PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

QUIETING TITLES ACT

PLEASE NOTE

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This document is ***not*** the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the ***Table of Public Acts*** on the following web site: www.princeedwardisland.ca/en/legislation

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QUIETING TITLES ACT

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QUIETING TITLES ACT
CHAPTER Q-2

1. Persons entitled to have title judicially investigated.

An owner of an estate in fee simple in land or a trustee for the sale of the fee simple is entitled to have his title judicially investigated and the validity thereof ascertained and declared, whether he has the legal estate or not, and whether his title is or is not subject to any charge or encumbrance. *R.S.P.E.I. 1974, Cap. Q-2, s.1.*

2. Other persons entitled with leave

Any other person who has any estate or interest in land may apply for the investigation of his title and a declaration of the validity thereof; but it shall be in the discretion of the judge before whom the proceedings are taken to grant or refuse the application and such discretion may be invoked and exercised at any stage of the proceedings, and the decision of the judge in exercising the discretion is not subject to appeal. *R.S.P.E.I. 1974, Cap. Q-2, s.2.*

3. Application by Crown

The Attorney General for Canada or the Minister of Justice and Public Safety and Attorney General for Prince Edward Island may apply for an investigation of the title of the Crown to any land and a declaration of the validity thereof. *R.S.P.E.I. 1974, Cap. Q-2, s.3; 1993, c.29, s.4; 2000, c.5, s.3; 2010, c.14, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

4. Application to Supreme Court

Every application shall be made to the Supreme Court or a judge thereof and shall be by petition (Form 1). *R.S.P.E.I. 1974, Cap. Q-2, s.4.*

5. Supporting documents

The application shall be supported by

(a) the title deeds, if any, and evidence of title in the possession or power of the applicant;

(b) certified copies of all registered instruments affecting the land, or photocopies of the registered instruments supported by the affidavit of the person making the photocopies swearing that the photocopies are true likenesses of the registered instruments or of all since the last judicial certificate, if any, under this Act, up to the time of the granting of the certificate of title, save and except mortgages of which discharges have been registered more than ten years prior to the date of the application and the discharges of the mortgages;

(c) an abstract of the title, unless the abstract is dispensed with in whole or in part;

(d) a concise statement of such facts as are necessary to make out the title which do not appear in the produced documents, but no abstract of produced documents shall be required except on special grounds;

(e) proof of any fact which is required to be proved in order to make out the title, and which is not established by the produced documents, unless the judge dispenses with the proof until a future stage of the investigation;

(f) an affidavit or deposition by the person whose title is to be investigated and a certificate of his counsel or solicitor, to the effect hereinafter mentioned, unless the judge, for special reason, dispenses therewith;

(g) a schedule of the particulars produced under this section. *R.S.P.E.I. 1974, Cap. Q-2, s.5; 1995, c.32, s.11.*

6. Statement by deponent

(1) The affidavit or deposition of the person whose title is to be investigated shall state

(a) that to the best of his knowledge and belief he is the owner of the estate or interest claimed by the petitioner, subject only to the charges and encumbrances set forth in the petition or in a schedule thereto, or that there is no charge or encumbrance affecting the land;

(b) that the deeds and evidences of title which he produces, and of which a list is contained in the schedule produced under section 5, are all the title deeds and evidences of titles relating to the land in his possession or power; and

(c) that he is not aware of the existence of any claim adverse to or inconsistent with his own to any part of the land or to any interest therein, or, if he is aware of an adverse claim, he shall set forth every such adverse claim and shall depose that he is not aware of any except what he sets forth.

Information to be contained in deposition

(2) The affidavit or deposition shall also set forth whether any one is in possession of the land and under what claim, right or title, and shall state that to the best of the deponent's knowledge, information and belief, the affidavit or deposition and the other papers produced therewith fully and fairly disclose all facts material to the title claimed by the petitioner, and all contracts and dealings which affect the title or any part thereof or give any right as against him.

