

Subdivision of Land Act [Cap 140]

LAWS OF FIJI

[1978 Edition]

CHAPTER 140

SUBDIVISION OF LAND

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SUBDIVISION OF LAND

**AN ACT
PROVIDE FOR THE REGULATION AND CONTROL OF
SUBDIVISIONS OF LAND**

*Ordinance Nos. 35 of 1937, 28 of 1938, 16 of 1941, 15 of 1943,
2 of 1945, 6 of 1945, 14 of 1946, 27 of 1948,
12 of 1955, 23 of 1973, 14 of 1975, 24 of 1976*

[30th October, 1937]

Short Title

1. This Act may be cited as the Subdivision of Land Act.

Application

2. The provisions of this Act shall apply only to the part or whole of any such area or areas as the Minister may from time to time by order in the Gazette define and specifically describe therein, and shall apply to all land in any area or areas so defined and described except-

(a) Crown land which is not the subject of a registered lease;

(b) land included within the boundaries of any city or town to which the Local Government Act applies; and

(Cap 125)

(c) land included in any native reserve constituted under the Native Land Trust Act.

(Cap 134)

(Amended by 12 of 1955, s. 2.)

Interpretation

3. In this Act, unless the context otherwise requires-

"Advisory Committee" means the Town and Country Planning Advisory Committee appointed under the provisions of section 4 of the Town Planning Act;

(Cap 139)

(Inserted by 23 of 1973, s. 2.)

"applicant" means the owner, lessee or sublessee of any land proposed to be subdivided and includes his duly authorised representative;

"Director" means the Director of Town and Country Planning for the time being appointed under the provisions of section 3 of the Town Planning Act;

(Cap 139)

(Inserted by 23 of 1973, s. 2.)

"local authority" means in the case of a rural area any person or body appointed by the Minister responsible for health matters under the provisions of the Public Health Act;

(Cap 91)

(Amended by 14 of 1975, s. 31.)

"lot" means an undivided plot or parcel of land, and, for the purposes of this definition, a river, street or public road shall be deemed to divide the land which it traverses;

(Inserted by 6 of 1945, s. 2.)

"noxious or offensive trade, business or manufacture" includes blood boiler, bone boiler, fell-monger, soap boiler, tallow melter, tripe boiler, leather dresser, tanner, fat melter or extractor, glue maker, size maker, gut scraper, dealer in rags and bones and any business or manufacture which the Minister may by order declare to be noxious or offensive;

"open space" includes a public garden, recreation ground, playing field or other land intended to be used for any such purpose;

"subdivide" means dividing a parcel of land for sale, conveyance, transfer, lease, sublease, mortgage, agreement, partition or other dealing or by procuring the issue of a certificate of

title under the Land Transfer Act in respect of any portion of land, or by parting with the possession of any part thereof or by depositing a plan of subdivision with the Registrar of Titles under the last-mentioned Act; and the corresponding noun shall be construed accordingly.

(Cap. 131)

(Substituted by 16 of 1941, s. 2, and amended by 14 of 1975,

Restriction on subdivision of land

4. Notwithstanding the provisions of any other law for the time being in force no land to which this Act applies shall be subdivided without the prior approval of the Director to be obtained in the manner hereinafter prescribed:

Provided that it shall be lawful to subdivide such land without such approval

(a) no part of the land is situated in any town or within three miles of the boundaries of a town; and

(b) and is subdivided in such a manner that no lot is less than five acres in area.

(Amended by 14 of 1946, s. 2, and amended by 24 of 1976, s. 8.)

Application to be made to the Director

5. Any person who desires to subdivide land in a manner which requires the approval of the Director as provided in section 4 shall submit in duplicate an application in writing to the Director.

(Substituted by 14 of 1946, s. 3, and amended by 12 of 1955, s. 4.)

(2) Such application shall be accompanied in each instance by a proposal plan or diagram in quadruplicate drawn on stout white paper in such manner and to such scale as may be prescribed.

