

New Zealand - Legislation

NEW ZEALAND

SAMOA LAND REGISTRATION

The undermentioned New Zealand legislation (as provided by s. 7 of the Reprint of Statutes Act 1972) is in force in Western Samoa, insofar as it is relevant, as at the date of this Reprint. In the application of the enactments to Western Samoa, reference should be made to the provisions of the Existing Law Adjustment Ordinance 1961.

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- Samoa Land Registration Order 1920 (N.Z. Gaz. 1920, p. 1680)
- Samoa Land Registration Amendment Order 1921(N.Z. Gaz. 1921, p. 2869)
- Samoa Land Registration Amendment Order 1924 (N.Z. Gaz. 1924, p. 2142)
- Samoa Land Registration Amendment Order 1927 (N.Z. Gaz. 1927, p. 668)
- Samoa General Laws Amendment Order 1938 (N.Z.S.R. 1938/86)
- Samoa Land Registration Amendment Order 1946 (N.Z.S.R. 1946/192)
- See also the following Western Samoan enactments:
  - Charitable Trusts Act 1965, s. 4 (registration of appointment of trustees as a Board); s. 15 (vesting of property in such Board); and s. 17 (registration of change of name of a Board)
  - Constitution of Western Samoa, Part IX (Land and Titles)
  - Estate and Gift Duties Act 1978 (not yet in force, see s. 2 thereof); s. 50(9) (registration of vesting order enforcing indemnity charges in respect of estate duty); ss. 52 and 53 (registration of charge in respect of estate duty, and vesting order enforcing such charge)
  - Fees for Land Registration Ordinance 1952
  - Land Titles Investigation Act 1966
  - Public Trust Office Act 1975, s. 34 (advances treated as registered mortgages); s. 70 (certificate of Public Trustee's status); s. 84 (lost titles of unclaimed property); s. 106 (no need for declaration of non-revocation of power of attorney); s. 117 (registration of Public Trustee's dealings with himself)
  - Samoa Land and Titles Protection Ordinance 1934
- and the enactments referred to in the notes to cl. 4 of the Samoa Land Registration Order 1920, below.

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**THE SAMOA LAND REGISTRATION ORDER 1920 (N.Z.)**

LIVERPOOL, Governor-General

**ORDER IN COUNCIL**

At the Government Buildings at Wellington this 1st day of April, 1920

Present:

THE RIGHT HONOURABLE W. F. MASSEY, P.C., PRESIDING IN COUNCIL

HIS EXCELLENCY the Governor-General of the Dominion of New Zealand, acting by and with the advice and consent of the Executive Council of that Dominion, and in pursuance of the authority to make laws for the peace, order, and good government of the Territory of Western Samoa conferred upon him by the Western Samoa Order in Council 1920, made by His Majesty on the 11<sup>th</sup> day of March 1920, under the Foreign Jurisdiction Act 1890, doth hereby order as follows.

- 1. Title-** This Order may be cited as the Samoa Land Registration Order 1920.
- 2. Commencement-** This Order shall come into force in the Territory of Western Samoa on the same day as the Samoa Constitution Order 1920.

The Samoa Constitution Order 1920 came into force on 1 May 1920; see *N.Z. Gaz.* 1920, p. 1619.  
See the notes to cl. 4.

**3. Application-** This Order shall apply only to Crown land, European land, and European interests in Native land.

See the notes to cl. 4.

**4. Interpretation-** In this Order -

"Instrument of title" means and includes-

- (a) Any Crown grant;
- (b) Any conveyance, mortgage, lease, licence, grant, assignment, surrender, or other instrument of assurance;
- (c) Any will, codicil, probate or letters of administration;
- (d) Any order of the High Court [or of any other Court of competent jurisdiction];
- (e) Any warrant, notice or other instrument of executive authority,-

affecting the title to land in Samoa;

"Crown grant" includes a grant by the Crown of any estate or interest in Crown land or in Native land;

"European interest in Native land" means any estate or interest. held in Native land otherwise than by virtue of Native custom;

"Legal title" or "legal estate or interest" is opposed to equitable title or equitable estate or interest;

"Registrar" means the Registrar of Land under this Order.

"Crown grant": The reference to a Crown grant is now obsolete, having regard to the provisions of the Constitution of Western Samoa. As to former grants of Crown land, see ss. 269 and 269A of the Samoa Act 1921 (N.Z.), which are no longer in force in Western Samoa (see s. 8 of the Reprint of Statutes Act 1972). Crown grants are also referred to in s. 15 of the Land Titles Investigation Amendment Act 1973.

