

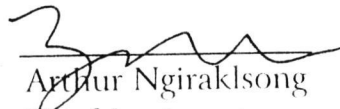
IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU

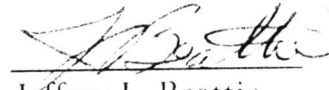
IN RE RULES AND REGULATIONS)
OF THE LAND COURT)

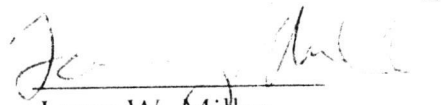
O R D E R


These Rules and Regulations of the Land Court are promulgated by the Supreme Court of the Republic of Palau, in consultation with the Land Court, pursuant to §16 of RPPL No.4-43, Article X, § 14 of the Constitution and 4 PNC §101. They apply to all proceedings before the Land Court.

So ordered the 15th day of October, 1996.


Arthur Ngiraklsong
Chief Justice


Jeffrey L. Beattie
Associate Justice


Larry W. Miller
Associate Justice


R. Barrie Michelsen
Associate Justice

RULES AND REGULATIONS OF THE LAND COURT

Promulgated by the Palau Supreme Court

Pursuant to RPPL No. 4-43 Section 16

Rules and Regulations of the Land Court

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RULES AND REGULATIONS OF THE LAND COURT

1. Authority

These Rules and Regulations are promulgated pursuant to the Land Claims Reorganization Act of 1996 (RPPL No. 4-43 Section 16), hereinafter cited as "the Act".

2. Purpose

These Rules and Regulations ("Regulations") implement the provisions of the Act which established the Land Court of the Republic of Palau. They govern the operations and activities of the Land Court in the performance of its responsibilities prescribed under the Act.

3. Definitions

In these Regulations, the following definitions shall apply:

- a. "Registration officer" means a Land Court registration officer.
- b. "Senior Judge" means the Senior Judge of the Land Court.
- c. "Registered land" means land recorded in the permanent register in the custody of and under the supervision of the Clerk of Courts.

4. Organization and Administration

The Land Court is a branch of the National Judiciary of the Republic of Palau, under the administration of the Chief Justice of the Supreme Court. The Land Court shall consist of one full-time Senior Judge and not less than three (3) nor more than six (6) associate judges, who shall serve on a full-time or part-time basis, as determined by the Chief Justice. Land Court judges are appointed by the President of the Republic upon nomination from the Judicial Nominating Commission.

The Land Court shall hire one Senior Registration Officer, other registration officers and necessary staff. All personnel are subject to the employment rules of the national judiciary.

See RPPL No. 4-43 Section 5.

5. Duties and Responsibilities

A. Land Court. The Land Court is responsible for the registration of ownership titles to all lands in the Republic. To accomplish such responsibility, the Land Court shall

1. Hold hearings and determine ownership of all unregistered lands in the Republic prior to December 31, 2000, in accordance with the Land Court Rules of Procedure, which are incorporated hereby.
2. Award ownership of public land, or land claimed to be public land, to any citizen or

citizens of the Republic who can prove

- a) that the land became public land, or became claimed as public land as a result of the acquisition by previous occupying powers or their nationals prior to January 1, 1981, through force, coercion, fraud or without just compensation or adequate consideration; and
- b) that prior to that acquisition, the land was owned by the citizen or citizens, or that the citizen or citizens are the proper heirs to the land.

3. Give priority to matters in which claimants have resolved their claims between themselves by promptly issuing determinations of ownership to those claimants in accordance with the agreements between them. In this regard, however, no determination of ownership shall be issued unless the land has already been surveyed and proper notice has been given as provided in Section 8 of the Act.

See RPPL No. 4-43 Section 4.

