

## Chapter 02

### ALIENATION OF LAND

Top of Page

#### Sections:

- 37.0201 Definitions
- 37.0202 Creation and membership of land
- 37.0203 Instruments affecting title to land—Duties of Commission
- 37.0204 Restrictions on alienation of land
- 37.0205 Transfer in trust for use of child or issue of child married to nonnative
- 37.0210 Registration required—Notice of contents
- 37.0211 Contract for sale of real property
- 37.0221 Leasing of native land
- 37.0222 Lease of native land for schools
- 37.0230 Violation--Penalty

**Reviser's Comment:** The provisions of this chapter were amended by PL 7-19, 1962. PL 9-18, 1965, and PL 10-58, 1968, apparently without reference to or compliance with Const. Amer. Samoa, Art. I, Sec. 3, which provides in part: "No change in the law respecting the alienation or transfer of land or any interest therein, shall be effective unless the same be approved by two successive legislatures by a two-thirds vote of the entire membership of each house and by the Governor."

The law dealing with alienation of land contained in the ASCA 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.

#### **37.0201 Definitions.**

As used in this chapter:

- (a) "Alienation" means the sale, gift, exchange, or any other method of disposal of property.
- (b) "Freehold lands", means all those lands included in court grants prior to 1900 which have not at the request of the owner, been returned to the status of other land in American Samoa surrendering their freehold characteristics.
- (c) "Native" means a full-blooded Samoan person of Tutuila, Manu'a, Aunu'u, or Swains Island.
- (d) "Native land" means communal land.
- (e) "Nonnative" means any person who is not a native under subsection (c) above.

History: 1949 code § 1280; readopted 1980, PL16-88 §§ 1,2; 1982, PL 17-31 §§ 1,2; 1999 PL 26-6.

#### Case Notes:

Individually owned land is land which was not freehold land in 1900 and which is not communal land. *Craddick v. Territorial Registrar*, ASR (1979).

As used in this chapter, "Samoan" includes Western Samoans and is not limited to American Samoans, and "native," which under this section means "full-blooded Samoan," includes full-blooded western Samoans; thus, person of 75 percent Western Samoan blood; though not an American Samoan. Has at least one-half Samoan blood for purposes of this chapter. *Moon v. Falemalama*, 4 ASR 836 (1975).

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).

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).

Unilateral and secret attempt by matai to give his daughter sole authority over family land to the exclusion of his successors in matai title would be inconsistent with Samoan tradition

and contrary to territorial statutes regulating alienation of family land. A.S.C.A. §§ 37.0201 et seq. *Gi v. Temu*, 11 A.S.R.2d 137 (1989).

Although Samoan custom requires family consultation before a sa'o conveys communal land, the court cannot impose this as an additional condition to such a conveyance absent statutory direction from the Fono. A.S.C.A. §§ 1.0202, 37.0201 et seq. *Vaimaona v. Tuitasi*, 18 A.S.R.2d 88 (1991).

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).

Communal land may not become individual property except in accordance with statutory procedures for alienation of communal lands. A.S.C.A. §§ 37.0201 et seq. *Faleafine v. Suapilimai*, 7 A.S.R.2d 108 (1988).

Territorial statute dealing with "alienation of land" provides substantive restrictions on alienation and also sets forth procedures for the lawful alienation of land, which are designed to ensure that land will not be alienated lightly even in the absence of a specific substantive restriction. A.S.C.A. §§ 37.0201 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., 37.0201 et seq. *Vaimaona v. Tuitasi (Mem.)*, 13 A.S.R.2d 76 (1989).

Matai cannot alienate land without complying with certain statutory procedures, including the approval of the Governor of American Samoa. A.S.C.A. §§ 37.0201 et seq. *Sivia v. Alaimalo*, 13 A.S.R.2d 95 (1989).

Freehold land is all those lands included in court grants prior to 1900. A.S.C.A. § 37.0201(b). *Vaivao v. Craddick*, 14 A.S.R.2d 108 (1990).

Because statute permits freehold land to revert to communal status at the request of the owner, it follows a fortiori that the same process is available for individual land. A.S.C.A. § 37.0201(b). *Fauolo v. Satele*, 15 A.S.R.2d 141 (1990).

### **37.0202 Creation and membership of Land Commission.**

There is created a Land Commission, which shall consist of 5 members who shall serve ex officio as follows: a man qualified and experienced in real estate transactions, who shall serve as chairman and shall be appointed by the Governor; the Territorial Registrar, who shall serve as secretary; and the 3 district governors of the government.