As to the terms "Crown land" and "Native land", and other terms relating to status and tenure of land in Western Samoa, see the detailed notes to s. 2 of the Samoan Land and Titles Protection Ordinance 1934.

"European interest in Native land": See the above notes re the term "Crown grant".

"Instrument of title": In para (a), as to "Crown grant", see above. In para. (d), the words in square brackets were added by cl. 5 of the Samoa Land Registration Amendment Order 1921. In other respects, this Order, which is included in this reprint because the original is not easily accessible in Western Samoa, has been reprinted in its original form. In its interpretation, regard should be had to the following further enactments:

Constitution of Western Samoa 1960, Article 122 (substituting references to Western Samoa for references to the Trust Territory of Western Samoa).

Existing Law Adjustment Ordinance 1961, s. 4(2) (substituting references to the Government of Western Samoa for references to the Crown and His Majesty); s. 4(3) (a) (substituting reference to the Supreme Court for references to the High Court); and s. 4(3)(b) (substituting references to the Chief Justice for references to the Chief Judge).

Law Practitioners Act 1976, s. 51(2) (as to the term "barrister and solicitor of the Supreme Court of New Zealand").

Public Seal and Crest of Western Samoa Act 1973 (as to the term "Seal of Samoa").

Public Service Act 1965, s. 3 (as to the term "Samoan Public Service").

Samoa Act 1921 (N.Z.), s. 66 (as to the term "Commissioner of the High Court"): this section is no longer in force in Western Samoa (s. 8 of the Reprint of Statutes Act 1972) and the office has lapsed.

Western Samoa Trust Estates Corporation Act 1976 (as to the term "New Zealand Reparation Estates").

See further the enactments referred to in the notes to the Index to this Title.

**5. Registrar-** There shall be an officer of the Samoan Public Service to be known as the Registrar of Land, and to be appointed by the Minister of External Affairs.

See the notes to cl. 4.

**6. Register-** It shall be the duty of the Registrar, as soon as practicable after the commencement of this Order, to prepare, in such manner as may be approved by the Chief Judge of the High Court, a register, to be called the Land Register, of the legal title to all Crown land, European land, and European interests in Native land existing in Samoa at the commencement of this Order.

See the notes to cl. 4.

**7. Inclusion of land-** When after the commencement of this Order any land in Samoa becomes Crown land, or European land, or any European interest is created in Native land, it shall be the duty of the Registrar to include such Crown land or European land or such European interest in Native land in the Land Register.

See the notes to cl. 4.

**8. Effect of registration-** No instrument of title shall in any manner affect the legal title to land in Samoa until and unless such instrument is registered in the Land Register in accordance with this Order.

**9. Mode of registration-** The registration of an instrument shall be effected by the entry of a memorial thereof by the Registrar in the Land Register on application for registration being made in accordance with this Order.

**10. Registration of public documents-** Application for the registration of a Crown grant, order of the High Court, probate, letters of administration, or other public or official instrument of title shall be made by depositing with the Registrar a copy thereof under the seal of Samoa or of the High Court, and such copy shall be retained by the Registrar as an official record.

As to registration of encroachment orders under s. 8(1) of the General Laws (No. 2) Ordinance 1932, see subs. (2) of that section.

See the notes to cl. 4.

**11. Registration of other instruments-** Application for the registration of any other instrument of title shall be made by depositing with the Registrar a copy thereof, and by producing for his inspection the original instrument, and such copy shall be retained by the Registrar as an official record.

**12. Deposit of powers-** Every power of attorney, with the verifications, if any, of the due execution of the same, may be deposited in the Land Register Office for safe custody and reference.

As to deposit of returns of rules, etc., of societies under the Industrial and Provident Societies Act 1968, see s. 21(7) of that Act.

**13. Priority-** Instruments of title in respect of the same land shall be entitled to registration in accordance with the priority of the respective applications for registration, and when such applications are made at the same time, then in accordance with the priority of execution.

**14. Unregistrable instruments-** Any instrument operating merely by way of contract or trust, or any other instrument not affecting the legal title to land, shall not be registered in the Land Register:

[Provided always that nothing herein expressed or implied shall be deemed to prevent the registration of any instrument which, but for the fact that the legal estate or interest is vested in a mortgagee, would when duly registered affect the legal estate or interest in any land authorised to be placed on the Land Register.]