(Amended by 12 of 1955, s. 3.)

(3) Such proposal plan or diagram shall show-

(a) the particulars of the instrument of title under which the land is held;

(b) the situation and boundaries of the land and of the lots immediately adjoining the land;

(c) the position and width of all roads, streets, lanes or pathways abutting on the land and the position of all streams, water-courses, water-holes, sewers and drains, if any, in the immediate vicinity;

(d) the manner in and the purposes for which it is intended to subdivide the land and the areas and dimensions of all the lots;

(Amended by 28 of 1938, s. 3.)

(e) the position and width of roads, streets, lanes or pathways to be made over and through the land;

(f) the intended position of the surface drains and the direction of flow or discharge thereof;
(g) and if so required by the Director, the levels of the present surface of the ground above some known datum sufficient to determine the intended level and rate or rates of inclination of the intended roads, reefs, lanes or pathways, and the levels and inclinations of the existing roads, streets, lanes or pathways with which it is intended that such roads, streets, lanes or pathways shall be connected;

(h) the position of all existing buildings erected on the land or within ten feet of the boundaries of the land proposed to be subdivided.

(Inserted by 12 of 1955, s. 4.)

(4) Every such application shall also be accompanied by-

(a) A statement in writing of the provisions which have been or will be made for the construction and maintenance of any road, street, lane or pathway or of any drain shown on the proposal plan or diagram and of the provisions which have been or will be made for the supply of water to the area and for the disposal of refuse, waste-water and night-soil; and

(b) All such other or additional documents, statements, information, plans or diagrams of whatsoever description as the Director may require.

Board to send copy of application to local authority

6. The Director shall, as soon as may be after receipt of the application send to the local authority one copy thereof together with one copy of the proposed plan or diagram and a copy of any other document, diagram or plan required by the Director under the provisions of section 5.

(Substituted by 12 of 1955, s. 5.)

Local authority to consider application

7.-(1) The local authority shall consider the application and may make recommendations to the Director.

(2) Where no recommendations are received by the Director within thirty days of the date when the application was sent to the local authority by the Director, the local authority shall be deemed to have no recommendations to make.

(3) Where the Director has, subsequent to the date of sending the application to the local authority sent to the local authority any other document, diagram or plan required by the Director, in relation to the application under section 5, the period of thirty days referred to in subsection (2) shall be deemed to commence from the latest date upon which any such document, plan or diagram was sent.

(Section substituted by 12 of 1955, s. 5.)

Power of Director to refuse or approve applications

8.-(1) The Director shall consider the application together with the plans or diagrams and documents and recommendations (if any) aforesaid and may require the applicant to amend his plan or diagram to fulfil such requirements as the Director may consider necessary and may approve the application subject to the completion of such amendments and the fulfilment by the applicant of any condition imposed by the Director under the provisions of this Act.

(2) If the Director is of the opinion that building or further building development is undesirable on the land which is the subject of the application or, having regard to the health, amenity or convenience of the neighbourhood, that any subdivision of land shown on the plan is unsuitable, he may refuse the application or he may, in approving the application in whole or in part, impose such conditions as are necessary to give effect to such decision.

(3) If the Director is of opinion, having regard to the health, amenity or convenience of the neighbourhood, that the establishment of any noxious or offensive trade, business or manufacture should not be permitted or that a portion of the land being subdivided not exceeding in any case one-twentieth of the total area thereof should be reserved as an open space, the Director may, in approving the application in whole or in part, impose such conditions as are necessary to give effect to such decision.

(4) The decision of the Director upon the application shall be communicated to the local authority which shall, unless notice of intention to appeal to the Minister shall have been given as hereinafter provided, forthwith take such steps as are necessary to enforce the observance of the decision of the Director.

(5) Any person who contravenes or fails to comply with any condition imposed by the Director under this section shall be deemed to have contravened or failed to comply with the provisions of this Act.