B. Land Court Judges and Employees. In carrying out the task of land title registration, employees of the Land Court shall have, but are not limited to, the following responsibilities:

1) Land Court Judges

All Land Court Judges must adhere to the ABA Code of Judicial Conduct and any other code of ethics established by the Supreme Court; conduct hearings on claims of land ownership in accordance with the Land Court Rules of Procedure; render determinations of ownership based on the evidence; issue Certificates of Title; administer oaths; and refer claims to the Supreme Court when necessary.

In addition to the foregoing, the Senior Judge shall establish and execute procedural and administrative policies for the Land Court operations in consultation with the Chief Justice; designate registration areas or delegate duty to Registration Officers; oversee activities of the Senior Registration Officer; assign claims to the associate judges for hearing; review transfers of titles or interests in registered lands, parcel split maps and issue new certificates as deemed proper; and designate acting Senior Judge during absence.

2) Land Court Registration Officers

All Land Court Registration Officers shall adhere to standards of the code of conduct promulgated by the Supreme Court; conduct preliminary inquiries and mandatory monumentation and mediation sessions, making effort to consult with and encourage participation of traditional leaders of the area; assist claimants to prepare written claims; encourage claimants to discuss and try to resolve their claims among themselves; inform or transmit to the Senior Registration Officer claims in their respective areas which are ready for hearing and determination; designate registration areas in consultation with the Senior Judge or Senior Registration Officer; assist in the

preparation for and during hearings as required by the judges; coordinate efforts with the Bureau of Lands and Surveys in the preparation of maps needed by the Land Court; review "worksheets" prior to their finalization by BLS to ensure proper claim marker connections; prepare and maintain inventory of land claims and records of their respective states; and administer oaths.

In addition to the above, the Senior Registration Officer shall plan, organize, supervise and coordinate activities of the Registration Officers; request land survey teams or hire private registered surveyors with approval of the Senior Judge to perform surveys of claims; and inform or transmit to the Senior Judge claims which are ready for registration.

3. Land Court Registrar

The Land Court Registrar shall register or record certificates of title and other documents of transfer of titles or interests in registered lands; and maintain custody of Land Court file records of all registered lands.

4. Land Court Clerks

Land Court Clerks shall administer oaths, assist claimants to prepare written claims, operate recording equipment and provide assistance during hearings, and provide secretarial and clerical tasks of the Land Court.

6. Designation of Registration Areas

The Land Court shall designate areas for which it is ready to commence registration. The purpose of the designation is to alert potential claimants of impending Land Court activities in the designated area.

7. Notice of Hearing

When the Land Court decides that a parcel is ready for ownership determination, it shall set a date for hearing of the claims. The Land Court shall give the first notice of the hearing at least 120 days prior to the hearing date; and a second and final notice at least 80 days prior to the hearing date. The notice shall be in both Palauan and English.

See RPPL No. 4-43 Section 8.

8. Contents of Notice of Hearing

The notice must contain all of the following information:

- a) Description of the land subject of the hearing;
- b) Date, time and place of mandatory monumentation and mediation session;
- c) Penalties for failure to attend mandatory monumentation and mediation session;
- d) Deadline for filing claims to the subject land;
- e) Procedure for filing claims;

- f) Forfeiture of claims not timely filed;
- g) Location of nearest Registration Officer and Land Court office;
- h) Statement that assistance in preparing written claims will be provided by the Land Court free of charge; and
- i) Other information as determined by the Land Court.

See RPPL No. 4-43 Section 8(c).

9. Posting and Service of Notice of Hearing:

The notice of hearing shall be posted and served in the manner and upon the locations and persons prescribed in Section 8(b)1 through 8 of the Act.

10. Claim of Land Ownership:

Any person or group of persons who claim ownership of land not yet registered must file a written claim in a claim form prescribed by the Land Court. Copies of documents, if any, by which claimant acquired title to the claimed property or which forms a basis for the claim, shall be attached to the claim form. One claim form must be filed separately for each parcel claimed. The Land Court Rules of Procedure shall be made available for review to all claimants at the time that they file their claims.

