

Making beach access waves

In recent years, our pleasant Caribbean idyll has been disturbed by disputes between land owners and members of the public as to whether and to what extent the public (which includes our tourist guests) have rights over the beaches. Having paid large premiums for a parcel containing beach land, land owners have claimed that they own the beach and therefore, not unreasonably, that they have the right to exclude members of the public from it, writes Daniel Priestley, Attorney-at-Law with Ogier.

The actions of beach goers would indicate a prevailing sentiment among interested members of the public that the beaches are a natural resource, which anyone and everyone has the right to use and enjoy.

There appears to be considerable confusion in the minds of land owners, members of the public and, indeed, the Royal Cayman Islands Police Force as to the correctness or otherwise of these positions and this article seeks to explain how the statutory laws of the Cayman Islands address the issue of beach access.

What is a beach?

Generally speaking, a beach is all that land adjoining the sea above the high-water mark, which is in apparent continuity with the land at high-water. For example, the parcel

of land immediately adjacent and to the north of the Governor's residence on West Bay Road in Grand Cayman may be considered beach land from the relative high-water mark on the land adjoining the sea to the commencement of the line of trees and other vegetation, the beach land being characterised by the presence of sand and no vegetation.

What is the boundary of a parcel of land which adjoins the sea?

This is defined by Regulation 28 of the Land Survey Regulations, which generally stipulates the boundary to be the position of the average high-water mark between the ordinary spring and neap tides. By comparison, for example, to the United Kingdom, the tidal exchange affecting the Cayman Islands is

Continued on page 8



Daniel Priestley. Some beach land owners on Seven Mile Beach appear, with some success, to be excluding the public from a portion of their beach land by quietly establishing "roped off" areas in conjunction with "No Trespassing" signs.

ing companies value exceptional health care

With the most advanced health plan around, with 4400 US and BUPA UK hospitals in your network care programme. Over \$1,000 US per year. The best health plan money can buy - don't you think your employees deserve it?



BRITISH CAYMANIAN INSURANCE

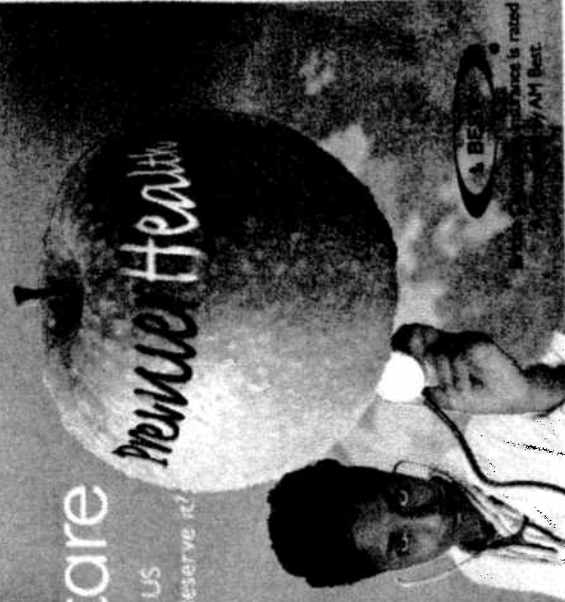
A member of Colonial Group International Ltd.

Personal & Business Insurance: Group Pensions: Group Medical: Life Assurance & Investments

INSURANCE LIMITED

100 SOUTH SQUARE GRAND CAYMAN TEL 949-8699

100 DUNNELL ST STAKE BAY CAYMAN BRAC TEL 948-1760



Making beach access waves

from page 1

minimal (a matter of perhaps a few feet) and so the position of the sea side boundary of any such parcel should be relatively straightforward to estimate, just by looking at it.

What is the nature of the rights of a proprietor to his parcel of land?

Section 23 of the Registered Land Law provides the answer. That provision confers on a registered proprietor: "absolute ownership of that parcel ... free from all other interests and claims whatsoever but subject - (a) [to matters shown on the register], and (b) ... to such liabilities, rights and interests as affect [that parcel] and are declared by section 28 not to require noting on the register."

What rights and interests exist which, although not referred to on the register, may still affect a parcel of land?

There are a number of them set out in section 28 of the Registered Land Law (referred to in legal parlance as "overriding interests"), most of which generally have no application to beach land. However overriding interests declared by section 28(f) of

the Registered Land Law can be relevant, and they are: "rights acquired or in the process of being acquired by virtue of any law relating to the limitation of actions or by prescription."

Some conclusions

The following conclusions may safely be drawn:-

1. A parcel of land adjoining the sea may include beach land up to the average high-water mark.
2. The position of the high-water mark is determined by reference to that part of the beach which is affected by tidal exchange.
3. Beach land below the high water mark is Crown or "public" land and may generally be used and enjoyed by the public without restriction.
4. The registered proprietor of such a parcel of land owns the beach land up to the high-water mark absolutely, free from any claims or interests, except those which are specifically referred to on the parcel register and those claims or interests which by law are overriding interests.

Land owners should therefore be comforted by knowing that they do own the vast majority of what the average person would regard as being "the beach" forming part of their parcel and

have the right to exclusive possession of it (and therefore the right to exclude members of the public from it) unless rights have been given away by the land owner or the previous owners of that parcel (in which case those rights should be apparent by an inspection of the register) or there exists an overriding interest or interests affecting the land.

How do you ascertain whether a parcel of beach land is affected by an overriding interest?

This issue is dealt with by section 4(f) of the Prescription Law, which states:

"When any beach has been used by the public ... for bathing or recreation, and any road, track or pathway passing over any land adjoining or adjacent to such beach has been used by the public ... as a means of access to such beach, without interruption for twenty years, the public shall ... have the absolute and indefeasible right to use such beach, land, road, track or pathway, unless it appears that [the rights] was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing."

As far as Grand Cayman is concerned, in applying the above

it is useful to draw a distinction between that beach land which is commonly known as "Seven Mile Beach" and all other beach land.

How does the Prescription Law affect Seven Mile Beach?

Caymanians will tell you that they have been accessing, using and enjoying the whole of Seven Mile Beach uninterrupted for as long as can be remembered (i.e. considerably in excess of the stipulated 20-year period) without seeking or obtaining any form of permission to do so and, generally speaking, these facts are unlikely seriously to be disputed. It is submitted therefore that the public generally have the rights to access and use and enjoyment of Seven Mile Beach for recreational purposes as a result of the application of section 4(f) of the Prescription Law. It is noteworthy that the Prescription Law provides a mechanism in section 9 for land owners to establish that there are no such rights affecting their beach land but, to the writer's knowledge, no such owner has come forward to avail himself of that procedure, perhaps concerned as to establishing a precedent which would

certainly put to rest any notion of excluding the public from Seven Mile Beach. In fact, some beach land owners on Seven Mile Beach appear, with some success, to be excluding the public from a portion of their beach land by quietly establishing "roped off" areas in conjunction with "No Trespassing" signs; and, so long as these actions do not become excessive, this may achieve a modus vivendi and de facto equitable balance between the respective rights of landowners and the public, hitherto in competition.

How does the Prescription Law affect other beach land?

The answer to this question will turn on the facts referable to the public's use of a means of access to a particular beach and the public's use and enjoyment of that beach. However, it can safely be said that establishing prescriptive rights of access, use and enjoyment for the benefit of the public to beach land other than Seven Mile Beach will be hard to achieve in the absence of compelling supporting evidence and the inclination of interested members of the public to take on the costs and administrative burdens of doing so.