to land defined in declaration made by the Minister (clause 3(1))
- Cannot apply to lands held in common under the Commonage Act (Ch. 152) (clause 3(3)).



# DECLARATION OF ADJUDICATION AREA

- Declaration made by Minister in the Gazette
- Declaration is —
  - published in daily newspaper once a week for three weeks
  - posted in the office of the Family Island Administrator for three consecutive weeks
  - posted on an official Government website.



# ADJUDICATION TRIBUNAL



## Adjudicator

- Appointed by Governor-General —
  - on declaration of area
  - On recommendation of the Judicial and Legal Service Commission
- Attorney of at least ten years experience in law of property and conveyancing



## Assessor # 1

Governor-General selects panel of four persons with local knowledge and history of declaration area



## Assessor # 2

Adjudicator chooses two persons from the panel to be known as “assessors”

# DEMARCATOR, SURVEYOR AND RECORDS OFFICER



## Demarcator

- Appointed by Adjudicator
- Must be a registered licensed land surveyor with at least ten years experience



## Surveyor

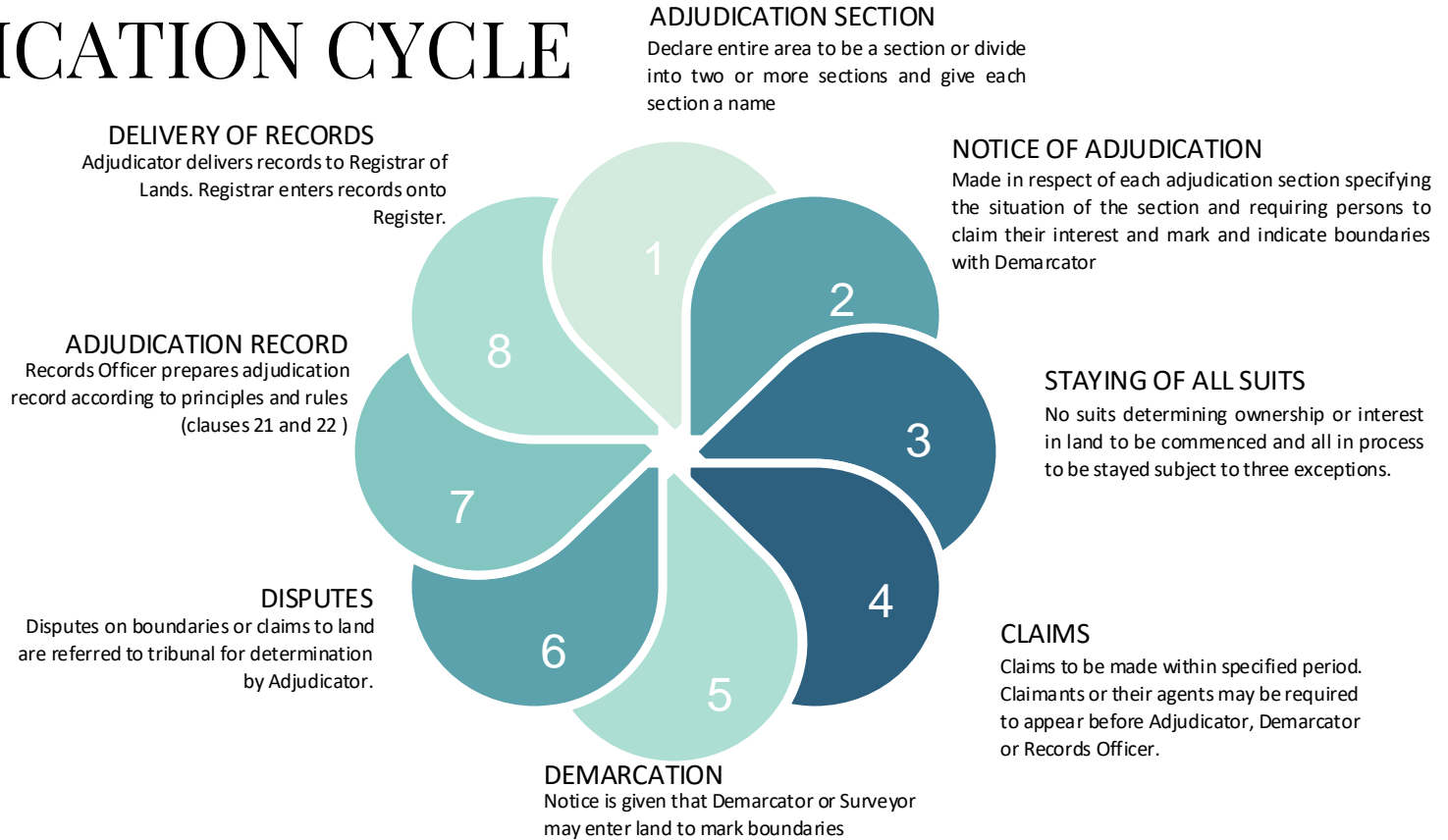
- Appointed by Adjudicator
- Must be registered and licensed land surveyor