Refusing approval of any application to subdivide land

9. Without in any way limiting the discretion of the Director, it shall be sufficient reason for refusing approval of any application to subdivide land if-

(a) any such land is the subject of a registered lease of native or Crown land issued ostensibly for agricultural or pastoral purposes whether or not such lease contains any specific condition limiting the use of such land to such purposes; or

(b) any such land is the subject of a registered lease of native or Crown land which will normally expire by effluxion of time within a period of ten years from the date of any application for permission to subdivide such land; or

(c) provision is not made for any drainage reserves or drainage easements which may be necessary to enable the allotments or parcels of land and any new roads, streets, lanes or pathways to be sufficiently drained into a public drain or existing road or street or lane or pathway or stream at or along which the drainage from such land or any such new road, street, lane or pathway may lawfully be discharged or caused to flow; or

(d) in any plan of subdivision any section ten chains or more in length of a new road or street, is not intersected or met by a cross road or street or connecting road or street.

Construction of drains, etc.

10.-(1) Whenever the Director shall consider that in the interests of public health any road, street, lane, pathway or drain shown on a plan or diagram deposited by an applicant under section 5 should be constructed or that proper and sufficient measures should be taken for the supply of water or for the disposal of refuse, waste-water or night-soil for the land proposed to be subdivided, the Director may, before approving the application, require the applicant to give an undertaking in writing that he will construct such road, street, lane, pathway or drain or take such measures as aforesaid to the satisfaction of the Director within such time as the Director may determine.

(2) Any applicant who may be required to give an undertaking under the provisions of subsection (1) may also be required to give or procure to be given to the Director security by bond with one or more sureties approved by the Director in such sum not exceeding the estimated cost of the works required to be constructed or provided as the Director may determine for the faithful and punctual fulfilment of such undertaking.

Procedure when Director approves application

11.-(1) When the Director has approved an application under this Act, he shall certify such approval on each copy of the plan or diagram submitted and still in the possession of the Director and such certified plans or diagrams shall thereupon be disposed of as follows:-

- (a) one copy shall be retained by the Director;
- (b) one copy shall be forwarded to the local authority; and
- (c) one copy shall be forwarded to the applicant.

(Subsection amended by 16 of 1941, s. 6, and 12 of 1955, s. 7.)

(2) Upon receipt of the copy of the certified proposal plan or diagram the applicant may-

(a) cause the land to be subdivided by a registered surveyor in whole or in part in accordance with such approved proposal plan or diagram and in compliance with the provisions of the Surveyors Act and the regulations thereunder;

(Cap 260)

(b) following such subdivision sell, lease, sublet or otherwise convey the land as the case may be in accordance with the Land Transfer Act;

(Cap 131)

(c) erect buildings thereon subject to the provisions of the Public Health Act.

(Cap 111)

Surveyor to submit plan

12. Before the registration of any lease, sublease, transfer or other instrument to which the provisions of this Act may apply the surveyor shall transmit his plan of such subdivision in duplicate on drawing paper to the Director of Lands, who, if he is satisfied that such plan conforms in all essential respects with the proposal plan or diagram approved by the Director, shall certify such plan and the duplicate thereof and the Director of Lands shall thereupon transmit such plan to the applicant and retain and preserve the duplicate thereof:

Provided that in the case of any lease or sublease of native or Crown land the rent of which has been reassessed under the provisions of the lease or sublease by reason of a subdivision under this Act, the Director of Lands shall not certify any such plan or diagram unless such lease or sublease has been produced and the fee paid for the registration of such reassessment.

Director to approve plan before registration

13.-(1) The Registrar of Titles shall not register any plan of subdivision which is required to be approved by the Director under this Act unless the plan is certified by the Director of Lands under the provisions of section **12**.

(2) Nothing in this Act shall be deemed to imply that the Registrar of Titles shall be bound to register any plan certified as prescribed in section **12** if such plan does not comply with any directions or regulations made or issued by the Registrar of Titles or if such plan is not in compliance with the provisions the Land Transfer Act or if such plan appears on examination by the Registrar to be inaccurate or the survey appears to be incorrect.

