

## Chapter 20

### GOVERNMENT LAND TRANSACTIONS

#### Sections:

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**Reviser's Comment:** The law dealing with alienation of land contained in 37.2001—37.2040 of the ASCA as recodified by the legislative reference bureau had been questioned as to whether the requirements of Art. 1, § 3 and Art. 11, § 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.

#### **37.2001 Eminent domain-Compensation.**

(a) The Government may take any land, easement or right-of-way, or any other property interest in American Samoa, when required for public purposes. Where possible, the Governor shall consult with the Legislature about proposed condemnation projects, and shall obtain the advice of the Legislature on all such projects. Payment of just compensation shall be made, in accordance with the procedures described in 43.1001 through 43.1036, to those who may be deprived of their property by such taking.

(b) The public purpose for a parcel of land acquired by the Government under eminent domain must be specified in the proposed condemnation. If the subject land is not used for the stated public purpose within five years after condemnation it must be returned to the prior owner with all improvements.

**History:**1962, PL 7-25; 1967, PL 10-25; readopted 1980, PL 16-88 § 1; 1982, PL 17-31 § 1; amd 1988, PL 20-50; amd 1989, PL 21-24.

#### **Case Notes:**

Change in use of land from original purpose of taking by eminent domain does not return title over land back to original owners. Title vested in the government in fee simple once eminent domain is exercised. *H. C. Atualevao v ASG*. ASR (1984).

#### **37.2010 Authority to purchase property-Transfer of title.**

The Government shall have the power and authority to purchase property for public purposes from the owners, and to compensate them by private agreement. When an agreement has been made for a purchase by the Government, a transfer of the title to the property shall be executed by the seller to the Government.

**History:**1962 PL 7-25; 1967, PL 10-25; readopted 1980, 16-88 § 1; 1982, PL 17-31 § 1.

#### **37.2020 Four-year lease.**

No lease of real property owned or controlled by the Government may be entered into for a period longer than 4 years unless such lease contains a provision satisfactory to the lessor whereby the rentals or lease price is adjusted upward or downward at intervals to adjust for inflation. For this purpose, recognized indexes appropriate to measure increases in value of

real property, maintained by federal government agencies, shall be made applicable by regulation adopted under the provision of the Administrative Procedure Act, 4.1001 et seq.

**History:** 1978, PL 15-69; readopted 1980, 16-88 § 1; 1982, PL 17-31 § 1.

**Case Notes:**

Where the Government had drafted a lease document inadvertently omitting a provision required by statute for periodic adjustment of the rent, and the lessee had no objection to such a provision, the lease would be reformed or construed to include the required provision rather than declared invalid. A.S.C.A. § 37.2020. *American Samoa Government v. Samoa Aviation, Inc.*, 11 A.S.R.2d 144 (1989).

Territorial Government has the statutory right to enforce against its lessee a provision satisfactory to it whereby rentals are adjusted at intervals for inflation, although such a clause was inadvertently omitted from the lease, but has no right to evict the lessee on account of such omission. *American Samoa Government v. Samoa Aviation, Inc. (Mem)*, 13 A.S.R.2d 65. A.S.C.A. § 37.2020 (1989).

Lease agreement omitting inflation adjustment clause required by statute would be enforced, after modification to include such a clause, where: (1) the statute did not provide that contracts omitting the required term should be absolutely void; (2) the contract complied with all applicable laws and regulations but one; (3) the only "misconduct" in which the lessee might be said to have engaged was to sign an apparently lawful agreement drafted by the lessor; (4) there was no evidence that the required clause was omitted by any reason but inadvertence; (5) the lessee had signed a covenant to obey all laws pertaining to the premises; (6) soon after being notified of the absence of the inflation adjustment clause, the lessee expressed its belief that it was in fact bound to pay the required adjustments; (7) the statute did not appear designed to punish conduct regarded as *malum in se* by effecting a forfeiture; (8) the statutory purpose of protecting the lessor could be accomplished by imposing on the lessee the obligation to pay the required adjustments; and (9) the record rather clearly showed that the absence of an inflation adjustment clause was not a genuine point of controversy between the lessor and lessee, but was one of a series of technical grounds on which the lessor sought to evict the lessee in order to accommodate another prospective tenant *v. Samoa Aviation, Inc. (Mem)*, 13 A.S.R.2d 65 (1989).

**37.2025 Six-year lease.**

No lease of real property owned or controlled by the Government may be entered into for a period longer than 6 years unless such lease contains a provision to adjust for inflation as provided in 37.2020, and, in addition, contains provisions satisfactory to the lessor which permit the rental to be renegotiated at the end of the third year, and annually thereafter, to adjust for changes in circumstances not related to inflation which increase or decrease the value of the leasehold. Changes in circumstances within the meaning of this section shall be those provided in regulations adopted under the provisions of the Administrative Procedure Act, 4.1001 et seq., such as, but not limited to, governmental actions increasing or decreasing the value of the leases, it being the purpose of this section that such adjustments shall be approximately one-half of the increment or decrement resulting from such governmental actions.