The Land Court shall provide assistance in preparing written claims to any interested party free of charge.

See RPPL No. 4-43 Section 8.

11. Deadline for Filing Claims

All claims to private lands must be filed with the Land Court no later than 60 days prior to the date set for hearing of the land claimed. A postponement of the hearing date shall not extend this deadline.

The deadline for claims to public land was January 1, 1989. Therefore, the Land Court shall not accept any new claims for public lands.

See RPPL No. 4-43 Section 8(a) and (e).

12. Forfeiture of Claims

Any claim which is not timely filed shall be forfeited. *See RPPL No. 4-43 Section 8(a).*

13. Mandatory Monumentation and Mediation Session

A monumentation and mediation session shall occur not less than 45 days before the date of

each Land Court hearing. Notice of the monumentation and mediation session shall be included in the notice of hearing. However, at the discretion of the Registration Officer, a separate notice may be served upon claimants after the deadline for filing claims has lapsed.

The Registration Officer shall designate the meeting place at or near the property site.

Attendance is mandatory for all claimants. Registration Officers shall note the absence of claimants or their authorized representatives. Adjoining land owners and traditional leaders of the area are encouraged to attend. All interested parties may also attend these sessions.

At the meeting, the Registration Officer shall explain the monumentation process, including claimants' obligation to clear of obstruction the perimeters of their claims, and to purchase the required boundary markers. Registration Officers shall also encourage discussion and informal resolution of disputed claims among claimants.

Immediately after the meeting, Registration Officers shall assist the claimants to monument their claims. The Registration Officer shall make sketches of the claims, indicating the general shape and approximate location of corner markers.

No monumentation and mediation session is required where the boundaries of the subject properties have already been resolved and monumented.

See RPPL No. 4-43 Section 7 (a) and (b).

14. Penalty for Failure to Attend Mandatory Monumentation and Mediation Session

A claimant who fails to attend or send a representative to a scheduled monumentation and mediation session without reasonable cause shall pay a penalty of \$250 to the Clerk of Courts within 10 calendar days of the monumentation. If less than all claimants attend a scheduled monumentation, the Land Court shall re-schedule another session and promptly deliver to the absent claimant a statement directing him or her to pay the penalty and to submit a payment receipt to the Land Court prior to the re-scheduled monumentation. The Land Court may exclude a claimant from the monumentation until the penalty is paid.

Any claimant who fails for a second time to attend a scheduled monumentation and mediation session may not contest the boundary monumentation resulting from the session.

In re-scheduling the monumentation, the Registration Officer should bear in mind that the monumentation and mediation session must take place at least 45 days prior to the hearing.

See RPPL No. 4-43 Section 7(c).

15. Compromise or Settlement of Claims

Where parties to any claim agree to a settlement or compromise, the particulars shall be recorded and acknowledged under oath by the parties, and shall have the same force and effect as a decision by the Land Court.

Where the only claimants to land which has already been surveyed have resolved their claims between themselves, the Land Court shall promptly issue a determination of ownership in accordance with the agreement. Such agreement must be in writing and must be signed and subscribed to by all claimants. However, in no event may the Land Court accept such an agreement unless the deadline for filing claims has lapsed, and proper notice has been given as provided for in the Act.

See RPPL No. 4-43 Section 4(c).

16. Survey of Claim Boundaries

The Senior Registration Officer shall request a survey team to perform a survey of the claims immediately following the monumentation. Registration Officers shall assist surveyors as necessary to locate claim markers, and must review the "worksheet" prior to its finalization in order to ensure that the claim markers are properly connected.

See RPPL No. 4-43 Section 6.

17. Conduct of Hearings

All Land Court hearings are public and all proceedings recorded. Hearings shall be held in the village or the state where the land lies, although claimants reasonably may agree with the Judge to change the hearing venue.