## Records Officer

- Appointed by Adjudicator
- Must be counsel and attorney at law who has practised primarily in the law of property and conveyancing for at least seven years

# ADJUDICATION CYCLE



# PRINCIPLES OF ADJUDICATION

## Absolute Title

Granted where the Records Officer is satisfied that a claimant —

(i) is in open and peaceful possession of a parcel and has been in such possession by himself or by his predecessors in title —

(A) in respect of private land, for an uninterrupted period of twelve years or more;

(B) in respect of Crown land, for an uninterrupted period of thirty years or more;

(C) in respect of foreshore, for an uninterrupted period of sixty years; or

(ii) has a good documentary title to land and that no other person has acquired a title thereto under any law relating to prescription or limitation,

and that he would succeed in maintaining or defending such possession or title against any other person claiming the land or any part thereof.



# PRINCIPLES OF ADJUDICATION

## Provisional Title

- Granted where the Records Officer is not satisfied that a person is entitled to an absolute title but that a person is in possession of, or has a right to a parcel.
- The Records Officer shall record —
  - (a) the date on which the possession of that person shall be considered to have begun;
  - (b) particulars of any deed, instrument or other document by virtue of which some estate, right or interest adverse to or in derogation of the title of that person may exist; or
  - (c) any other qualification which affects the title.

# PRINCIPLES OF ADJUDICATION

## Crown Land

The Records Officer shall record as Crown Land, any land that is entirely free from private rights, or that the rights existing in or over it do not amount to full ownership and are not such as to enable him to grant a provisional title to another person.

## Lease

The Records Officer will record any right which is registrable as a lease, charge, easement, profit or restrictive covenant or agreement under the Registered Land Act, 2024, on the adjudication record of the land to which the lease, charge, etc., subsist.

# PRINCIPLES OF ADJUDICATION

“good documentary title”

Means a title evidenced by documents which establishes that a person is entitled to land in fee simple and commencing with —

- (a) a Crown grant or lease, certificate of title; or
- (b) conveyance, assignment, mortgage, or other good root of title which is not less than thirty years old.

# OBJECTIONS TO AND FINALITY OF ADJUDICATION RECORD

## Objections

- Persons aggrieved by any entry or omission from any completed adjudication record may object to the record by petition to the tribunal to determine or redetermine the issue;
- Objection must be made within period of time specified in notice of completion of record

## Finality

- Records are final on the later of the expiry of period of time specified in notice of completion of record or when all records are presented to tribunal;
- Adjudicator to —
  - sign and date records;
  - provide period for inspection of records;
  - deliver the records to the Registrar of Lands.

# ADJUDICATION RECORD

The adjudication record shall contain the following information —

- (a) the number and approximate area of the parcel as shown on the demarcation map;
- (b) either the name and description of the person entitled to be registered as the owner of the parcel with particulars of the manner in which that person acquired that parcel and of any restriction on his power of dealing with it, or the fact that the parcel is Crown land;
- (c) such particulars of any right registrable under the Registered Land Act, 2024 as shall enable it to be registered as a lease, mortgage, charge, easement, profit or restrictive covenant or agreement, as the case may be, affecting the parcel together with the name and description of the person entitled to the benefit thereof and particulars of any restriction on his power of dealing with it;
- (d) if any person noted in the adjudication record is under disability, the name of his guardian;
- (e) a list of the documents, if any, produced to the Records Officer and retained by him for the purpose of adjudication; and
- (f) the date on which the form is completed.