Dispensing with or modifying affidavit or deposition

(3) The affidavit or deposition may be dispensed with or may be made by some other person instead of the person whose title is to be investigated or an affidavit or deposition as to part may be made by one person, and as to part by another, in the discretion of the judge to whom the application is made, and in such case the affidavit shall be modified accordingly. *R.S.P.E.I. 1974, Cap. Q-2, s.6.*

7. Certificate of counsel

The certificate of the counsel or solicitor shall state

(a) that he has investigated the title and believes the petitioner to be the owner of the estate which he claims in the land, subject only to any charge of encumbrance set forth in the petition or in the schedule thereto, or that he so believes, subject to any condition, qualification or exemption set forth in the certificate; and

(b) that he has conferred with the deponent on the subject of the various matters set forth in the affidavit or deposition referred to in sections 5 and 6 and believes the affidavit or deposition to be true. *R.S.P.E.I. 1974, Cap. Q-2, s.7.*

8. Evidence admissible

(1) The judge in investigating the title may receive and act upon any evidence that is received by the Supreme Court on a question of title, and any evidence which the practice of conveyancers authorizes to be received on an investigation of a title out of court, or any other evidence, whether the evidence is or is not receivable or sufficient in point of strict law or according to the practice of conveyancers, if the evidence satisfies the judge of the truth of the facts intended to be established thereby.

Proof

(2) The proof may be by affidavit or certificate or may be given orally or in any other manner or form satisfactory to the judge. *R.S.P.E.I. 1974, Cap. Q-2, s.8.*

9. Payment of taxes, rates etc. before issuance of certificate

Before a certificate of title is granted satisfactory evidence shall be given by certificate, affidavit or otherwise that all taxes, rates and assessments for which the land is liable have been paid, or that all, except those for the current year, have been paid. *R.S.P.E.I. 1974, Cap. Q-2, s.9; 1983, c.1, s.6; 1986, c.5, s.2.*

10. Further evidence

If the judge is not satisfied with the evidence of title produced in the first instance he shall give a reasonable opportunity to produce further evidence or to remove defects in the evidence produced. *R.S.P.E.I. 1974, Cap. Q-2, s.10.*

11. Publication of notice of application

(1) Except as hereinafter provided, before a certificate of title is granted or a conveyance is made under this Act, the judge shall direct to be published in the Gazette, and if he sees fit in one or more newspapers, and in such form and for such period as he considers expedient, a notice either of the application having been made, or of the order or decision of the judge thereon, and the notice shall state the time within which adverse claims may be filed and the certificate or conveyance shall not be signed or executed until after the expiration of at least four weeks from the first publication of the notice or such other period as the judge may appoint.

Exception

(2) Where the value of the land is proved to the satisfaction of the judge to be not more than $10,000 he may dispense with the publication of the notice and in lieu thereof may direct that for such period as he may think fit a printed or typewritten notice of the application, or of the order or decision of the judge thereon, be posted up in one or more conspicuous places on the land, and in such other place, if any, as he may think fit, and the certificate or conveyance shall not be signed or executed until the period limited by the notice for filing adverse claims has expired. *R.S.P.E.I. 1974, Cap. Q-2, s.11; 1994, c.48, s.16.*

12. Execution of conveyance by judge without notice

Where the judge is satisfied respecting the title, and considers that the certificate of title can safely be granted or the conveyance can safely be executed without any other notice of application than the published or posted notice, he may grant the certificate or direct the execution of the conveyance. *R.S.P.E.I. 1974, Cap. Q-2, s.12.*

13. Notice to persons interested

Where it appears that there is any person who may have a claim adverse to or inconsistent with that of the petitioner to or in respect of any part of the land, the judge shall direct such notice as he considers necessary to be mailed to or served on that person, his agent or attorney. *R.S.P.E.I. 1974, Cap. Q-2, s.13.*

14. Guardian, appointment

(1) Where it appears that any persons who will become the heirs of a living person or that any person not in existence may be interested in opposing the claim of the petitioners, the judge may appoint a litigation guardian to represent them and they shall be bound by the adjudication.

