

## Chapter 01

### TITLES TO LAND

#### Sections:

- 37.0101 Registration—Absence of conflicting claim a prerequisite**
- 37.0102 Survey**
- 37.0103 Notice—Adverse claim**
- 37.0104 Adjudication of conflicting claims**
- 37.0111 Affidavit—Recording—Right to file**
- 37.0112 Affidavit--Posting notice**
- 37.0113 Affidavit--By lessor**
- 37.0120 Adverse possession--Claim in arrest**

**Reviser's Comment:** The law dealing with alienation of land contained in the A.S.C.A., as recodified by the legislative reference bureau had been questioned as to whether the requirements of Art. I, § 3 and Art. II, § 9, American Samoa Constitution, had been fulfilled. Since the records were not available to answer the question, the Legislature passed PL 16-88 and PL 17-31 to ensure that the law dealing with alienation of land complies with the Constitution.

#### **37.0101 Registration—Absence of conflicting claim a prerequisite.**

(a) The owner of any land in American Samoa not previously registered may register his title thereto with the Territorial Registrar.

(b) No title to land shall be registered unless the Registrar is satisfied that there is no conflicting claim thereto and unless the description clearly identifies the boundaries of the land by metes and bounds.

(c) Every registration shall specify whether the land is registered as family owned communal land or individually owned land.

**History:** 1962, PL 7-31; 1968, PL 10-38; readopted 1980, PL 16-88 §§ 1,2; 1982, PL 17-31 §§ 1, 2.

#### **Case Notes:**

Registration of land forbidden when made while another registration application pending. *Fuimaono v. Penitusi*, ASR (1978).

Denied registration because survey map and description offered arc defective and conflicting claim resulting from occupancy without objection by Tuavela. who also are attempting to register land. *Atualevao v. Talio*, ASR (1978).

Recognized individually owned land but does not define it; courts definition is: (1) cleared on individual's own initiative; (2) cultivated by him; and (3) occupied by him. *Fanene v. Talio*, ASR (1977).

Title to land cannot be registered unless registrar is satisfied that there are no conflicting claims and unless description clearly identifies boundaries of land. RCAS 10.0112. *Tuai v. Savea*, 4 ASR 483 (1964).

Code requires that all boundaries of land be identified by metes and bounds before it may be registered. RCAS 10.0112. *Largo v. Mageo*, 4 ASR 287 (1962).

Since land may not be registered where there are unmitigated or unresolved competing claims (including pending lawsuits regarding registrar must deny such registration. A.S.C.A. § 34.0101(b). *Lealaimatafao v. Misiata*, 17 A.S.R.2d 110 (1990).

Absent any evidence of fraud, registration of title to land pursuant to legislative procedures (which require, inter alia, public posting of an offer of registration for sixty days during which any objections must be filed) cannot be questioned. A.S.C.A. §§ 37.0101 et seq. *Ifopo v. Siatu'u*, 10 A.S.R.2d 66 (1989).

Statutory proceedings for registration of land have in rem effect. A.S.C.A. §§ 37.0101 et seq. *Ifopo v. Siatu'u*, 10 A.S.R.2d 66 (1989).

Party who does not timely object to another's offer to registrar land cannot later claim such land by filing a notice of adverse claim or by offering to and registering title to such land. A.S.C.A. §§ 37.0103, 37.0101(b). *Lealaimatafao v. Misiata*, 17 A.S.R.2d 110 (1990).

The mere filing of a document with the Registrar, without compliance with either the procedures for the registration of land or those for the conveyance of communal land, conveys no title. A.S.C.A. §§ 37.0101 et seq., §§ 37.0201 et seq. *Magalei v. Atualevao*, 19 A.S.R.2d 86 (1991).

Because failure to meet statutory notice requirement can deprive family members of an adequate opportunity to object to the registration of title, compliance with the statutory notice requirements for registrations of title is an essential feature of the registration process. A.S.C.A. §§ 37.0101 et seq. *Vaimaona v. Tuitasi*, 22 A.S.R.2d 1 (1992).

Courts may disregard land registrations if the failure to give notice, as required by statute, appears in the registration record itself. A.S.C.A. § 37.0101 et seq. *Fa'aa'ua' v. Tauiliili*, 15 A.S.R.2d 71 (1990).

