

Public access rights to Cayman's beaches - what changes do recent legislative amendments bring?

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1. The Prescription (Amendment) Law, 2017: Prescription for the illness?

Golden beaches increasingly worth more than their weight in gold, Cayman's beaches are a finite resource. On an island whose physical landscape is developing and changing as quickly as it is, it perhaps seems inevitable that there have been increasing reports of conflicts arising from blocked or disputed public access to Cayman's beaches.

Can the recent changes to the Prescription Law (1997 Revision) brought about by the Prescription (Amendment) Law, 2017 provide a first step towards a statutory remedy to end the long-fought conflicts between property owners, beach-goers and developers?

2. What has changed?

A particular criticism levied at the pre-amended legislation was that that it required citizens to bring a private lawsuit at their own, often significant, expense to the Grand Court to establish public rights of way on behalf of the public generally. The Prescription (Amendment) Law, 2017 has amended section 9 of the Prescription Law (1997 Revision) (see below for significance) by:

(i) forming a dedicated Governmental department with responsibility for ensuring access to public beaches which would be able to make an application to the Grand Court to resolve a dispute regarding public beach access; and

(ii) permitting an application to be made to have a dispute settled regarding access to a public beach.

3. How do public beach access rights arise?

Public beach access rights may legally arise in a number of ways but typically they have arisen in the Cayman Islands in one of two ways:

1. Prescription

A prescriptive easement is a legal right to use another person's land for a specific limited purpose acquired by continued use by a person or persons(s) without permission of the owner for a legally defined period.

With respect to beach access rights in Cayman, Para 4., Prescription Law (1997 Revision) provides that:

"When any beach has been used by the public...and any road, track or pathway passing over any land adjoining or adjacent to such beach has been used by the public...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 same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing."

Person(s) wishing to formalise and publicly record a beach access easement with Lands & Survey will make an application to the Grand Court which will seek to evidence that the requirements of Para 4 have been met. Upon the Court's satisfaction that a prescriptive easement has arisen, a Court Order would be submitted to Lands & Survey instructing them to record the location, size and nature of the prescriptive easement against the registered title of the affected parcel of land.

2. Dedication for Public Use

By statute, it is the duty of the [Planning] Authority to ensure that the open character of scenic shoreline land is preserved, in particular that of the beaches, and also to safeguard the public's right to use the beaches and to gain access to them through public rights of way.

Most evidently shown by the slew of brown signs along Seven Mile Beach, pursuant to Para 32 of Development and Planning Regulations (2015 Revision), the Planning Authority, when granting planning permissions in relation to land in Hotel/Tourism zones which have a shoreline of two hundred feet or more in a development they shall require the owner to set aside and dedicate to the public a right of way of not less than six feet in width per every two hundred feet, from the public road to the sea.

The dedication process has now been formalised by the Registered Land (Amendment) Law, 2017, whereby landowners seeking to dedicate their land for public use may make an application to Lands & Survey in the prescribed form.

4. What remedies are currently available in the event

that a public access is blocked?

a) Where a public right has not yet been formalised:

The Prescription Law (1997 Revision) provides that where the public has used any beach, land, road, track or pathway in the manner without interruption for twenty years and such use is then disputed, any person concerned in the dispute may lodge a plaint in the Grand Court under the Judicature Law (2013 Revision).

b) Where a public right of access has been formalised:

"Once a highway, always a highway"

It was the Victorian judge John Maynard Byles who coined the phrase 'once a highway, always a highway' in the 1860 case of *Dawes v Hawkins*. This legal principle still holds true, and it remains the case that public highways can only lose this status if a formal order is applied for and approved by the Court.

As referred to earlier, statute currently requires citizens to bring a private lawsuit at their own, often significant, expense to the Grand Court in the event that a public right of access has been blocked or significantly interfered with.

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