Costs, payment of

(2) The judge may order that the costs of the litigation guardian be paid by the petitioner. *R.S.P.E.I. 1974, Cap. Q-2, s.14.*

15. Further publication or service of notice

Before granting the certificate or directing the execution of the conveyance the judge may require any further publication to take place or any other notice to be mailed or served which he considers necessary. *R.S.P.E.I. 1974, Cap. Q-2, s.15.*

16. Filing statement of claim

(1) Any person having an adverse claim or a claim not recognized in the petition may at any time before the certificate is granted or the conveyance is executed, file and serve on the petitioner, his attorney or agent, a statement of his claim (Form 2).

Verification of

(2) The claim shall be verified by an affidavit to be filed therewith. *R.S.P.E.I. 1974, Cap. Q-2, s.16.*

17. Deciding cases of a contest

In case of a contest, the judge may either decide the question of title on the evidence before him, or may refer the question or any matter involved therein to the Court of Appeal or may direct any mode of investigation which he considers expedient, and may defer granting the certificate or directing the execution of the conveyance. *R.S.P.E.I. 1974, Cap. Q-2, s.17; 2008, c.20, s.72(79).*

18. Order security for costs

The judge may at any stage of the proceeding order security for costs to be given by the petitioner or by any person making an adverse claim. *R.S.P.E.I. 1974, Cap. Q-2, s.18.*

19. Costs, order *re*

The judge may order costs either as between party and party, or as between solicitor and client, to be paid by or to any party to any proceeding, and may give directions as to the fund out of which any costs shall be paid. *R.S.P.E.I. 1974, Cap. Q-2, s.19.*

20. Withdrawal of application

The petitioner may by leave of the judge withdraw his application at any time before final adjudication, on payment of all costs incurred in the investigation, either by himself or by any adverse claimant. *R.S.P.E.I. 1974, Cap. Q-2, s.20.*

21. Referral of petition or question

Subject to rules of court, the judge may refer a petition or any question arising in the course of any proceeding thereon to any officer of the court, or to counsel named by the judge, who shall proceed as the judge himself should do had the reference not been made, and shall have all the power of the judge, except the power to grant the certificate or to direct the execution of the conveyance. *R.S.P.E.I. 1974, Cap. Q-2, s.21.*

22. Claim of title, subject to

(1) Every claim of title under this Act shall be presumed to be subject to the following exceptions and qualifications unless the petition expressly states the contrary:

(a) the reservations, if any, contained in the original grant from the Crown;

(b) any title or lien which, by possession or improvements or other means, the owner or person interested in any adjoining land has acquired to or in respect of the land;

(c) any lease or agreement for a lease for a period yet to run, not exceeding three years, where there is actual occupation under the same;

(d) any public highway, right of way, watercourse and right of water, and other easement;

(e) any claim for succession duty.

Exceptions

(2) If the petitioner desires the certificate to declare the title to be free from such exceptions or qualifications, or any of them, the petition shall so state, and the investigation shall proceed accordingly, but this subsection does not apply to the exception or qualification as to a public highway. *R.S.P.E.I. 1974, Cap. Q-2, s.22; 1978, c.6, s.62.*

23. Certificates of title

The judge may give one certificate of title comprising all the land mentioned in the petition, or may give separate certificates as to separate parts of the land. *R.S.P.E.I. 1974, Cap. Q-2, s.23.*

24. Execution and filing of certificate

The certificate of title (Form 3), shall be under the seal of the court and shall be signed or initialled by a judge and shall also be signed by the Prothonotary, and the certificate and the schedule, if any, thereto or a duplicate or counterpart of the same shall be registered in full both in the Supreme Court and in the registry office of the county where the land lies without any further proof thereof. *R.S.P.E.I. 1951, c.136, s.24; 2008, c.20, s.72(79).*

25. Endorsement of certificate, evidence of registration

A certificate of the registration in the Supreme Court may be endorsed on the certificate of title, or on any counterpart or certified copy thereof, thus:

Registered in ..... 19.....,

..... Book Page.....