**History:** 1949 Code § 1281; 1965. PL 9-18; readopted 1980 PL 16-88 §§ 1,2; 1982, PL 17-31 §§ 1,2.

### **37.0203 Instruments affecting title to land— Duties of Commission.**

(a) All instruments affecting the title to land which require the approval of the Governor before becoming effective shall be filed with the secretary of the Land Commission for study and recommendations thereon by the Commission.

(b) The Commission shall meet from time to time upon call of the chairman and make recommendations to the Governor respecting the approval or disapproval of instruments affecting the title, ownership or possession of land so submitted for consideration and approval.

(c) It shall be the duty of the Commission to endeavor to prevent the monopolistic ownership of land and improvident alienations of communal lands by those charged with the management and control thereof.

(d) The Commission shall also conduct studies and make recommendations to the Governor for the improvement of the registration, recording and indexing of instruments affecting land and property rights and surveys and plotting of land.

(e) The Commission shall also make such general recommendations to the Governor as may be considered appropriate for the maintenance of orderly and permanent records respecting the ownership of land and other property.

(f) The Commission shall make such rules governing its procedure, as it shall deem proper.

**History:** 1949 Code § 1281; readopted 1980. PL. 16-88 §§1. 2; 1982, PL 17-31 §§ 1,2.

**Case Notes:**

The Land Commission carried out its duty to prevent “improvident alienation” of land by asking the sa’o if he had consulted with his family before conveying communal land, but the Commission is under no obligation to absolutely prevent such a conveyance. A.S.C.A. § 37.0203©. *Vaimaona v. Tuitasi*, 18 A.S.R.2d 88 (1991).

The Governor and the Land Commission must approve conveyances of communal land. A.S.C.A. §§ 37.0203-37.0204. *Magalei v. Atualevao*, 19 A.S.R.2d 86 (1991).

**37.0204 Restrictions on alienation of land.**

(a) It is prohibited for any matai of a Samoan family who is, as such, in control of the communal family lands or any part thereof, to alienate such family lands or any part thereof to any person without the written approval of the Governor of American Samoa.

(b) It is prohibited to alienate any lands except freehold lands to any person who has less than one-half native blood, and if a person has any nonnative blood whatever, it is prohibited to alienate any native lands to such person unless he was born in American Samoa, is a descendant of a Samoan family, lives with Samoans as a Samoan, lived in American Samoa for more than 5 years and has officially declared his intention of making American Samoa his home for life.

(c) If a person who has any nonnative blood marries another person who has any nonnative blood, the children of such marriage cannot inherit land unless they are of at least one-half native blood.

(d) This section does not prohibit the conveyance and transfer of native land for governmental purposes to the United States Government or to the government of American Samoa or to a lawful agent or trustee thereof, or the conveyance and transfer, in the discretion and upon the approval of the Governor, to an authorized, recognized religious society, of sufficient land for erection thereon of a church, or dwelling house for the pastor, or both; provided, that the reconveyance and retransfer of such land shall be to native Samoans only and in the discretion and upon the approval of the Governor.

(e) The true children of the present record titleholder of Swains Island, which became a part of American Samoa some 25 years subsequent to the original enactment of this section and is not under the matai system, and their lineal descendants born in American Samoa, shall, notwithstanding any other provision of this section, be deemed to have heritable blood with respect to said island or any part thereof, and an otherwise valid devise of said island or any part thereof to any such true child of such descendant shall not be construed to be alienation in violation of this section.

**History:** 1949 Code § 1282; readopted 1980, PL 16.88 §§ 1. 2; 1982, PL 17-31 §§ 1,2.

**Case Notes:**

Individually owned land cannot be alienated to any person who has less than one-half native blood. *Craddick v. Territorial Registrar*, ASR (1979).

As used in this section, “Samoan” includes Western Samoans and is not limited to American Samoans, and “native,” which under this chapter means “full-blooded Samoan,” includes full-blooded Western Samoans, thus, person of 75 percent Western Samoan blood, though not an American Samoan, has at least one-half Samoan blood for purposes of this section. *Moon v. Falemalama*, 4 ASR 836 (1975).

Under this section, freehold land may be alienated to a person with less than one-half Samoan blood, alienation of communal land to any person who is not a full-blooded Samoan is prohibited unless he was born in American Samoa and is a descendant of a Samoan family and lives with Samoans as a Samoan and has lived in American Samoa for more than 5 years and has officially declared his intention of making American Samoa his home for life, and any other land may be alienated to a person with at least one-half Samoan blood. *Moon v. Falemalama*, 4 ASR 836 (1975).