The proviso was added by clause 6(a) of the Samoa Land Registration Amendment Order 1921; see cl. 6(b).

**15. Refusal of registration-** The Registrar may refuse to accept for registration any instrument of title which does not in his opinion sufficiently describe or indicate the land to which it refers, [or of which (not being an instrument described in clause 10 hereof) the copy deposited with the Registrar under clause 11 hereof is not endorsed with the name and address of the person who drew or prepared the instrument, or which in his opinion is in any respect not prepared in conformity with this Order.]

The words in square brackets were added by clause 4 of the Samoa Land Registration Amendment Order 1927.

Documents contravening s. 18 of the Survey Ordinance 1961 are not to be registered; see s. 18 of that Ordinance.

**16. Fees-** On the registration of instruments under this Order and on the deposit of powers of attorney there shall be payable by the applicant for registration or deposit such fees as may be prescribed by Ordinance.

See the Fees for Land Registration Ordinance 1952.

**17. Search-** The Land Register and all deposited copies of instruments of title shall be open to search and inspection on payment of such fees as may be prescribed by Ordinance.

**18. Transmissions, etc.-** Whenever by reason of death, forfeiture, re-entry, or in any other manner the legal title to land [or the interest of any person registered on the Land Register] is affected otherwise than by an instrument of title it shall be the duty of the Registrar, on being satisfied as to the facts, to enter a memorial thereof in the Land Register.

The words in square brackets were inserted by clause 7(a) of the Samoa Land Registration Amendment Order 1921; see cl. 7(b).

**19. Execution of instruments-** Otherwise than by way of testamentary disposition it shall not be competent for any person to create, transfer, or surrender any legal estate or interest in any land in Samoa, except by an instrument in writing executed by him or by his agent and attested or verified in manner hereinafter provided:

[Provided that nothing in this clause shall be deemed to apply to any order of Court, Crown grant, or any Warrant, notice, or other instrument of executive authority.]

The proviso was added by clause 8(a) of the Samoa Land Registration Amendment Order 1921; see cl. 8(b).

See the notes to cl. 4.

**20. Attestation of execution-** If any such instrument is executed in Samoa, the execution thereof shall be attested by a judge or Commissioner of the High Court, or by a Registrar or Deputy Registrar of the High Court, or by the Registrar of Land [or by the Samoan Public Trustee] [or by a solicitor of the Supreme Court of New Zealand.]

The words in the first set of square brackets were added by the Samoa Land Registration Amendment Order 1924.

The words in the second set of square brackets were added by cl. 3 of the Samoa General Laws Amendment Order 1938.

See the notes to cl. 4.

**21. Execution abroad-** If any such instrument is executed elsewhere than in Samoa, the execution thereof shall either be attested by a solicitor of the Supreme Court of New Zealand, a Commissioner of the Supreme Court of New Zealand, or a British consular officer, or shall be verified by the certificate of a notary public.

See the notes to cl. 4.

**[22. Acting as conveyancer-** No person shall act as a conveyancer in connection with any instrument capable of being registered under these regulations who is not either a barrister or solicitor of the Supreme Court of New Zealand or a person to whom a licence (revocable at the will of the Court) so to act has been granted by the High Court.]

This clause was added by cl. 4 of the Samoa Land Registration Amendment Order 1927.

See the notes to cl. 4.

As to practising as a solicitor in respect of drawing conveyances, etc., see s. 2(2) of the Law Practitioners Act 1976.

**[23. Notification as to Crown land-** In any case in which land in Samoa becoming Crown land has at any time been included by the Registrar in the Land Register pursuant to clause 7 of this Order and is vested in His Majesty as New Zealand Reparation Estates or is otherwise so vested in right of the Government of New Zealand, or is vested or held or administered otherwise than as ordinary Crown land in Samoa vested in His Majesty for the public purposes of the Government of the Territory of Western Samoa, then the Administrator may at any time notify in writing to the Registrar particulars of the character of the land or the purposes for which it is so vested or the way in which it is administered, whether in His Majesty in right of the Government of New Zealand as Reparation Estates or in His Majesty in right of His Dominion of New Zealand in some other character, or as the case may be.

See the notes to cl. 4.

**[24. Memorial as to Crown Land-** On receipt of any such notification the Registrar shall retain the same as an official record and enter in the Land Register an appropriate memorial of the effect thereof.]