Land can only be registered by its owner and not a village, because the concept of village ownership of land is ordinarily contrary to Samoan custom and tradition. A.S.C.A. §§ 37.0101 et seq. *Lualemana v. Atualevao*, 16 A.S.R.2d 34 (1990).

Where the registered title to land was procured by fraud, the records of the Territorial Registrar may be amended to show the correct owners even though such registration proceedings usually have in rem effect and certificates of title obtained thereby are ordinarily conclusive. A.S.C.A. § 37.0101. *Fania v. Sipili*, 14 A.S.R.2d 70 (1990).

Compliance with the land-registration statute creates a strong presumption that the land belongs to the person or persons named in the certificate of registration; this presumption is conclusive unless rebutted by either (a) compelling proof that the certificate of registration was obtained by fraud or (b) fatal irregularities affirmatively appearing on the face of the registration documents. A.S.C.A. § 37.0101 et seq. *Ava v. Logoai*, 19 A.S.R.2d 75 (1991).

Statute providing that land should not be registered when a competing application for registration is pending neither renders void a final judgment entered in violation of its terms, nor otherwise permits a collateral attack on that judgment. A.S.C.A. § 37.0101. *Tela v. Aoelua*, 12 A.S.R.2d 40 (1989).

Parties who did not object to offer for registration of land in accordance with statutory procedure were bound by the result in the ensuing registration proceeding, because registration proceedings have in rem effect. A.S.C.A. §§ 37.0101 et seq. *Tufono v. Vaeao*, 15 A.S.R.2d 47 (1989).

The court is bound to recognize a land survey which has been registered according to law. A.S.C.A. § 37.0101 et seq. *Willis v. Fai'ivae*, 17 A.S.R.2d 38 (1990).

That land registered in the name of one party can later be proved to have been property of person other than registrant will not void a registration otherwise performed in accordance with statute if the true owner did not object within the period prescribed by statute. A.S.C.A. §§ 37.0101 et seq. *Faleafine v. Suapilimai*, 7 A.S.R.2d 108 (1988).

Land registration performed in accordance with statutory procedures will be given full effect even though party who might have objected did not discover the proposed registration in time to object. A.S.C.A. §§ 37.0101 et seq. *Faleafine v. Suapilimai*, 7 A.S.R.2d 108 (1988).

When no adverse claim was filed with respect to part of a survey offered for registration, and where the evidence reflected that this land had in fact been settled and occupied by the applicant for registration, the uncontested portion could be registered as the property of the applicant. A.S.C.A. §§ 37.0101 et seq. *Maea v. Manuu*, 11 A.S.R.2d 93 (1989).

Where the evidence showed that disputed land was originally cleared and cultivated by the village in a collective effort, and tracts surveyed by various families within the village overlapped one another and extended beyond any evidence of recent cultivation, no party had proven entitlement to the land by the preponderance of the evidence and all offers of registration should be denied. A.S.C.A. offers of registration should be denied. A.S.C.A. §§ 37.0101 et seq. *Maea v. Manuu*, 11 A.S.R.2d 93 (1989).

Land registration statute, under which any objection to proposed registration must be filed within sixty days or land is registered in the name of the claimant and all other claims of ownership are forever precluded, does not amount to a judicial transfer of land from the "true" owner to the registered owner; rather, the statute gives anyone who believes himself the owner of land a fair opportunity to present his claim to the court, and then conclusively presumes that any one who did not avail himself of this opportunity was not the true owner of the land. A.S.C.A. §§ 37.0101 et seq. *Ifopo v. Siatu'u*, 12 A.S.R.2d 24 (1989).

Land registration statute gave competing claimants sixty days in which to urge any objection to the proposed registration, including objection that the land was communal and that no sale was approved by the Land Commission or by the Governor. A.S.C.A. §§ 37.0101 et seq., 37.0204. *Ifopo v. Siatu'u*, 12 A.S.R.2d 24 (1989).

Where objections to land registration based on statutory procedures for alienation of communal land were not raised within sixty days of proposed registration, the law conclusively presumes either that the procedures for alienation of communal land were met or that the land was not communal. A.S.C.A. §§ 37.0101 et seq., 37.0204. *Ifopo v. Siatu'u*, 12 A.S.R.2d 24 (1989).

Purpose of requirement that objection to proposed registration of land be made within sixty days was to relieve the registrant of the burden of affirmatively proving every fact necessary to establish title after the passage of many years, during which witnesses would tend to die and documents to be lost or destroyed.