# APPEALS

- Aggrieved persons may appeal to the Supreme Court within six months from the date of the certificate of the Adjudicator given under section 27 or within such extended time as the Supreme Court may allow on good cause being shown
- Appeal must be on the ground —
  - that the decision is erroneous in point of law; or
  - of failure to comply with any procedural requirement of the Act.
- The decision of the Supreme Court may be appealed to the Court of Appeal.

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# REGISTERED LAND BILL, 2024



# APPLICATION

- Applies to land adjudicated under the Land Adjudication Act
- No other law, practice or procedure relating to land shall apply to registered land
- Registration of Records Act has no application in respect of any document evidencing transfer of land, lease or registrable charge



# THE LAND REGISTRY

The Registry will keep the following items —

- the Land Register
- the Registry Map
- all Mutation forms (alterations to Map)
- all parcel files (documents supporting entry including instruments and plans)
- the Application book (copy of all applications submitted)
- an alphabetically organised index of names of all proprietors of land, leases and charges)
- register and file of powers of attorney

# THE LAND REGISTER

Land Register comprises —

- a register in respect of each parcel of land;
- a register in respect of each lease.

Register to —

- show whether land is private or Crown;
- disclose whether title is absolute or provisional;
- be divided into three sections —
  - property;
  - proprietorship; and
  - encumbrances.

# REGISTRAR OF LANDS & OTHERS

- Registrar —
  - Appointed by Governor-General acting on advice of the Judicial and Legal Service Commission;
  - must be practising as counsel and attorney for not less than ten years;
  - assisted by such number of Deputy or Assistant Registrars or Registration as necessary.
- Deputy Registrar must have not less than seven years in practise as counsel and attorney
- Assistant Registrar must have not less than five years in practise as counsel and attorney
- Registrar is *inter alia*, empowered to —
  - require production of any instrument, certificate, document or plan relating to land;
  - summon any person to appear to give information;
  - administer oaths;
  - delegate powers to Deputy or Assistant Registrar.

# COMBINATIONS AND SUBDIVISIONS

- Contiguous parcels owned by the same proprietor and subject to the same rights and obligations, may be combined closing the registers relating to individual parcels and opening a new register for the combined parcels;
- On application of the proprietor of a parcel for the division of his parcel into two or more parcels, the Registrar shall effect the division by closing the register relating to the parcel and opening new registers in respect of the new parcels resulting from the divisions;

# REPARCELLATION

- Proprietors of contiguous parcels who wish to change layout may apply to Registrar for the closing of existing registers and opening of new registers in accordance with the new layout.
- Must have the written consent of all other persons in whose names any right or interest in such parcels is registered, and of any cautioner;
- If the Registrar believes a proposed reparation involves substantial changes of ownership which should be effected by transfers without invoking this section, he may in his discretion refuse to effect such reparation.

# DIVISION OF LAND FOR ESTATE PURPOSES

- Registrar may divide parcel of land for estate purposes on application by —
  - personal representative of an estate;
  - beneficiary of an estate; or
  - proprietors where the parcel was previously transferred by a personal representative to persons entitled under a will or on intestacy,
- Division by closing register of initial parcel and opening register in respect of each divided portion of the parcel

# VOLUMETRIC PARCELS

- On application of the proprietor of a parcel for the division of that parcel into a base parcel and one or more volumetric parcels, in accordance with a volumetric plan, the Registrar shall —
  - (a) file the volumetric plan and assign it a volumetric plan number;
  - (b) open a new register in respect of each volumetric parcel shown on the volumetric plan; and
  - (c) in respect of the register relating to the base parcel, note in the encumbrances section, the easements in favour of the volumetric parcels that have been opened.



# VOLUMETRIC PARCELS

- The title to a base parcel shall be held by the owners of the volumetric parcels as tenants in common in accordance with section 7 of the Conveyancing and Law of Property (Condominium) Act (Ch. 139).
- A volumetric parcel shall be deemed for the purposes of sections 32 and 33 of this Act to be a parcel and for all purposes to be land
- Each volumetric parcel shall have its own register.