Clauses 23 and 24 were added by N.Z.S.R. 1946/192.

F. D. THOMSON,

Clerk of the Executive Council.



# THE SAMOA LAND REGISTRATION AMENDMENT ORDER 1921 (N.Z.)

JELLICOE, Governor-General

## ORDER IN COUNCIL,

At the Government House at Wellington this 5th day of December 1921

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL.

His Excellency the Governor-General of the Dominion of New Zealand, acting by and with the advice and consent of the Executive Council of that Dominion, and in pursuance of the authority to make laws for the peace, order, and good government of the Territory of Western Samoa conferred upon him by the Western Samoa Order in Council 1920, made by His Majesty on the 11th day of March, 1920 under the Foreign Jurisdiction Act 1890, and further in pursuance of the Treaties of Peace Act 1919, and of all other powers and authorities enabling him in that behalf, doth hereby order as follows.

**1. Title-** This Order may be cited as the Samoa Land Registration Amendment Order 1921, and shall be read with and form part of the Samoa Land Registration Order 1920.

**2. Commencement-** This Order shall come into force on the first day of January 1922, save as hereinafter specially provided.

**3. Ordinances as to registration-** (a) It shall be lawful from time to time to provide by Ordinance for the practice and procedure of land registration in Western Samoa, provided that no such Ordinance shall be repugnant to the Samoa Land Registration Order 1920, or any amendment thereof.

(b) If any such Ordinance is in part repugnant to the Samoa Land Registration Order 1920, or any amendment thereof, such Ordinance shall nevertheless be valid as to the residue thereof, if and so far as the residue is in substance and effect severable from the part which is so repugnant or *ultra vires*.

**4. Land Transfer Act 1915 (N.Z.)-** Notwithstanding anything hereinbefore contained or implied, it shall be lawful to enact by Ordinance that an Act of the General Assembly of New Zealand intituled the Land Transfer Act 1915, or any other Act passed in substitution therefor, shall be in force in the Territory of Western Samoa with such modifications as may be deemed requisite for such territory.

See the notes to cl. 4 of the Samoa Land Registration Order 1920 (in these notes hereafter called "the principal Order").

**5.** *This clause amended subclause 4(d) of the Samoan Land Registration Order 1920 (N.Z.).*

**6.(a)** *This subclause amended clause 14 of the Samoa Land Registration Order 1920 (N.Z.).*

(b) This clause shall be deemed to have been in force since the coming into operation of the Samoa Land Registration Order 1920 (N.Z.).

**7.** (a) *This subclause amended clause 18 of the Samoa Land Registration Order 1920 (N. Z.).*

(b) This clause shall be deemed to have been in force since the coming into operation of the Samoa Land Registration Order 1920 (N.Z.).

**8.(a)** *This subclause amended clause 19 of the Samoa Land Registration Order 1920 (N. Z.).*

(b) This clause shall be deemed to have been in force since the coming into operation of the Samoa Land Registration Order 1920 (N.Z.).

**9. Form of caveat-** Any person-

(a) Claiming to be entitled to or to be beneficially interested in any land, estate, or interest authorised to be included in the Land Register by virtue of any unregistered agreement or other instrument or transmission or of any trust, expressed or implied, or otherwise howsoever; or

(b) Transferring or conveying any estate or interest in land authorised to be included on

the Land Register to any other person to be held in trust-  
may at any time lodge with the Registrar a caveat in the form in the Schedule hereto.

**10. Effect of caveat-** So long as a caveat remains in force the Registrar shall not register any instrument affecting the estate or interest protected by such caveat:

Provided that nothing herein shall prevent the completion of the registration of an instrument which has been accepted for registration before the receipt of the caveat.

**11. Notice and removal of caveat-** (a) Upon the receipt of any caveat the Registrar shall notify the same to the person against whose estate or interest the caveat has been lodged.

(b) Such person may, if he thinks fit, summon the caveator, or the person on whose behalf such caveat has been lodged, to attend before the High Court or a judge to show cause why such caveat should not be removed.

(c) Such Court or Judge, upon proof that such person has been summoned, may make such order in the premises, either *ex parte* or otherwise, as to such Court or judge seems meet.

See the notes to cl. 4 of the principal Order.