A.S.C.A. §§ 37.0101 et seq. *Ifopo v. Siatu'u*, 12 A.S.R.2d 24 (1989).

Where statutory scheme including land registration procedure and restrictions on alienation of communal land effected its own reconciliation of competing policies, there was no need for a court to fashion a new and different one by refusing to enforce land registration statute. A.S.C.A. §§ 37.0101 et seq., § 37.0204. *Ifopo v. Siatu'u*, 12 A.S.R.2d 24 (1989).

Courts can and do disregard land registrations that are clearly proved to have been procured by fraud, or in which the failure to afford required notice affirmatively appears in the record of the registration. A.S.C.A. §§ 37.0101 et seq. *Ifopo v. Siatu'u*, 12 A.S.R.2d 24 (1989).

Territorial Registrar is charged with registering title to land only when all statutory registration procedures have been met, and court should not assume that he did not comply with this obligation. A.S.C.A. §§ 37.0101 et seq. *Ifopo v. Siatu'u*, 12 A.S.R.2d 24 (1989).

Court could not conclude that notice required by statute was not given simply because the registrar's file contained no document attesting such notice, or because a number of witnesses testified that they never saw any notices. A.S.C.A. §§ 37.0101 et seq. *Ifopo v. Siatu'u*, 12 A.S.R.2d 24 (1989).

Land registration statute cannot have the intended effect of affording finality to disputes and security to titles if court is prepared to conduct its own de novo review of whether there was compliance with the statute in every case where non-compliance is alleged; rather, court must assume—and absent compelling evidence to the contrary must conclude—that Territorial Registrar recorded a title only after complying with his obligations under the law. A.S.C.A. §§ 37.0101 et seq. *Ifopo v. Siatu'u*, 12 A.S.R.2d 24 (1989).

Purpose of statute providing that land should not be registered when a competing application for registration is pending is to preclude registration until competing claimants have opportunity to be heard; party who was an objector to a proposed registration and whose competing claim was fully heard and decided was therefore not prejudiced by the court's failure to determine his competing application for registration at the same time. A.S.C.A. § 37.0101. *Tela v. Aoelua*, 12 A.S.R.2d 40 (1989).

Territorial land registration statute gives anyone who believes himself the owner of land a fair opportunity to present his claim to the court, and then conclusively presumes that anyone who did not avail himself of this opportunity was not the true owner of the land. A.S.C.A. § 37.0101 et seq. *Meafua v. Taliu*, 13 A.S.R.2d 13 (1989).

Temporary absence from the vicinity during the time when land was surveyed and offer of registration posted did not excuse failure to object to the registration during statutory 60-day period. A.S.C.A. § 37.0101 et seq. *Meafua v. Taliu*, 13 A.S.R.2d 13 (1989).

Testimony of matai that he always attended village council meetings and always looked at the post on which notices were posed, but had not heard the opposing party's survey announced and had not seen notice of her registration posted, was insufficient to rebut the presumption of validity of certificates by officials charged with announcing the survey and posting the notice, especially where matai admitted that the frequently travels abroad and may have done so during the time in question. A.S.C.A. § 37.0101 et seq. *Meafua v. Taliu*, 13 A.S.R.2d 13 (1989).

Court must assume, and absent compelling proof to the contrary must conclude, that Territorial Registrar recorded a title only after complying with his obligations under the law. A.S.C.A. § 37.0101 et seq. *Meafua v. Taliu*, 13 A.S.R.2d 13 (1989).

Under territorial statute dealing with "titles to land," a procedurally valid registration precludes subsequent judicial inquiry into the validity of the record owner's title; anyone who wishes to object on any ground whatever to the registrant's claim of ownership has sixty days within which to do so, and in the absence of such objection the land is registered in the name of the claimant and all other claims of ownership are forever precluded. A.S.C.A. §§ 37.0101 et seq. *Vaimaona v. Tuitasi* (Mem.), 13 A.S.R.2d 76 (1989).

Distinction between separate statutory procedures for registration "of the land" and "of the deed" is best characterized as a distinction between substance and procedure: compliance with the land registration statute protects the landowner by precluding rival claimants from attacking the record owner's title, whereas the statute on land alienation leaves rival claimants procedurally free to object to the record owner's title but provides that anyone who complies with its provisions becomes the lawful owner of the land. A.S.C.A. §§ 37.0101 et seq., 37.0201 et seq. *Vaimaona v. Tuitasi* (Mem.), 13 A.S.R.2d 76 (1989).