A.B.,

Prothonotary

and a memorandum or certificate so signed shall be evidence of the registration mentioned therein. *R.S.P.E.I. 1974, Cap. Q-2, s.25; 1982, c.28, s.4.*

26. Effect of certificate of title

The certificate of title, sealed, signed and registered as required by section 24, shall be conclusive, and the title therein mentioned shall be deemed absolute and indefeasible on and from the date of the certificate as regards the Crown and all persons whomsoever, subject only to any charges or encumbrances, exceptions or qualifications mentioned therein or in the schedule thereto, and shall be conclusive evidence that every application, notice, publication, proceeding, consent and act which ought to have been made, given and done before the granting of the certificate, has been made, given and done by the proper person. *R.S.P.E.I. 1974, Cap. Q-2, s.26.*

27. Evidence of certificate, what is admissible in evidence of

After a certificate of title is registered a copy thereof purporting to be signed and certified as a copy by the Prothonotary, or by the Registrar of Deeds for the county in which the land lies, shall be admissible evidence of the certificate for all purposes without further evidence of such copy, and without accounting for the non-production of the certificate. *R.S.P.E.I. 1974, Cap. Q-2, s.27; 2008, c.20, s.72(79).*

28. Indefeasible title, grant of

In case of a sale by the Supreme Court, the court may investigate the title with a view to granting an indefeasible title, and in that case a conveyance (Form 4), executed to the purchaser, under the seal of the court and purporting to be under the authority of this Act, shall have the same effect as a certificate. *R.S.P.E.I. 1974, Cap. Q-2, s.28.*

29. Judgment for specific performance

Where judgment is given for the specific performance of a contract for the sale of land and it is provided by the contract that the vendor shall give an indefeasible title, the court may make the like investigation, and the conveyance may be according to Form 4. *R.S.P.E.I. 1974, Cap. Q-2, s.29.*

30. Withholding material, documents or information from court, effect of

If in the course of any proceeding any person acting either as principal or agent knowingly and with intent to deceive makes or assists or joins in or is privy to the making of any material false statement or representation, or suppresses, withholds or conceals or assists or joins in or is privy to the suppression, withholding or concealing from the court of any material document, fact or matter of information, any certificate or conveyance obtained by

means of such fraud or falsehood shall be null and void except as against a purchaser for valuable consideration without notice. *R.S.P.E.I. 1974, Cap. Q-2, s.30.*

31. Reinvestigation of title, by leave

(1) After a certificate is granted or a conveyance is executed any person aggrieved thereby may, on petition, and after satisfactorily accounting for his delay, by leave of the court or a judge, have the title or claim reinvestigated on such terms as may be considered just.

Registration of petition

(2) A certificate of the presentation of the petition shall be registered in the proper registry office.

Petition does not affect

(3) No proceeding on the petition shall affect the title of any person who, after the date of the certificate or conveyance under this Act and before the registration of the certificate of the presentation of the petition, has acquired by sale, mortgage or contract, for valuable consideration, any estate or interest in the land described in the certificate or conveyance.

Court order

(4) The court or judge may make such order on the petition as he may consider just having regard to subsection (3) and section 30. *R.S.P.E.I. 1974, Cap. Q-2, s.31; 1982, c.28, s.4.*

32. Appeal

An appeal lies from an order or decision of a judge under this Act to the Court of Appeal. *R.S.P.E.I. 1974, Cap. Q-2, s.32; 2008, c.20, s.72(79).*

33. Book for registration of certificates

A separate book shall be kept in the Supreme Court for the registration of certificates and conveyances under this Act, and the certificates and conveyances registered therein shall be numbered in order, and an index to the book shall be kept in such form as the court may direct. *R.S.P.E.I. 1974, Cap. Q-2, s.33.*