Claims shall be heard by one Land Court Judge, but may be heard by a panel of three judges at the discretion of the Senior Judge. A judge assigned to hear claims may request a three judge panel.

At the commencement of the hearing, the Judge shall describe the land at issue and list the persons who filed claims thereto. Thereafter, the hearing shall be conducted in accordance with the Land Court Rules of Procedure promulgated on April 4, 1996. All claimants or their authorized representatives must be given an opportunity to be heard.

Except in cases where claims of Palauan citizens, clans or lineages prevailed over the claim of the Trust Territory Government, its Land Title Officer and all of its political subdivisions, the statute of limitations, laches or stale demand, waiver, res judicata or collateral estoppel as to matters decided before January 1, 1981, and adverse possession, may not be asserted against and shall not apply to claims for public land by citizens of the Republic.

Where the land claimed was the subject of proceedings before the District Land Title Officer or the Palau Land Commission, the Land Court shall accept the record of such proceedings as evidence in hearings before it, giving such record as much weight as it deems appropriate.

See RPPL NO. 4-43 Section 9 and Section 4(b).

18. Prior Determinations and Judgments

Except for claims still pending to public lands, the Land Court shall not hear claims or disputes to land between parties or their successors or assigns, where such claims or disputes were finally determined by the Land Claims Hearing Office, the Land Commission or a court of competent jurisdiction. The Land Court shall accept such prior determinations as binding on such parties without further evidence than the judgment or determination of ownership.

See RPPL No. 4-43 Section 9(b).

19. Postponement of Hearings

For good cause shown, a hearing may be postponed for a reasonable period of time. The Land Court

shall notify all claimants of the postponement in writing. The Land Court shall also notify all claimants of the new hearing date by written notice.

A postponement does not extend the deadline for filing claims to the

subject land *See RPPI No. 4-43 Section 8(e).*

20. Determination of Ownership

A determination of ownership based on findings of facts and conclusions of law shall be issued within twenty (20) business days after the conclusion of the hearing. Such determination of ownership and a summary of the proceedings, including the findings of fact and conclusions of law, shall be served promptly on all parties of record. The Land Court shall file the original of the determination with the Clerk of Courts, and maintain a copy in its records.

If a determination justifiably cannot be timely issued, the Land Court shall issue a written statement to the parties explaining why the determination cannot be made within such time, and the date when the determination of ownership will be issued.

A determination of ownership rendered pursuant to an agreement of the parties shall be issued and served in the same form and manner as provided herein.

The concurrence of a majority shall constitute a determination in a hearing conducted by a panel of three judges.

See RPPL No. 4-43 Section 11.

21. Appeals from Land Court Determinations

Appeal from a Land Court determination of ownership shall be filed with the Appellate Division of the Supreme Court within 30 days after the aggrieved party receives the determination. Such appeals are governed by the ROP Rules of Appellate Procedure.

The Land Court need not be named as a party to an appeal from its termination.

See RPPL No. 4-43 Section 12.

22. Certificate of Title

The Land Court shall issue a Certificate of Title setting forth the names of all persons or groups of persons holding interest in the land pursuant to the determination of ownership as originally made or as modified by the Appellate Division of the Supreme Court, as the case may be, not more than thirty (30) days after the later of (1) the completion of a final cadastral map of by the Bureau of Lands and Surveys, or (2) the expiration of the time for appeal from a determination of ownership by the Land Court without any notice of appeal having been filed or after the determination of an appeal.

If a certificate of title is issued upon a basis other than a Land Court determination or Supreme Court modification or order (such as an *inter vivos* transfer, e.g.), there must be a written statement or memorandum made for the Land Court's record showing the basis upon which it is issued.

The certificate of title shall be conclusive upon all persons so long as notice was given as provided in the Act, and shall be prima facie evidence of ownership subject to any leases or use rights of less than one year.

The Land Court shall file the original Certificate of Title with the Clerk of Courts, deliver the "Owner's Duplicate Certificate" upon the owner, and maintain a copy in its record file.

