

BOUNDARY DISPUTES UNDER A REGISTERED LAND SYSTEM

These short notes discuss the impact of a land registration system on boundary disputes. Whilst the former is often thought of as being intended to reduce the former, in reality it has little or no impact on such disputes.

The most important point to take away is that **Land Registry plans do not show legal boundaries.**

Under the Land Title Registration Act 2011 (“the 2011 Act”), Bermuda adopted a statutory and compulsory land registration scheme.

Although England and Wales adopted a statutory land registration scheme as long ago as 1925, it was not initially compulsory. There was a significant overhaul and modernisation of the scheme in England and Wales under the Land Registration Act 2002, (“the 2002 Act”) which made registration compulsory, but since registration is only required on transfers of land, there remain a surprisingly large number of unregistered properties. There is likely to be a similarly significant time-lag in the registration of land in Bermuda, since the 2011 Act only requires registration in the event of a relevant property transaction – such transactions being set out in section 24.

In terms of boundary disputes in England and Wales, the key provision of the 2002 Act is contained in section 60, which provides:

“(1) The boundary of a registered estate as shown for the purposes of the register is a general boundary, unless shown as determined under this section.

(2) A general boundary does not determine the exact line of the boundary.

(3) Rules may make provision enabling or requiring the exact line of the boundary of a registered estate to be determined and may, in particular, make provision about—

- (a) the circumstances in which the exact line of a boundary may or must be determined,
- (b) how the exact line of a boundary may be determined,
- (c) procedure in relation to applications for determination, and
- (d) the recording of the fact of determination in the register or the index maintained under section 68.

(4) Rules under this section must provide for applications for determination to be made to the registrar.”

Members of the public, surveyors and lawyers constantly fail to have regard to this section, the effect of which is to provide that Land Registry plans *do not show legal boundary lines*. In other words, the plans which the Land Registry produce are essentially useless in terms of boundary disputes. Indeed they are worse than useless, because the aforementioned members of the public and professionals who ought to know better, regularly treat them as showing boundaries. Consequently, it is not uncommon for Land Registry plans to actually act as a catalyst for a boundary dispute.

Although there is a procedure for “determined boundaries” to be recorded at the Land Registry in England and Wales – arising from rules made under section 60(3) and (4) – this has proved not to be an attractive option for most landowners and lawyers, and there are very, very few determined boundaries recorded.

In any event, it is the first two subsections of section 60 which give rise to the relevant comparison with the Bermudian position.

Section 17 of the 2011 Act provides as follows:

“(1) The boundary of a registered estate as shown for the purposes of the register is an indicative boundary.

(2) An indicative boundary does not determine the exact line of the boundary of the registered estate.

(3) Subsections (1) and (2) apply to the boundaries of –
(a) any registered estate; or
(b) the land affected by any caution against first registration,
shown on the Index Map or any plan derived from the Index Map.”

It is notable that, perhaps learning from the relative unpopularity of the concept in England and Wales, Bermuda has chosen not to adopt any provision permitting the creation of determined boundaries.

Consequently, boundary disputes will continue to be litigated more or less precisely as prior to the dawn of the new land registration system.

Pearman v Fray [2017] SC (Bda) 29 Civ (21 April 2017) is an example of a local Bermudian boundary dispute case – a dispute as to ownership of (and a prescriptive right of way over) a private roadway – which would have followed more or less precisely the same course after land registration as it did beforehand.

Consequently, it is suggested that the evidence which one should be looking for in a boundary dispute arising under registered land, more or less in order of importance/priority (which will vary from case to case) is as follows;

- Conveyances
- Measured site survey (now) – showing all existing physical boundary features and identifying datum points
- Historic site surveys – much more the norm in Bermuda than the UK – Crisson & Company are a local surveyors who specifically mention their archive of historical site surveys; undoubtedly valuable to anyone litigating a boundary dispute
- Land Valuation Department records – regular inspections for property tax purposes
- Evidence of land surveyors as to staking – common practice on sale in Bermuda
- Parish Vestry records – sometimes contain information from lost conveyances (e.g. *Pearman*)
- Aerial photographs
- Other photographs – taken at time of purchase etc.
- Lay witnesses (and their memories)

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