34. Person under disability, rights of

Where any person who, if not under disability, might have made any application, given any consent, or done any act, or been party to any proceedings under this Act, is an infant or a mentally incompetent person, the guardian of the infant, or trustee of the mentally incompetent person, may make such application, give such consent, do such act, and be party to such proceeding as such person might if free from disability, and shall otherwise represent such person for the purposes of this Act, and if the infant has no guardian, or the mentally incompetent person no trustee, the court or judge may appoint a person with like power to act for the infant or mentally incompetent person. *R.S.P.E.I. 1974, Cap. Q-2, s.34; 2023, c.11, s.84(2).*

35. Failure to bring action no objection

No objection to a petition shall be allowed upon the ground that the petitioner should first have brought an action, and if it appears upon the determination of the investigation that the petitioner is entitled to the possession of the land, he may obtain an order against any other party to the proceeding for the delivery of possession thereof. *R.S.P.E.I. 1974, Cap. Q-2, s.36.*

36. Death of a party to the proceedings, effect of

Proceedings shall not abate or be suspended by any death or transmission or change of interest, but in any such event the court or a judge may require notices to be given to persons becoming interested, or may make any order for discontinuing, or suspending, or carrying on the proceedings, or otherwise in relation thereto as may seem just. *R.S.P.E.I. 1974, Cap. Q-2, s.37.*

37. Defect in procedure, effect of

No petition, order, affidavit, certificate, registration or other proceeding shall be invalid by reason of any informality or technical irregularity therein, or of any mistake not affecting the substantial justice of the proceeding. *R.S.P.E.I. 1974, Cap. Q-2, s.38.*

FORM 1*

PETITION TO QUIET A TITLE

In The Supreme Court

In the matter of (briefly describing the property).

To the Honourable the Judges of the Supreme Court

The Petition ..... of

SHEWETH:

That your Petitioner is absolute owner in fee simple in possession (or as the case may be) of the following land (describing it):

That there is no charge or other encumbrance affecting your Petitioner's title to the land (except, etc., or that your Petitioner's title is subject only to the charges or encumbrances in the schedule hereto mentioned, and that the only persons having or claiming any charge, encumbrance, estate, right or interest in the land are set forth in the schedule hereto annexed, and that the charge, encumbrance, estate, right or interest belonging to or claimed by each is therein set forth). Your Petitioner therefore prays that his title to the land may be investigated and declared under the *Quieting Titles Act.*

.....

A.B.,

or

.....

C.D., Attorney for A.B.

{Note: Form 1 is prescribed by section 4 of the Act.}

FORM 2*

ADVERSE CLAIM

In The Supreme Court

In the matter of, etc., (as in petition). G.H., of, etc., claims to be the owner of the land (or as the case may be) (stating briefly the nature and the grounds of the claim).

Dated this ..... day of ....., 19.....

.....

G.H.,

or

.....

E.F., Attorney for G.H.

{Note: Form 2 is prescribed by subsection 16(1) of the Act.}

FORM 3*

CERTIFICATE OF TITLE

In The Supreme Court

(L.S.)

These are to certify under the authority of the *Quieting Titles Act*, that A.B., of ..... is the legal and beneficial owner in fee simple in possession (or as the case may be) of all, etc. (here describe the land) subject to the exceptions and qualifications mentioned in section 22 of the said Act (or as the case may be), and to (specifying either by reference to a schedule or otherwise any of the charges or encumbrances, exceptions or qualifications to which the title of A.B. is subject), but free from all other rights, interests, claims and demands whatever.

In witness whereof ..... the seal of the Court has been hereunto

affixed, this ..... day of ..... 19.....

Prothonotary

{Note: Form 3 is prescribed by section 24 of the Act.}

FORM 4*

CONVEYANCE BY THE SUPREME COURT

(L.S.)

The Supreme Court of Prince Edward Island, under the authority of the *Quieting Titles Act*, doth hereby grant unto A.B., of ..... (here describe the land sold) to hold the same unto the said ..... in fee simple (or as the case may be), subject to (here specify as in the case of a certificate of title).

In witness whereof .....the seal of the Supreme Court has been hereunto affixed, this ..... day of ..... 19.....

Prothonotary.

**{Note: Form 4 is prescribed by section 28 of the Act.}*