(Cap 131)

Procedure when Director refuses application

14. When the Director has refused to approve an application under this Act or has approved an application in part or subject to conditions, the Director shall forthwith communicate his decision together with the reasons therefor to the applicant who may, within twenty-eight days after the receipt of such communication, appeal to the Minister whose decision shall be final:

Provided that the Minister may-

- (a) for good cause extend the said period of twenty-eight days; and
- (b) seek and obtain the advice of the Advisory Committee on such appeals or on any other matters under this Act.

(Substituted by 12 of 1955, s. 9 and amended by 23 of 1973.)

General penalty

15.-(1) Any person who contravenes or fails to comply with any of the provisions of this Act or regulations thereunder shall be liable to a fine not exceeding two hundred dollars and shall also be liable to a further fine not exceeding ten dollars for each day or part of a day during which such contravention or non-compliance continues.
(Amended by 2 of 1945, s. 114.)

(2) Notwithstanding anything contained in any Act or law to the contrary, prosecutions under this Act may be commenced at any time within six months next after the fact of the fact of the commission of the offence charged comes to the knowledge of the Director.
(Inserted by 16 of 1941, s. 7.)

Power of local authority to order demolition of unauthorised building

16. In case of the erection of any building on a subdivision made contrary to the provisions of this Act the local authority may order the demolition by the person or persons who erected or authorised the erection of such building within such time as may be required by the local authority, and if such building has not been demolished within such required time the local authority may itself or by its agents demolish such building and recover the cost of so doing as a civil debt from the person or persons who erected or authorised the erection of such building.

(2) Any person aggrieved by an order of the local authority under this section may within 10 days of the service of such order require by summons the local authority to appear before a magistrate to show cause why the order should not be set aside.

Appeals

(3) An appeal shall lie to the Supreme Court from the decision of the magistrate under the provisions of subsection (2) and the provisions of the Criminal procedure Code relating to appeals shall apply *mutatis mutandis* to such appeals.

(Cap. 21.)

Procedure for the recovery of penalties

17. Every director, every manager and every secretary of a company by whom or with whose consent any act of such company which constitutes an offence under this Act is committed shall be liable for the payment of any penalty or penalties incurred under this Act by such company.

Enforcement of bond

18.-(1) Whenever any person gives a bond under this Act and it appears that a condition of such bond has been broken, the Director or such other person as may be authorised by him in writing may sue for and recover the amount recoverable in respect of the breach of the condition of such bond.

(2) Any sum recovered in respect of the breach of a condition of a bond under this Act shall be devoted to such purposes in connexion with the land in relation to which the bond has been given as the Minister may determine.

Power to make regulations

19.-(1) The Minister may make regulations for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), such regulations may prescribe fees to be paid to the Director in respect of applications for approval of subdivision.

(3) All fees received by the Director shall be paid by him into the Consolidated Fund.
(Section amended by 12 of 1955, s. 10.)

Administered by Ministry of Urban Development, Housing and Social Welfare

[Subsidiary Legislation]

CHAPTER 140

SUBDIVISION OF LAND

Order 3rd February, 1971

SECTION 2-APPLICATION OF ACT

The provisions of the Act shall apply to all land situated within two miles of any road declared to be a public road under the provisions of the Roads Act or any other road maintained by any local or other public authority or a road dedicated with the approval of any such authority in the islands of Viti Levu, Vanua Levu, Taveuni and Ovalau.

(Cap. 175.)

SECTION 19-SUBDIVISION OF LAND REGULATIONS

Made by the Minister

Regulations 12th January, 1978

Short title

1. These Regulations may be cited as the Subdivision of Land Regulations.

Interpretation

2. In these Regulations, "appropriate form" means a form approved in writing by the Minister.

Application form and fee

3.-(1) Every application submitted to the Director in accordance with section 6 of the Act shall be on the appropriate form and shall be accompanied by a fee calculated in accordance with the Schedule.