See RPPL No. 4-43 Section 13(a).

23. Registry of Title and Mandatory Recording of Interests in Land

The original determination of ownership and the original certificate of title must be recorded in the Office of the Clerk of Courts, and shall be bound in a permanent register in the custody of the Clerk of Courts.

All security interests in land, releases and satisfactions thereof, leases of one year or more, deeds of transfer, judgments affecting rights or interest in land and documents evidencing easements or use rights of more than one year shall be recorded in the permanent register. A copy of such documents must also be filed with the Land Court Registrar.

See RPPL No. 4-43 Section 14(a).

24. Transfer of Interests in Registered Land

A. Inter vivos Transfers. When transfer of title or interest in registered land occurs, the Senior Land Court Judge shall cancel the certificate and issue a new certificate of title to the transferee. If only a part of the land is transferred, the Land Court shall require the certificate holder to have the area to be transferred surveyed at his own expense, and a map thereof submitted to the Senior Land Court Judge. If satisfactory to the Senior Judge, a new certificate of title shall then be issued for each part of the land covered by the former certificate.

Upon receiving a request for or notice of transfer, the Senior Land Court Judge must determine that the document of transfer is properly executed and properly describes the land before canceling the existing certificate and issuing a new certificate of title. In doing so, the Senior Judge may order such notice and hearing as deemed appropriate.

The owner's duplicate certificate must be submitted for proper cancellation upon a request for or notice of transfer. If the owner's duplicate certificate has been lost, destroyed or is otherwise unavailable, the new owner may request the Land Court to issue a replacement duplicate certificate. Such request shall be by petition under oath. The replacement certificate shall include a statement that it is issued in place of a lost or destroyed certificate.

B. Testamentary Transfers. Transfers of interests in land by will or by intestate succession shall be determined by the Trial Division of the Supreme Court. Upon determination by the Trial Division of the proper devisee or heir, the Trial Division shall order the Land Court to cancel the decedent's duplicate certificate and the original certificate bound in the permanent register and to issue a new original certificate and duplicate certificate in favor of the devisee or heir.

The Land Court may establish a fee schedule and charge for issuance of new or replacement certificates.

See RPPL No. 4-43 Section 15(a) and (b).

25. Pending Cases and Matters

All cases and matters pending before the Land Claims Hearing Office as of March 5, 1996, shall be transferred to the Land Court for further proceedings. Hearings on these pending cases and matters may be *de novo*, or on the record where a hearing was concluded, depending on the completeness of the files and at the discretion of the Senior Land Court Judge or his designee.

See RPPL No. 4-43 Section 21.

26. Referral of Claims to the Supreme Court

The Land Court may refer disputed claims to the Trial Division of the Supreme Court if it deems that consideration of such claims will seriously interfere with the registration of all lands in the Republic prior to December 31, 2000. The Land Court must state the reasons why it believes referral is necessary.

See RPPL No. 4-43 Section 4(d).

27. Appointment of Guardians for Minors or Incompetents

A guardian duly appointed by competent authority or the Land Court may represent and act for a minor or incompetent in any proceedings before the Land Court. *See RPPL No. 4-43 Section 10.*

28. Proof of Service

The Land Court shall maintain proofs of service of all papers required to be filed, posted or served upon other parties or agencies. The proofs of service shall contain an acknowledgment by the person served or a statement certified by the person who made service, of the date, manner of service and names of persons served or location of posting.

29. Revisions and Amendments

These regulations may be revised and amended whenever the Supreme Court, in consultation with the Land Court, deems necessary.

30. Conflict

In the event of a conflict between these Regulations and the Act, the Act shall be deemed controlling.

31. Title

These Rules and Regulations of the Land Court shall be known and cited as Land Court Regulations (LC Reg. ____).

32. Effective Date

These Regulations shall become effective as of October 18, 1996.