

Chapter 15

SEPARATION OF STRUCTURES FROM COMMUNAL LAND

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37.1501 Definitions.

As used in this chapter, “Samoan” or “Samoan descent” includes American Samoans of at least one-half Samoan blood and persons born on other islands of the Pacific Ocean who are of at least one-half Polynesian, Melanesian or Micronesian blood and who reside in American Samoa.

History: 1962, PL 7-23; 1968, PL 10-66.

Case Notes:

With respect to land, a separation agreement splits a particular structure from the land on which it is built or is to be built, so that the structure will be the property of the person building it rather than the landowner. A.S.C.A. § 37.1501 et seq. *Fagasoia v. Fanene*, 18 A.S.R.2d 72 (1991).

37.1502 Power and authority for agreement of separation— Recording agreement— Encumbrances.

(a) The senior matai in charge of communal lands belonging to his family, or the male members of the family owning and residing on communal lands, or the owner of individually owned lands or freehold lands, shall have the power and authority, as limited by this chapter, to agree with any person that any structure now existing or hereinafter erected on such lands shall not be or become a part of the real estate, but shall remain separate and distinct therefrom, subject to ownership separate from the land, and also subject to the right of removal by the owner of the structure.

(b) Any agreement made under the authority of this section shall be reduced to writing and offered to the Territorial Registrar for recording.

(c) After recording has been completed in accordance with the terms of this chapter and subject to the restrictions provided by law, any person may obtain a lien or encumbrance on the structure which may be foreclosed or enforced as though the structure were personal property.

History: 1962, PL 7-23; 1968, PL 10-56.

Case Notes:

Male members of the family means majority of such members over 18 years of age. *Fa'ana'e v. Tu'uu s.*, 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. Tallo*, ASR (1977).

Court judgment that disputed tract was communal land of a family which was not a traditional Samoan family with a matai, left open the question of how to deal with ownership

rights since family could not create new matai title. *Willis v. Willis* (mccii), 4 ASR2d 144 (1987); Court finds family accepts land as owned as tenants-in-common by six family members. *Willis v. Willis*, 4 ASR2d 188 (1987).

Judgment that disputed tract was “communal land” of a family that was not a traditional Samoan family with a matai left open the question how family was to exercise rights of ownership under land statutes presuming the existence of a senior matai, since family was prohibited by statute from creation a new matai title. A.S.C.A. §§ 1.0401, 37.1502-03. *Willis v. Willis*, 4 A.S.R.2d 144 (1987).

Land held to belong to family members as tenants in common is “communal” insofar as each member held an undivided interest in the land by virtue of joint occupation and cultivation, but was not Samoan communal property for purpose of statutes requiring action to be taken by a matai. A.S.C.A. § 37.1502-03. *Willis v. Willis*, 4 A.S.R.2d 144 (1987).

Chattel mortgages in American Samoa create a lien rather than pass legal title. A.S.C.A. § 37.1502. *Shantilal Brothers, Ltd, v. KMST Wholesale*, 15 A.S.R.2d 115 (1990).

37.1503 Execution of agreement.

(a) If the person seeking to separate a structure from communal lands is not the matai in charge of the communal lands upon which the structure is or is proposed to be erected, the agreement shall be executed on behalf of the owners of the land by the matai of the family.

(b) If the person seeking to separate a structure from the communal lands is the matai of the family owning the communal lands upon which the structure is or is proposed to be erected, the agreement shall be executed on behalf of the family members owning and residing on the communal lands who are over the age of 18 years.

(c) If the person seeking to separate a structure from individually owned lands or freehold lands is the owner of the lands upon which the structure is or is proposed to be erected, the agreement shall be executed by such owner.

History: 1962, PL 7-23.

Case Notes:

Judgment that disputed tract was “communal land” of a family that was not a traditional Samoan family with a matai left open the question how family was to exercise rights of ownership under land statutes presuming the existence of a senior matai, since family was prohibited by statute from creating a new matai title. A.S.C.A. §§ 1.0401, 37.1502-03. *Willis v. Willis*, 4 A.S.R.2d 144 (1987).

Land held to belong to family members as tenants in common is “communal” insofar as each member held an undivided interest in the land by virtue of joint occupation and cultivation, but was not Samoan communal property for purpose of statutes requiring action to be taken by a matai. A.S.C.A. § 37.1502-03. *Willis v. Willis*, 4 A.S.R.2d 144 (1987).

Matai’s signature is required on separation agreements by family members to build homes on communal land. A.S.C.A. § 37.1503(a). *Utu v. Fuata*, 17 A.S.R.2d 104 (1990).

37.1504 Notice of receipt of instrument.

(a) When an instrument entered into in accordance with this chapter is offered to the Territorial Registrar for recording, he shall give notice of the receipt of the instrument by causing a written notice thereof in both the English and Samoan languages to be posted on the building site, and by posting a notice on the bulletin board near the front door of the courthouse in Fagatogo.

(b) The notice shall be in the following form:

Office of the Territorial Registrar Fagatogo, American Samoa
TO THE MEMBERS OF THE..... FAMILY, AND TO ALL TO WHOM
THESE PRESENTS MAY COME:

NOTICE IS HEREBY GIVEN THAT OF

has offered for recording in this office an instrument in writing which is (to be) erected on lands allegedly belonging to situated in or near the village of County, American Samoa.

NOTICE IS FURTHER GIVEN THAT any interested person may object to the recording of such instrument by filing, in the office of the Territorial Registrar in the courthouse in Fagatogo, American Samoa, written objections to the recording of said instrument. Objections must be filed within 30 days after the posting of this notice.

NOTICE IS FURTHER GIVEN THAT if no such objections are filed within the said 30-day period, the instrument will be recorded and shall be valid and binding on all persons.

Dated this day of, 19... TERRITORIAL REGISTRAR

(c) All expenses incident to the posting of the notice shall be paid by the person offering the agreement for recording.

Amendments: 1977, 1979 Subsections (a) and (b): amended “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.

37.1505 Recordation of separation not objected to.

If no objection to the separation of a building from the lands is filed with the Territorial Registrar within 30 days after the posting, the Territorial Registrar shall record the agreement, together with proof of the required posting.

History: 1962, PL 7-23; 1968, PL 10-56.

Case Notes:

Where separation-of-structure agreement recorded pursuant to provision of code contains statement that land is communal and court finds it individually owned, court will not order agreement executed. RCAS 12.0204. Meredith v. Aumavae. 4 ASR 680 (1965).

37.1506 Objections—Hearing—Decision.

(a) If objections are filed within 30 days after posting of notice, the Territorial Registrar shall so inform the Chief Justice, and the matter shall be set down for trial in the High Court as a civil matter, and all interested persons shall be notified of the time and place of the trial.

(b) If, on the trial, the court finds that the requirements of law have been met and that the use of the separation agreement will not unduly interfere with the use of the lands by the family, if it has such right of use, and that the cost of the building was or will be borne by the person who erects or erected the same, then the court shall order the Territorial Registrar to record the agreement, together with proof of required posting and a certified copy of the order of the court; otherwise, the court shall order the Territorial Registrar not to record the instrument, and it shall, after the entry of such order, be null and void and of no further force and effect.

History: 1962, PL 7-23; 1968, PL 10-56; and 1977, PL 15-39 § 1; and 1979, PL 16-5 § 1, History: 1962, PL 7-23; 1968, PL 10-56.

Case Notes:

Words “civil matter” refer to civil cases in general and not to those cases to be tried in trial division; land and titles division has jurisdiction. Meredith v. Mafatau. ASR (1977).