The protection of Samoan lands is a permissible state objective “independent of the racial discrimination which it was the object of the Fourteenth Amendment to eliminate”. We find the prohibition against the alienation of land to non-Samoans to be necessary to the safeguarding of these interests. *Douglas O. Craddick and Magdalene v. Craddick v. Territorial Registrar of American Samoa*, ASR (1980).

Conveyance not prohibited to recognized religious society. *Reid V Tavete*. I ASR 2d 85 (1983).

Conveyance not prohibited to United States government. ASG. or authorized agents. *Burns Philip Co. and ASG v. Mageo*. I ASR 2d 95(1983).

The Governor and the Land commission must approve conveyances of communal land. A.S.C.A. §§ 37.0203-37.0204. *Maggie v. Atualevao*, 19 A.S.R.2d 86 (1991).

A matai's alienation of land must comply with certain statutory procedures, including the approval of the Governor of American Samoa. A.S.C.A. § 37.0204. *Alaimalo v. Sivia*, 17 A.S.R.2d 25 (1990).

Common law rule against perpetuities is designed to protect the free alienability of land and therefore has no application to Samoan communal property, which are not freely alienable. A.S.C.A. § 37.0204. *Tufele v. Mose*, 7 A.S.R.2d 157 (1988).

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).

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).

### **37.0205 Transfer in trust for use of child or issue of child married to nonnative.**

This regulation shall not apply to any native proprietor of land, other than communal family land, who desires to make provision for his son or daughter, in view of legal marriage with a nonnative, or for his son or daughter already married to a nonnative, or for any of the issue of any such marriage, by deed or will in favor of a trustee to hold in trust for the use of such son or daughter or such issue.

**History:** 1949 Code § 1287; readopted 1980. PL 16-88 §§ 1.2; 1982. PL, 17-31 §§ 1.2.

### **37.0210 Registration required—Notice of contents.**

(a) No instrument shall be effectual to pass the title to any land or any interest therein, or to render such land liable as security for the payment of any debt or obligation until such instrument has been duly registered with the Territorial Registrar.

(b) Due registration of an instrument relating to land or an interest therein shall be notice of the contents of such instrument to all persons thereafter dealing with such land or interest therein.

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

### **Case Notes:**

At the time plaintiff grantee received and registered deed, title to the property described therein passed to plaintiff and grantor lost all interest therein, and defendant grantees of adjoining land owned by the same grantor as had sold land to plaintiff would be held to have had notice of the contents of plaintiff's duly registered deed at the time defendants accepted delivery of their own deed, and defendants' deed, which passed to them a small portion of the land already passed to plaintiff, had no effect on plaintiff's ownership of the property described in plaintiff's deed *Moon v Falemalama* 4 ASR 836 (1975).

Where the record is unclear as to whether a deed has been duly registered, the appellate court will remand the issue to the trial court for further evidentiary findings. A.S.C.A. § 37.0210(a). *Vaimaona v. Tuitasi*, 18 A.S.R.2d 88 (1991).

Final step in the statutory procedure for alienation of communal land is recordation of the transaction with the Territorial Registrar; when a buyer and seller comply with all the

statutory provisions for alienation of land, including this recordation provision, the buyer becomes the owner of whatever interest the seller had in the land. A.S.C.A. § 37.0210. *Vaimaona v. Tuitasi* (Mem.), 13 A.S.R.2d 76 (1989).

Territorial statute providing for the registration of instruments, as opposed to the registration of title itself, does not specify posting or any other particular form of notice prior to registration. A.S.C.A. § 37.0210. *Vaimaona v. Tuitasi* (Mem.), 13 A.S.R.2d 76 (1989).

Though registration of an instrument of conveyance is a necessary condition of the effectiveness of that instrument to pass title, it may not in all cases be sufficient; registration of the instrument gives notice to people dealing with the land “thereafter” but does not necessarily affect the interests of persons who dealt with the land before. A.S.C.A. § 37.0210. *Vaimaona v. Tuitasi*, 18 A.S.R.2d 88 (1991).

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).

Matai cannot alienate land without complying with certain statutory procedures, including the approval of the Governor of American Samoa. A.S.C.A. §§ 37.0201 et seq. *Sivia v. Alaimalo*, 13 A.S.R.2d 95 (1989).

### **37.0211 Contract for sale of real property.**

No agreement for the sale of real property or of any interest therein is valid unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged or his agent thereunto authorized in writing but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

**History:** 1979, PL 16-12 § 1; 1981, PL 17-1 § 1; readopted 1980, PL 16-88 §§ 1,2; 1982, PL 17-31 §§ 1,2.

**Reviser’s Comment:** As required by Art. I, § 3 and Art. II, § 9 of the American Samoa Constitution, 37.0211 was passed by two successive legislatures.