It would be to the advantage of a party who purchases land that has never been previously registered to apply for registration in accordance with both the "titles" chapter and the "alienation" chapter. A.S.C.A. §§ 37.0101 et seq. *Vaimaona v. Tuitasi* (Mem.), 13 A.S.R.2d 76 (1989).

Registrar's certificate of title is presumed to be valid and a party asserting its procedural irregularity has the burden of presenting compelling proof. A.S.C.A. §§ 37.0101 et seq. *Vaimaona v. Tuitasi* (Mem.), 13 A.S.R.2d 76 (1989).

Land registration statute does not require that posting of notices be evidenced by an affidavit or by any other particular form of notice. A.S.C.A. §§ 37.0101 et seq. *Vaimaona v. Tuitasi* (Mem.), 13 A.S.R.2d 76 (1989).

Petition for quiet title was denied absent a survey and proof of compliance with the title registration statute. A.S.C.A. § 37.0101 et seq. *Vaivao v. Craddick*, 14 A.S.R.2d 108 (1990).

Court may disregard land registrations if the failure to give statutory notice appears in the registration record itself. A.S.C.A. § 37.0101 et seq. *Afualo v. Fanene, Pualioa v. Afualo*, 15 A.S.R.2d 48 (1990).

A land registration, effected in accordance with all statutory procedures, establishes good title against the world, and a later registration of the same land is of no legal effect. A.S.C.A.

§ 37.0101 et seq. *Fa'aaua'a v. Tauliili*, 15 A.S.R.2d 71 (1990).

A valid registration effected in accordance with statutory procedures establishes a title good against the world. A.S.C.A. §§ 37.0101 et seq. *Lualemana v. Atualevao*, 16 A.S.R.2d 34 (1990).

A land survey may not be registered until the owner has complied with the statutory requirements. A.S.C.A. § 37.0101 et seq. *Willis v. Fai'ivae*, 17 A.S.R.2d 179 (1990).

A survey which has never been posted in accordance with statutory requirements cannot be registered. A.S.C.A. §§ 37.0101 et seq. *Magalei v. Atualevao*, 19 A.S.R.2d 86 (1991).

### **37.0102 Survey.**

(a) When land is offered for registration, the offer shall be accompanied by a survey of land to which the title is proposed to be registered. The survey shall conform to regulations of the Governor.

(b) Unless otherwise provided by regulation, the point of departure in such survey shall be either tied in with an established coordinate or be a concrete monument procured from or poured in place by an authorized representative of the Governor for that purpose and set at least 3 feet in the ground at a corner of that land.

(c) The survey shall be accompanied by a certificate of the surveyor and the pulenuu of the village in which or nearest to which the land is located, to the effect that the pulenuu gave public oral notice in the village at a meeting of the chiefs thereof of the time and place of the intended survey in order that other interested landowners might have an opportunity to be present thereat.

(d) Any person who claims to be the owner of land which is not communal property may ask that the land be surveyed by a government surveyor, at the owner's expense, and the Governor may provide for such survey to be made by a government surveyor if private surveying services are not available. Only the senior matai of a Samoan family has the authority to request a survey of communal property of that family.

**History:** 1962, PL 7-31; 1968, PL 10-68; 1971, PL 12-3; readopted 1980, PL, 16-88 §§ 1,2. 1982, PL 17-31 § 1.2.

### **Case Notes:**

Absent evidence regarding monument that meets statutory requirements, survey is not proper and cannot be registered. *Fanene v. Taito*, ASR (1977).

The senior matai may delegate certain specific tasks to members of his family. *Galea'i P. Poumele v. Ta'ei Ma'ae*. ASR (1980).

The purposes of the statute are also served if the senior matai is allowed to delegate expressly such authority to another family member, for ultimate control still remains in the senior matai. *Galea'i P. Poumele v. Ta'ei Ma'ae*, ASR (1980).

Only the senior Matai of a Samoan family has the authority to request a survey of communal property of that family. *Poumele v. Ma'ae*, 2 ASR 2d 4 (1983).

Land offered for registration must be accompanied by a survey which conforms to the regulations of the Governor. *Poumele v. Ma'ae*, 2 ASR 2d 4 (1983).