**History:** 1978 PL 15-69; readopted 1980 16-88 § 1; 1982 PL 17-31 § 1.

**37.2030 Ten-year lease.**

No lease of real property owned or controlled by the government which extends for a period of 10 years or longer may be effective until it has been submitted to the Fono, and not disapproved by a concurrent resolution duly adopted within 30 days of its submission. A special session may be called for the purpose of considering such leases.

**History:** 1978, PL 15-69; readopted 1980. PL 16-88 § 1; 1982, PL 17-31 § 1.

**Case Notes:**

Legislative veto provision does not violate American Samoa Constitution. Concurrent resolution given binding effect by law, is not itself a law. *Tuika Tuika v. Governor of American Samoa*. 4 ASR2d 85 (1987).

By making it easier for the legislature to supervise the quasi-legislative activities of the executive branch, a

territorial statute providing for "legislative veto" enhanced the diffusion of power among the different branches of government. A.S.C.A. § 37.2030. *Tuika Tuika v. Governor of American Samoa*, 4 A.S.R.2d 85 (1987).

Territorial statute requiring the Governor to submit to the Fono for possible disapproval any lease of land lasting over ten years was not legislation "affecting the powers of the legislature" requiring the prior approval of the Secretary of the Interior. A.S.C.A. § 37.2030. *American Samoa Government. Tuika Tuika*, 6 A.S.R.2d 58 (1987).

Territorial statute providing for a "legislative veto" of leases of government land did not violate American Samoa Constitution. A.S.C.A. § 37.2030; Rev. Const' of Am. Samoa art. II §§ 9 & 10. *Tuika Tuika v. Governor of American Samoa*, 4 A.S.R.2d 85 (1987).

### **37.2040 Relocation and assistance.**

(a) The Governor is authorized and empowered to promulgate such rules as are necessary to provide relocation payments and assistance and to otherwise enable the government to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, January 2, 1971, 84 Stat. 1894.

(b) When federal funds are available for payment of financial assistance to persons displaced as a result of the acquisition of property for a federally assisted public improvement, and to the extent that the Legislature of American Samoa has provided matching funds for the federal funds, the Governor shall have authority to implement and administer all financial assistance in accordance with the provisions of the federal law and regulations.

**History:** 1972, PL 12-62.

### **37.2050 Highway-Establishment.**

The public highway declared and proclaimed by Regulations No. 15 and No. 16, 1900, enacted 3 September 1900, by B. F. Tilley. Commander, U.S.N., Commandant, and amended by W. Evans, Captain, U.S.N., on 10 May 1921, extending from Blunt's Point on the southern side of Pago Pago Harbor, toward Observatory Point and around the harbor to Breaker's Point on the northern side of the harbor, along the shore at highwater mark, of a uniform width of 15 feet distant inland from the shore, the land included in the description being condemned and appropriated for public uses, is recognized as a public highway, and the rights of the government and the public thereto is asserted.

**History:** 1949 Code § 1291(1).

**Reviser's Comment:** 1949 AS Code § 1291(4) provided: "Any person or persons who claim compensation for any of the land condemned as herein before stated [in AS Code § 1291(1), now this section], under Section 2 of the Deed of Cession granted from the Chiefs and Rulers of Tutuila to the United States government and bearing date April 17, 1900, must have presented their claims to the High Court within three months from September 3, 1900, as required by the aforesaid regulations, otherwise such claims shall not be recognized, and in all cases whatsoever the amount of compensation allowed for such claims by the said Court, is final."

#### **Case Notes:**

In condemning land for public uses to build a road, the United States also acquired the land between the road and the shoreline, including the accompanying littoral rights; these rights have been transferred to ASG. § § 37.2050. *Anderson v. Vaivao*, 21 A.S.R.2d 95 (1992).

An action challenging ordinances condemning land for the coastal road was barred by laches when the plaintiff did not file suit until 90 years after the ordinances were enacted. A.S.C.A. § 37.2050. *Anderson v. Vaivao*, 21 A.S.R.2d 95 (1992).

### **37.2051 Highway-Construction and repair-Interference.**

(a) It shall be lawful for those employed by the government to enter upon the lands within the boundaries stated in 37.2050 and build or repair the highway thereon as from time to time directed, remove all rocks, trees or other obstructions and complete the formation or repair of the highway.

(b) Any person who obstructs or who in anyway aids or abets in the obstruction of, the building or repair of the highway established by 37.2050 shall, upon conviction, be fined not

more than \$50, or imprisoned with or without hard labor, in the discretion of the court, for a term not exceeding 3 months, for each offense.

**History:** 1949 Code § 1291 (2), (3).

**37.2052 Highway-Erection of private structures-Penalty.**

(a) It is unlawful for any person to erect any fence, wharf, boathouse, building or structure of any kind whatsoever to seaward of the public highway established by 37.2050 without special permission of the Governor of American Samoa, to whom there must be presented a written application with plans of the structure intended to be erected.

(b) Any wharf, fence, building or other structure erected in contravention of this section must be removed upon the order of the Governor at the expense of the person erecting or causing the same to be erected, and in addition, any person so erecting, or causing the same to be erected, is guilty of a class A misdemeanor, and upon conviction, shall be sentenced accordingly.

**History:** 1949 Code § 1291(5), (6); amd 1980, PL 16-90 § 68.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.