(2) All fees received by the Director under the provisions of this regulation shall be paid by the Director into the Consolidated Fund.

4.-(1) Every proposal plan or diagram shall be drawn in black ink and shall be accurately plotted with the north point upwards.

(2) Every proposed plan or diagram shall be drawn to a scale which shows in a legible manner the particulars required under section 6 of the Act and these Regulations.

Additional information to be shown

5. In addition to the requirements set out in section 6 of the Act, the proposal plan or diagram shall show or, where appropriate, shall be accompanied by-

- (a) the particulars of the instrument of title under which the adjoining land is held;
- (b) the approximate width of any stream, creek or river that forms a boundary, and its direction of flow;
- (c) the approximate position and extent of any beach or other similar feature where the sea or its inlets form a boundary;
- (d) the correct name of any main topographical features
- (e) the approximate position of any feature of historical, archaeological, geological or natural importance that is contained within or near the boundaries;
- (f) in the case of agricultural subdivisions, concise notes as to the quality of the soil and the respective areas of arable and hill grazing land within the portion to be subdivided;
- (g) the intended or existing position of drainage easements for surface drains, the direction of flow and point of final discharge;
- (h) the position of all existing or proposed easements correctly labelled;
- (i) the intended purpose of each lot;
- (j) the width, name and status of any road shown on the plan;

- (k) sufficient topographical information to enable the present surface of the ground, above some known or assumed datum, to be determined;
- (l) a locality diagram sufficient to enable the position of the land to be readily located on existing maps, plans or charts.

Proposed commercial use in rural areas

6. In the case of a proposed subdivision of land for commercial purposes in a rural area the application shall be accompanied by a plan incorporating the following information:-

- (a) the number, distribution and type of existing shops within a 3 kilometre radius of the site;
- (b) the approximate road distances to the existing shops from the proposed site;
- (c) the topographical suitability of the site for commercial development including vehicle accessibility, location of roads, vehicle parking facilities and proposals for the provision of loading and unloading bays for vehicles; and
- (d) the general distribution of households and the approximate number of people living within the 3 kilometre radius of the site.

Colouring of plans

7. On every proposal plan or diagram the following information required to be shown thereon shall be coloured in the manner hereinafter prescribed-

- (a) the limits of land proposed to be subdivided edged in red;
- (b) existing roads, streets, lanes or pathways coloured burnt sienna;
- (c) proposed new roads, streets, lanes or pathways coloured pink;
- (d) proposed drainage easements coloured blue;
- (e) proposed reserves coloured green;
- (f) proposed allotment boundaries edged yellow.

SCHEDULE
(Regulation 3)

SCALE OF FEES

1. The following fees shall be charged on the submission of applications, to subdivide land:-

SUBDIVISIONAL SCHEME PLAN EXAMINATION

- (a) Basic fee.....\$1500
- (b) Lot fee for each lot up to a maximum of 20 lots\$1.00
- (c) For subdivision over 20 lots the fee shall be \$35-00 plus \$0-50 for every lot in excess of 20 lots.

(d) Lots for open space reserves or for roads, or other public utilities, that is, lots intended to be dedicated or otherwise transferred to the Crown or local authority shall not be included in the lot charge.

2. Where the submission of engineering plans is required the following additional fees shall be charged:-

ENGINEERING PLAN EXAMINATION

(a) Basic fee	\$1000
Plus additional fees calculated as below;	
(b) For engineering work of a value exceeding \$2,000 but not exceeding \$5,000	\$5-00
(c) For the value of work exceeding \$5,000 but not exceeding \$10,000	\$1000
(d) For the value of work exceeding \$10,000 but not exceeding \$15,000	\$2000
(e) For the value of work exceeding \$15,000 but not exceeding \$20,000.....	\$25-00
(f) For the value of work exceeding \$20,000 the fee shall be \$25.00 plus \$1.00 for every \$1,000 (or part thereof) value in excess of \$20,000	

Controlled by the Ministry of Urban Development, Housing and Social Welfare