In an action attacking the validity of a concluded land registration proceeding to which a presumption of conclusiveness had attached, the court would not surmise from a variance in dates between the survey and the offer of registration that the required notice of the survey had not been given, since the original commissioning of a survey in 1933 did not preclude the possibility of a physical retrace in 1945 when the registration process was undertaken. A.S.C.A. § 37.0102. *Ifopo v. Siatu'u*, 10 A.S.R.2d 66 (1989).

Complaints asserting ownership of land did not fail to state a claim because of plaintiff's failure to comply with statutory requirement of timely objection to defendant's prior registration of land, where pleadings did not establish that defendant had complied with statutory notice requirements for registration of land. T.C.R.C.P. Rule 12(b) (6); A.S.C.A. §§ 37.0102, 37.0103. *Moeisogi v. Faleafine*, 5 A.S.R.2d 131 (1987).

Registration of land not performed in accordance with statutory procedure is void. A.S.C.A. §§ 37.0102, 37.0201 et seq. *Faleafine v. Suapilimai*, 7 A.S.R.2d 108 (1988).

Offer of registration for communal land must be accompanied by survey requested by senior matai of the family; a family with a vacant senior matai title must select a senior matai before it can offer land for registration. A.S.C.A. § 37.0102. *Faleafine v. Suapilimai*, 7 A.S.R.2d 108 (1988).

Whether a lapse of time between the making of a land survey, with the attendant notice required by statute, and offer of survey for registration was so great as to prevent rival claimants from receiving fair notice is a question of fact to be resolved on a case-by-case basis. A.S.C.A. § 37.0102 (c). *Lualemaga v. Sosene*, 9 A.S.R.2d 85 (1988).

### **37.0103 Notice—Adverse claim.**

(a) Notice of the proposed registration shall be posted for 60 days on the bulletin board at the courthouse in Fagatogo and at 2 public places in the village in which or nearest to which the land is located and shall be published in a local newspaper at least once each 30 days during the 60-day notice period.

(b) During such 60-day period anyone claiming an interest in the land adverse to that of the applicant or applicants for registration may file notice of adverse claim with the Territorial Registrar.

(c) The Territorial Registrar shall not register any land until the applicant has provided notarized statements from the pulenu'u, newspaper, and clerk of the court, each of which states that the required notice has been given.

(d) If no notice of adverse claim is filed within the 60-day period, and all the requirements of this chapter have been complied with, the Territorial Registrar shall register the title to such land in the name or names of the applicant or applicants.

**History:** 1962, PL 7-31; 1968, PL 10-38; and 1977, 15-39 § 3, and 1979, PL 16-5 § 3, readopted 1980, PL 16-88 §§ 1, 2; 1982, PL 17-31 §§ 1, 2; and 1988 PL 20-61; and 1989 PL 21-1.

**Amendments:** 1977, 1979 Subsection (a) changed "administration building in Utulei" to "court house in Fagatogo."

**Reviser's Comment:** As required by Art. 1, § 3 and Art. 11 § 9 of the American Samoa Constitution, this amendment was passed by two successive legislatures.

### **Case Notes:**

Objection to application to register land must be filed within 60 days after application was tiled, and objection not filed in time cannot be considered. RCAS 100112. *Pullet v Mollify*, 4 ASR 672 (1965).

Court would not invalidate a land title registered forty years earlier on the ground that the Territorial Registrar's file did not contain a certificate that the required notice of a survey had been given, since the certificate might have been misplaced during the intervening years and since the court could assume that the Registrar would comply with the statute prohibiting acceptance of the registration without the required certificate. A.S.C.A. § 37.0103. *Ifopo v. Siatu'u*, 10 A.S.R.2d 66 (1989).

Where plaintiff offered land for registration which was not finally registered until a dispute with an objector was settled seven years later, defendant's intervening registration of land which partly overlapped the land claimed in plaintiff's pending registration was void to the extent of the overlap, since defendant had not timely objected to plaintiff's initial offer of registration of the land. A.S.C.A. § 37.0103. *Lealaimatafao v. Misaiata*, 17 A.S.R.2d 110 (1990).

Party who does not timely object to another's offer to register land cannot later claim such land by filing a notice of adverse claim or by offering to and registering title to such land. A.S.C.A. §§ 37.0103, 37.0101(b). *Lealaimatafao v. Misaiata*, 17 A.S.R.2d 110 (1990).