# EFFECT OF REGISTRATION

Absolute title - absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever but subject to encumbrances listed on the register or overriding interests.

Provisional title - provisional title of a parcel shall not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of that proprietor arising before such date or under such instrument or in such other manner as is specified in the register of that parcel.

Crown land - registration as Crown land shall, subject to

any registered Crown land encumbrances, enable the Minister with responsibility for Crown Lands, by a disposition registered under the Act, to dispose of such land in accordance with section 54 of the Conveyancing and Law of Property Act (*Ch.138*).

Lease - vests in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease.

# CONVERSION OF PROVISIONAL TITLE TO ABSOLUTE TITLE

- The Registrar may order conversion of a provisional title to absolute title where —
  - (a) the qualification to which the provisional title is subject has ceased to be of effect; or
  - (b) a period of time has elapsed since the date of first registration with a provisional title, which when added to the period from which the possession of the proprietor shall be considered to have begun exceeds twelve years and there is no effective qualification to which the provisional title is subject.
- This process is subject to advertising of the intended conversion.

# ENTRIES ARE ACTUAL NOTICE

Every proprietor acquiring any land, lease or charge shall be deemed to have had notice of every entry in the register relating to the land, lease or charge.

# CERTIFICATES AND SEARCHES

- Proprietor of land or lease may apply for certificate of land or certificate of lease
- The Registrar may issue a land certificate or a certificate of lease, in the prescribed form showing all subsisting entries in the Register affecting that land or lease.
- Only one certificate shall be issued in respect of each parcel of land or lease
- Any person on payment of fee may —
  - search the registry and inspect any register, register map, of filed instrument or plan.
  - be entitled to a certified copy of any register or part of the Registry Map or any instrument or plan filed in the registry;
- Any person may apply to the Registrar for an official search in respect of any parcel, and the Registrar shall issue a certificate of official search setting forth particulars of the subsisting entries in the register of that parcel.

# DISPOSITIONS

- No registered land, lease or charge shall be capable of being disposed of except in accordance with this Act, and every attempt to so dispose of such land, lease or charge, shall be ineffectual to create, extinguish, transfer, vary or affect any estate, right or interest in the land, lease or charge.
- Instruments shall be presented for registration within forty-five days of the signature of the first, or the only, named party therein.
- The Registrar may, order a person to present an instrument for registration where they have failed to do so within the required time

# PRIORITY OF INTERESTS

- Interests on the register shall have priority according to the order in which the instruments were presented to the registry, irrespective of the dates of the instruments and notwithstanding that the actual entry in the register may be delayed.
- An instrument prepared in the registry shall be deemed to have been presented for registration on the date on which application for its preparation was made.
- Instruments sent by post or under cover and received during the hours of business shall be deemed to be presented immediately before the closing on that day.
- Instruments sent out and received between the time of closing and the next opening of the office for business shall be deemed to be presented immediately after such opening.

# STAY OF REGISTRATION

- Purchaser or any other person proposing to deal with registered land can apply for stay of registration of any instrument which may affect the dealing
- Purchaser, etc., must with consent of proprietor, apply for search at the Registry and make Registrar aware of the proposed dealing
- Suspension period is 14 days
- When instrument effecting the proposed dealing is presented for registration, that instrument will have priority over any other instrument presented for registration during the suspension period

# LEASES

- Certain leases are mandatorily required to be registered including leases —
  - for a specified period exceeding two years; or
  - containing an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, exceed two years;
- Lease must be in prescribed form;
- Other leases may be registered on voluntary basis;



# CHARGES

- Proprietor may charge his land, lease or charge, to secure the payment of an existing or a future or a contingent debt or other money or money's worth or the fulfilment of a condition.
- Charge must be made by instrument (in a prescribed form) and must contain a signed acknowledgement that the chargor understands the effect of section 84 (charges remedies)
- Charge is only completed by its registration as an encumbrance and registration of the person in whose favour it is created as its proprietor and by filing the instrument.