**Reviser’s Comment:** § 37.02 12 was deleted as it was based on PL 18-17 which requires passage by two successive Legislatures according to Art. I, § 3 and Art. II, § 9 of the American Samoa Constitution. As of this codification, PL 18-17 had not passed the 19th Legislature.

#### **Case Notes:**

Noncompliance with the statute of frauds does not abridge a court’s power to compel the specific performance of an agreement in the case of part performance. A.S.C.A. § 37.0211. *Blue Pacific Management Corp. v. Paisano’s Corp.*, 23 A.S.R.2d 58 (1992).

A court may compel specific performance of a partially performed, unwritten agreement; the court’s power to compel specific performance is expressly recognized in the statute of frauds relating to land transactions. A.S.C.A. § 37.0211. *Manoa v. Jennings*, 21 A.S.R.2d 23 (1992).

### **37.0221 Leasing of native land.**

(a) Native land may, with the approval of the Governor, be leased to any person for any term not exceeding 55 years for any purpose, except for the working of minerals and cutting of timber.

(b) Provisional agreements for the leasing of native land as provided in subsection (a) may be entered into with the native proprietor or proprietors. Every such provisional agreement, stating in full its terms and conditions, shall be submitted with a plan showing the situation of the land to the Governor for approval, and it shall have no validity until such approval has been signified in writing.

(c) All leases of native land approved under this section shall be conditioned on the occupation or cultivation of at least 1/10 of the area of the land leased, by the lessee within a

period of 2 years from the date of approval. Upon failure of this condition or failing the continuous occupation or cultivation of the land for any period of 5 years after the date of approval, the Governor may, if he deems it necessary and expedient, cancel the lease, and the land shall revert immediately to the native lessor. Land leased pursuant to this section shall be deemed occupied by the lessee if the lessee is a party to a mortgage of such land granted in connection with the acquisition or erection of improvements situated thereon.

(b) The lessee must, within 2 calendar months after any provisional agreement to lease has been approved by the Governor, deposit in the Office of the Governor a properly drawn and legally attested lease for confirmation under the hand and seal of the Governor, and such lease shall be registered in a book to be styled registrar of titles.

(e) If a lessee enters into a mortgage of land lease pursuant to this section to finance the acquisition or construction of housing or other improvements of any type situated thereon, the lease of such land shall not be subject to cancellation or revert under subsection (c) of this section during the original stated term of such mortgage or any renewal or extension thereof.

**History:** 1949 Code §§ 1283—1286; and 1978, PL 15-88 § 1; and 1979, PL 16-49 § 1; readopted 1980, PL 16-88 §§ 1, 2; 1982, PL 17-31 §§ 1, 2; and 1988 PL 20-73; 1989 PL 21-23.

**Amendments:** 1978, 1979 Subsection (a): raised maximum term from 30 to 55 years.

**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.

### **37.0222 Lease of native land for schools.**

(a) Any person, corporation, organization, society, or association may lease, for school purposes, so much native land as is actually necessary for such purposes for a period of not more than 30 years, with a right to provide in the lease for any number of renewals thereof for a like period; provided, that such lease, and the renewals thereof, shall be approved by the Governor of American Samoa, that the school conducted on such leased premises shall be subject to governmental supervision, and that such instruction in the English language as the Governor may direct shall be given regularly in such school.

(b) Unless a school is conducted upon such leased premises within one year from the approval of such lease, or if, for any period of 2 years after the date of its approval no school is conducted thereon, the Governor may cancel such lease and the land shall immediately revert to the native lessor.

**History:** 1949 Code § 1288; readopted 1980, PL 16-88 §§ 1,2; 1982, PL 17-31 §§ 1,2.

### **37.0230 Violation—Penalty.**

Any alienation in violation of this chapter shall be void; and any person committing, or attempting to commit, a breach of a provision of this chapter, except 37.0210 and 37.0211, shall be liable to a fine not to exceed \$200, and any nonnative failing to conform to this chapter, except 37.0210 and 37.0211, shall be liable to the forfeiture to the owner of the land, of all improvements he may have erected or made on the land and no action shall lie for the recovery of any payment he may have made or other expenditure he may have incurred in respect thereof.

**History:** 1949 Code § 1290; readopted 1980, PL 16-48 §§ 1,2; 1982, PL 17-31 §§ 1,2.