Absent compelling proof to the contrary, the court will assume that the Territorial Registrar recorded a land title only after complying with his legal obligations, including notice requirements. A.S.C.A. § 37.0103. *Asifoa v. Faoa*, 21 A.S.R.2d 88 (1992).

Inadequacies of affidavit of posting may be supplemented on remand by testimony showing actual compliance with statutory guidelines. A.S.C.A. § 37.0103(a). *Vaimaona v. Tuitasi*, 18 A.S.R.2d 88 (1991).

The land-registration statutes do not require a certification or an affidavit by the Territorial Registrar or the High Court that notice was given for the required period. A.S.C.A. §§ 37.0103(c), 37.0104(b). *Asifoa v. Faoa*, 21 A.S.R.2d 91 (1992).

Statute prohibiting anyone but senior matai of Samoan family from bringing action to enjoin activities on communal land did not prohibit another member of family from objecting to registration of land by another family. A.S.C.A. §§ 37.0103, 43.1309. *Sagatu v. Vaioli*, 3 A.S.R.2d 97 (1986).

Complaint asserting ownership of land did not fail to state a claim because of plaintiff's failure to comply with statutory requirement of timely objection to defendant's prior registration of land, where pleadings did not establish that defendant had complied with statutory notice requirements for registration of land. T.C.R.C.P. Rule 12(b)(6); A.S.C.A. §§ 37.0102, 37.0103. *Moeisogi v. Faleafine*, 5 A.S.R.2d 131 (1987).

Court may not consider a claim to ownership of land by one who has not timely objected to registration of the land by another. A.S.C.A. § 37.0103. *Falefia v. Sipili*, 7 A.S.R.2d 1

(1988).

Statute providing that “no affidavit affecting the chain of title to real estate may be filed for record” without first being posted for sixty days does not apply to registrar’s certificate that notice of offer of land registration has been posted for sixty days, since (1) land registration statute does not require an affidavit or even an unsworn certificate of posting, but only that an affidavit of posting itself be posted would create an infinite regress under which no document could ever be filed and no land ever registered. A.S.C.A. §§ 37.0103, 37.0112. *Meafua v. Taliu*, 13 A.S.R.2d 13 (1989).

Where certificate of required posting of notice said that notice was posted at “the Administration Building” rather than at “the Court House” as required by statute, the court would take judicial notice that the certificate tracked the language of a former statute and that the registrar had for some years posted notice not at the Administration Building but at the Court House, which was itself the former Administration Building. A.S.C.A. § 37.0103. *Vaimaona v. Tutasi (Mem.)*, 13 A.S.R.2d 76 (1989).

Individual title to land is registered in claimant’s name if the claim is publicly posted for sixty days, no adverse claim is lodged within that period, and all other statutory requirements are met. A.S.C.A. § 37.0103. *Fania v. Sipili*, 14 A.S.R.2d 70 (1990).

An affidavit of a posting of notice may be inadequate where: 1) it alleges that notice was posted for thirty-three days, as opposed to the requisite sixty days; 2) it was subscribed before the posting took place and thus was prepared without personal knowledge as to whether the posting actually took place; 3) it does not show the signature of the person qualified to take oaths and so may not have been made under oath; and 4) it states that notice was posted in a village different from that where the deed indicated the land is located. A.S.C.A. § 37.0103(a). *Vaimaona v. Tuitasi*, 18 A.S.R.2d 88 (1991).

A land-title registration was void when the required newspaper publication of a proposed registration and the certification of this notice was lacking. A.S.C.A. § 37.0103(a), (c). *Timu v. McMoore*, 24 A.S.R.2d 84 (1993).

### **37.0104 Adjudication of conflicting claims.**

(a) If it appears to the Territorial Registrar that there are conflicting claims to the title offered for registration, he shall refer the matter to the High Court of American Samoa for adjudication.

(b) Upon adjudication of the matter by the High Court, the Territorial Registrar shall register the land as directed by the court.

(c) Judgments adjudicating title to land shall:

(1) provide monuments, located on the ground, delineating the boundaries of the property;

(2) provide for a survey, the cost of which shall be assessed by the court;

(3) be accompanied by the survey when the judgment is registered by the Territorial Registrar.