# EASEMENTS, POSITIVE AND RESTRICTIVE COVENANTS

- The grant or reservation of the easement is completed by —
  - its registration as an encumbrance in the register of the land burdened; and
  - in the property section of the land which benefits.
- A covenant may be positive or restrictive and, if registered under this Act, is enforceable against the covenantor and the covenantor's successor in title by the owner or occupier of land benefitting from the covenant.
- Restrictive covenant to be noted in the encumbrances section of the register of the land or lease burdened by the restrictive covenant
- Positive covenant to be noted —
  - in the encumbrances section of the register of the land or lease burdened by the positive covenant; and
  - in the property section of the land which benefits from the positive covenant
- Positive or restrictive covenant is not binding on any person acquiring the land or lease unless noted in the register

# PROFITS AND LICENCES

- The proprietor may grant a profit by instrument in prescribed form which must —
  - indicate clearly the nature of the profit;
  - the period for which it is to be enjoyed and —
    - whether it is to be enjoyed in gross, or as appurtenant to other land or a lease; and
    - whether it is to be enjoyed by the grantee exclusively or by him in common with the grantor.
- The grant of a profit shall be completed —
  - by its registration as an encumbrance in the register of the land or lease which it affects;
  - where it is appurtenant to other land or a lease, by its registration in the property section of the register of the land or lease to which it is appurtenant.
- A licence is not capable of registration.
- A licence relating to the use or enjoyment of land is ineffective against a *bona fide* purchaser for valuable consideration unless the licensee has protected his interest by lodging a caution under that section

# CO-PROPRIETORSHIP AND PARTITION

- Governor-General may prescribe —
  - the maximum number (whether one or a greater number) of persons who are allowed to be registered in the same register as proprietors; or
  - the maximum denominator of the vulgar fraction which expresses the share of any proprietor, or both of them, and no dealing shall be registered if its effect would be that that number or that denominator, as the case may be, would be exceeded.
- Tenants in common must apply to Registrar to partition land
- Registrar shall effect the partition of the land in accordance with any agreement of the proprietors in common, or, in the absence of agreement, in such manner as the Registrar may order

# CAUTIONS

Caution may be lodged by person who —

- claims any unregistrable interest in land, a lease or a charge;
- is entitled to a license;
- has presented a bankruptcy petition against the proprietor of any registered land, lease or charge; or
- being a bank, has advanced money on a current account to the proprietor of registered land, lease or charge,

Caution has the effect of forbidding the registration of the land, lease or charge concerned and the making of entries affecting the same.

Registrar shall give notice of the caution in writing to the proprietor of the affected land;

The caution may be withdrawn by the cautioner or removed by order of the Court.

# PRESCRIPTION

- Adverse possession of registered land
- Limitation Act applies
- Person in possession required to apply to Registrar
- Advertisement of application at the expense of applicant
- Registrar to give notice to person holding absolute title

# RECTIFICATION AND INDEMNITY

## Rectification by Registrar

- The Registrar may rectify the Register or any instrument presented for registration in the following instances —
  - in the case of errors or omission not materially affecting the interests of any proprietor;
  - where a person has acquired an interest in land by prescription;
  - with the consent of all parties interested;
  - where, upon resurvey, a dimension or area shown in the Register or Registry Map is found to be incorrect.
- Notice must first be given to all persons interested or affected by the rectification.

# RECTIFICATION BY COURT

The court may order rectification of the Register where it is satisfied that any registration has been obtained, made or omitted by —

- Fraud; or
- Mistake.



# RIGHT OF INDEMNITY

Subject to the Act and any laws relating to limitation of actions, any person suffering damage by reason of any —

- rectification of the Register under the Act;
- mistake or omission in the Register which cannot be rectified; or
- error on a certificate of official search issued by the Registrar,

shall be entitled to be indemnified by the Government out of moneys provided by Parliament.

# APPEALS

- Aggrieved persons may appeal a decision of the Registrar within 30 days, giving notice of their intention to the Supreme Court in the prescribed form.
- An appeal to the Supreme Court shall not affect a disposition:
  - for valuable consideration;
  - made in good faith; and
  - registered before delivery of notice of the appeal to the Registrar
- A note that an appeal is pending shall be made on the affected Register and any disposition shall be subject to the notice.
- The decision of the Supreme Court may be appealed to the Court of Appeal.