**12. Lapse of caveat-** Except in the case of a caveat lodged by or on behalf of a beneficiary claiming under any will or settlement, or for the protection of any trust, or by the Registrar in exercise of the powers by this Order in Council given to him in that behalf, every caveat shall, upon the expiration of 14 days after notice given to the caveator that application has been made for the registration of any instrument affecting the land, estate, or interest protected thereby, be deemed to have lapsed as to such land, estate, or interest, or so much thereof as is referred to in such notice, unless notice is within the said 14 days given to the Registrar that application for an order to the contrary has been made to the High Court or a Judge thereof, and such order is made and served on the Registrar within a further period of 14 days.

See the notes to the principal Order.

**13. Registrar's caveat-** The Registrar may enter caveats for the protection of any person who is under the disability of infancy, lunacy, unsoundness of mind, or absence from Western Samoa, or on behalf of the Crown, to prohibit the transfer or conveying or dealing with any land belonging or supposed to belong to any such persons as hereinbefore mentioned, and also to prohibit the dealing with any land for the prevention of any fraud or improper dealing.

See the notes to the principal Order.

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SCHEDULE

CAVEAT FORBIDDING REGISTRATION OF DEALING

To the Registrar of Land, Western Samoa.

TAKE notice that I, [*Name of caveator*], of [*Occupation and address*], claiming estate or interest [*Here state the nature of the estate or interest claimed, and the ground on which claim is founded*] in [*Here describe land*], forbid the registration of any instrument affecting the said estate or interest until this caveat is withdrawn by me, or by order of the High Court or some Judge thereof, or until the same has lapsed under the provisions in that behalf contained in clause 12 of the Samoa Land Registration Amendment Order 1921 (N.Z.)

And I appoint [*Here state an address within a radius of one mile from the Land Registry Office*] as the place at which notices relating hereto may be served.

Dated this                      day of                      1921.

Signed by the above-named    as caveator in the presence  
of                      .

See the notes to the principal Order.

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JELLICOE, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 9th day of September 1924

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

*This Order amended clause 20 of the Samoa Land Registration Order 1920 (N.Z.)*

F. D. THOMSON,

Clerk of the Executive Council.

THE SAMOA LAND REGISTRATION AMENDMENT ORDER 1927 (N.Z.)

CHARLES FERGUSSON, Governor-General

ORDER IN COUNCIL,

At the Government House at Wellington this 11th day of March 1927

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

His Excellency the Governor-General of the Dominion of New Zealand, acting by and with the advice and consent of the Executive Council of that Dominion, and in pursuance of the authority to make regulations for the peace, order, and good government of Samoa conferred upon him by the Samoa Act 1921, and of all other powers and authorities enabling him in that behalf, doth hereby order as follows.

- 1. **Title-** This Order may be cited as the Samoa Land Registration Amendment Order 1927.
- 2. **Principal Order-** This Order shall be read together with and deemed to form part of the Samoa Land Registration Order 1920 (hereinafter referred to as "the principal Order").
- 3. **Commencement-** This Order shall come into force on the 1st day of April 1927.
- 4. *This clause amended clause 15 of the principal Order.*
- 5. *This clause added clause 22 to the principal Order.*

F. D. THOMSON,

Clerk of the Executive Council.

THE SAMOA GENERAL LAWS AMENDMENT ORDER 1938 (N.Z.)

GALWAY, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 5th day of July 1938

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL.



PURSUANT to the Samoa Act, 1921, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

REGULATIONS

- 1. **Title-** This Order may be cited as the Samoa General Laws Amendment Order 1938, and shall come into force on the 11th day of July 1938.
- 3. *This clause amended cl. 20 of the Samoa Land Registration Order 1920.*

C. A. JEFFERY,  
Clerk of the Executive Council.

THE SAMOA LAND REGISTRATION AMENDMENT ORDER 1946 (N.Z.)

B. C. FREYBERG, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 20th day of November 1946

Present:

THE RIGHT HON. W. NASH PRESIDING IN COUNCIL

PURSUANT to the Samoa Act 1921, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby order as follows.

- 1. **Title-** This Order may be cited as the Samoa Land Registration Amendment Order 1946.
- 2. **Principal Order-** This Order shall be read together with and be deemed to form part of the Samoa Land Registration Order 1920 (hereinafter referred to as the principal Order).
- 3. *This clause added clauses 23 and 24 to the principal Order.*

T. J. SHERRARD,  
Acting Clerk of the Executive Council.

The Samoa Land Registration Order 1920 is administered  
in the Department of Justice.