**History:** 1962, PL 7-31, 1968, PL, 10-38, 1971, PL, 12-3, readopted 1980, PL, 16-88 §§ 1,2,1982, PL, 17-31 §§ 1, 2.

#### **Case Notes:**

Subsection (b) does not indicate manner of adjudicating conflicting claims: therefore, the court may adjudicate in favor of both applicant and objector or objector alone. *Fanene v. Taito*. ASR (1977)

The land-registration statutes do not require a certification or an affidavit by the Territorial Registrar or the High Court that notices was given for the required period. A.S.C.A. §§ 37.0103©, 37.0104(b). *Asifoa v. Faoa*, 21 A.S.R.2d 91 (1992).

### **37.0111 Affidavit—Recording—Right to file.**

(a) An affidavit explaining any defect in the chain of title to any real estate may be recorded, as an instrument affecting the same, but no one except the owner in possession of such real estate shall have the right to file such affidavit.

(b) An affidavit filed under the authority of this section, or the record thereof, including all such affidavits now on record, shall raise a rebuttable presumption from the date of its recording, as shown by the endorsement of the Territorial Registrar thereon, that the purported facts stated therein are true. Five years after the date shown by such endorsement, such presumption shall be conclusive against all persons except the United States of America and the government of American Samoa.

**History:** 1962, PL 7-31; 1968, PL 10-68; readopted 1980, PL, 16-88 §§ 1, 2; 1982, PL, 17-31 §§ 1,2.

**37.0112 Affidavit—Posting notice.**

(a) No affidavit affecting the chain of title to real estate may be filed for record unless the original in English and a copy thereof in Samoan have first been posted at the courthouse in Fagatogo for a period of 60 days, and 2 copies thereof in English and Samoan posted for the same period in 2 public places in the village located nearest to the real estate concerned.

(b) The Territorial Registrar shall execute a certificate under the seal of his office that the posting required by this section has been done, which certificate shall be recorded with the affidavit. No affidavit shall be filed until such certificate has been issued.

**History:** 1962, PL 7-31; 1968, PL 10-68; and 1977, PL 15-39 § 2: and 1979, PL. 16-5 § 2; readopted 1980, PL 16-88 §§ 1, 2; 1982, PL 17-32, §§ 1,2.

**Amendments:** 1977, 1979 Subsection (a): changed “administration building in Utulei” to “courthouse in Fagatogo.”

**Reviser’s Comment:** As required by Art. I, § 3 and Art II, § 9 of the American Samoa Constitution, this amendment was passed by two successive legislatures.

**37.0113 Affidavit—By lessor.**

A lessor who is an owner of real estate shall be deemed to be an owner in possession within the meaning of this chapter, but no affidavit executed by a lessor shall be filed and recorded unless it is accompanied by an affidavit executed by his lessee in actual possession setting forth that the lessor is the actual owner of the real estate involved. The affidavit of the lessor shall be posted and recorded in the same manner as other affidavits curing defects in the chain of title to real estate.

**History:** 1962, PL 7-31; readopted 1980, PL 16-88 §§ 1, 2; 1982, PL 17-31, §§ 1,2.

**37.0120 Adverse possession—Claim in arrest.**

(a) Actual, open, notorious, hostile, exclusive and continuous occupancy of real estate for 30 years confers a title thereto by adverse possession, which is sufficient against all.

(b) Any person claiming title to land in the occupation of another may state in writing such claim and file the same with the Territorial Registrar. Such claim, when so filed, shall arrest the running of the statutory period governing acquisition of title by adverse possession.

**History:** 1962, PL, 7-31; 1968, PL, 10-68; readopted 1980, PL 16-88 §§ 1,2; 1982, PL, 17-31 §§ 1,2.

**Case Notes:** -

Claim of title to land by either original occupancy or adverse possession is inconsistent. *Atualevao v. Talio*, ASR (1978). *Seipua v. Mageo*. ASR (1978).

If true owner is on the land, another person who is on the land has not only no adverse possession, but no possession whatsoever. *Iaoa v. Vele*. ASR (1977).

Statute provides that actual, open, noistrious, hostile, exclusive and continuous occupancy of land for 20 years will bar action for recovery of real property and confer tide by adverse possession sufficient against all. RCAS 100115. *Lob v. Hens of Sekio*. 4 ASR 477 (1964)

Actual, open, notorious, hostile, exclusive and continuous occupancy of portion of land for more than 20 years confers title by adverse possession. RCAS 100115 *Fau v. Wilson*, 4 ASR 443 (1964).

Adverse possession for 20 years confers title “which is sufficient against all.” RCAS 10.0115. *Laeli v. Moetoto*, 4 ASR 494 (1964).

Statutory period governing acquisition of title by adverse possession is 20 years and effect of running of period is to vest title in adverse possessor. RCAS 10 0115 *Lualemana v. Chiefs of Aitulagi*, 4 ASR 383 (1963).

The only ways communal land can become individual land are by adverse possession for thirty years or by compliance with the statutory procedures for alienation of communal land, including the approval of the Land Commission and the Governor. A.S.C.A. §§ 37.0120,

37.0201 et seq. *Ava v. Logoai*, 19 A.S.R.2d 75 (1991).

Land owned by ASG is not subject to acquisition by adverse possession, because the statute of limitations for adverse possession does not run against the government. A.S.C.A. § 37.0120. *Anderson v. Vaivao*, 21 A.S.R.2d 95 (1992).

Since many Samoan families allow other families to live on their land, “hostile” possession within the meaning of territorial statute allowing acquisition of land by adverse possession must be proved by evidence of acts unequivocally inconsistent with the ownership of the land by another family. A.S.C.A. § 37.0120. *Sialega v. Taito* (Mem.), 3 A.S.R.2d 40 (1986).

A family which has occupied a tract of land for at least thirty years, and which has on many occasions acted as the owner of the land in ways that were utterly inconsistent with the claim of another family, has acquired the land by adverse possession even if it had not done so by original occupancy. A.S.C.A. § 37.0120. *Sialega v. Taito*, 3 A.S.R.2d 78 (1986).

Widow who was neither a blood member of her late husband’s family nor analogous in any way to a member of the family, and whose possession of land was open, notorious, and clearly hostile to the competing claim of the husband’s family, could acquire the land by adverse possession. A.S.C.A. § 37.0120. *Puailoa v. Estate of Lagafuaina*, 11 A.S.R.2d 54 (1989).

Limitation of actions and adverse possession, while facts giving rise to them are usually intertwined, are separate laws and may sometimes depend on different facts. A.S.C.A. §§ 37.0120, 43.0120(6). *Roberts v. Seseapasara*, 8 A.S.R.2d 43 (1988).

Purchaser’s possession of land as lessee prior to her purchase might count toward thirty-year period for adverse possession, but did not prevent the purchase from giving rise to a new cause of action for the purpose of twenty-year statute of limitations. A.S.C.A. §§ 37.0120, 43.0120(6). *Roberts v. Seseapasara*, 8 A.S.R.2d 43 (1988).

Even if plaintiff family once had plantations on disputed land, defendant family would have become owner by virtue of open, notorious, exclusive, continuous, and hostile occupation of the land for twenty years under the adverse possession statute then in effect. A.S.C.A. § 37.0120 (prior to 1982 amendment). *Leomiti v. Toluao*, 11 A.S.R.2d 49 (1989).

Actual, open, notorious, hostile, exclusive and continuous occupancy of real estate for 30 years confers a title thereto by adverse possession which is sufficient against all. A.S.C.A. § 37.0120(a). *Vaivao v. Craddick*, 14 A.S.R.2d 108 (1990).

Because the adverse possession statute was amended in 1962 to change the prescriptive period from twenty years to thirty years, occupancy beginning later than the effective date of the 1962 amendment, which has been interrupted, or which has not been exclusive at any time since 1962 must meet the thirty-year requirement in order to acquire title by adverse possession. A.S.C.A. § 37.0120. *Willis v. Fai’ivae*, 17 A.S.R.2d 38 (1990).

Once the registered owner of land has shown that the area in controversy is the same land previously registered, the burden then shifts to the challenger, who can only prevail by showing that his family subsequently acquired the land by deed from record owners or by adverse possession. A.S.C.A. § 37.0120. *Avegalio v. Leatumauga*, 18 A.S.R.2d 9 (1991).

Acquiring land by adverse possession requires possession which is exclusive, continuous, open, notorious, and hostile to anyone else’s claim of ownership for the statutory period. A.S.C.A. § 37.0120. *Magalei v. Atualevao*, 19 A.S.R.2d 86 (1991).

Because land can be owned communally in American Samoa, a communal family may obtain title to land through adverse possession. A.S.C.A. § 37.0120. *Anderson v. Vaivao*, 21 A.S.R.2d 95 (1992).