



WESTERN SAMOA

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THE LAND REGISTRATION ACT 1992/1993
1992/1993

No.24

AN ACT to consolidate and amend the law relating to the Registration of deeds affecting Land and for matters incidental thereto.

(2 February 1993)

PART I
PRELIMINARY

1. Short Title, commencement, and application - (1)

This Act may be cited as the Land Registration Act 1992/1993.

(2) This Act shall commence on a date to be fixed by the Head of State acting upon the advice of Cabinet, by Order.

(3) Subject to the provisions of sections 11, 12 and 13 of the Land and Titles Act 1981 this Act shall apply only to public land, freehold land, and customary land leases.

2. Interpretation - In this Act unless the context otherwise

requires:

"**Conveyancer**" means a person who draws or prepares any instrument on behalf of any other person.

"**Customary land lease**" means an interest held in accordance with the proviso to Article 102 of the Constitution in customary land and otherwise than by virtue of Samoan custom and usage.

"**Government**" means the Government of the Independent State of Western Samoa.

"**Instrument**" means any document, or documents in a set, affecting land or an interest in land which may be registered pursuant to this Act; and includes an instrument of title.

"**Instrument of title**" means and includes:

- (a) Any conveyance, mortgage, variation of mortgage, lease, licence, grant, assignment, surrender, or other instrument of assurance;
- (b) Any will, codicil, probate or letters of administration;

- (c) Any order of the Supreme Court or of any other Court of competent jurisdiction;
- (d) Any warrant, notice or other instrument of executive authority authorised by law,-
affecting the title to land.

"**Land Register**" means the Land Register continued pursuant to section 14 of this Act.

"**Legal title**" or "**legal estate or interest**" is opposed to equitable title or equitable estate or interest.

"**Lessee**", in relation to a customary land lease includes a licensee and any other person to whom a customary land lease is granted and includes also every lawful successor of the original holder of a customary land lease.

"**Minister**" means the Minister of Lands, Surveys and Environment.

"**Practising certificate**" means a current practising certificate issued pursuant to the Law Practitioners Act 1976.

"**Prescribed**" means prescribed by regulations made under this Act.

"**Solicitor**" means a Solicitor or a Barrister and Solicitor of the Supreme Court of Western Samoa.

"**Registrar**" means the Registrar of Land under this Act, and includes any person designated pursuant to section 4 of this Act as an Assistant Land Registrar when acting within the scope of his delegated authority.

"**Western Samoa representative**" has the meaning given to it by the Oaths Affidavits and Declarations Act 1963.

PART II **ADMINISTRATION**

3. Registrar - (1) There shall continue to be a Registrar of Land who shall be the Director for the time being of Lands, Surveys and Environment.

(2) It shall be the duty of the Registrar:

- (a) To keep and maintain the Land Register;
- (b) Generally to do all such things and take all such proceedings as are prescribed by this Act or regulations made pursuant to this

Act. or as the Supreme Court directs.

4. Delegation by Registrar - (1) Subject to this Act, the Registrar may delegate to any person all or any of his powers and functions excepting only this power of delegation which may then be exercised and performed by that person in relation to the matters or classes of matters the subject of the delegation.

(2) Every delegation is revocable at will, and no such delegation affects the exercise of a power or the performance of a function by the Registrar.

(3) The Registrar may designate as an Assistant Land Registrar any person to whom powers and functions are delegated pursuant to subsection (1) of this section.

5. Administration of Act - This Act is administered in the Department of Lands, Surveys and the Environment.

PART III **INSTRUMENTS**

6. Multiple ownership - Any two or more persons named in any instrument of title as transferees, mortgagees, or proprietors of any estate or interest in land, shall, unless the contrary is expressed, be deemed to be entitled as joint tenants with right of survivorship and every such instrument when registered shall take effect accordingly.

7. 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, except by an instrument executed by him or by his duly authorised agent and attested or verified in manner hereinafter provided:

PROVIDED THAT nothing in this section shall be deemed to apply to any order of Court, or any Warrant, notice, or other instrument of executive authority.

8. **Attestation of execution** - If any instrument requiring attestation pursuant to section 7 of this Act is executed in Western Samoa, the execution thereof shall be attested by a Registrar or Deputy Registrar of the Supreme Court, or by the Registrar or Assistant Registrar of Land or by the Public Trustee or by a Notary Public or by a Solicitor.

9. **Execution abroad** - If any instrument requiring attestation pursuant to section 7 of this Act is executed elsewhere than in Western Samoa, then the execution thereof shall be attested by:

- (a) A Western Samoa Representative or Notary Public exercising his office in the country in which the instrument is signed; or
- (b) A Solicitor who holds a practising certificate.

10. **Correctness of instrument to be certified** - (1) Subject to subsections (2) and (3) of this section the Registrar shall not be required to receive any instrument (other than an instrument or other document to which section 18 of this Act applies) affecting any estate or interest in land unless there is endorsed thereon and signed by the Solicitor for the party claiming under or in respect of the instrument a certificate of correctness in the following form :- "Certified correct for the purposes of the Land Registration Act 1992/1993".

(2) Notwithstanding the provisions of subsection (1) of this section, where the Registrar is satisfied that no Solicitor acts or has acted in respect of the instrument on behalf of the party claiming under or in respect of the same, the Registrar may accept a certificate signed by that party, or if more than one, by any or all of them.

(3) Any person having an interest in any instrument referred to in subsection (2) of this section who is aggrieved by a refusal of the Registrar to accept a certificate under that subsection, may apply to the Supreme Court for an order directing the Registrar to accept such certificate and upon such application the Court may make such order as it deems just and expedient; and upon production of a sealed copy of the order the Registrar shall register the instrument if it is certified or otherwise presented in accordance with the order.

(4) A corporation may authorise any person to certify on its behalf.

(5) A person signing a certificate of correctness, by so doing, certifies that the instrument is correct in form and may safely be acted upon by the Registrar and does not contravene any Act or Regulation then in force.

(6) Every person who falsely or negligently signs a certificate of correctness of an instrument commits an offence and is liable upon conviction to a fine not exceeding \$1,000.

(7) Nothing in this section shall repeal or modify any provision of the Alienation of Freehold Land Act 1972.

11. Unregisterable instruments - (1) Except where any of sections 11, 12 and 13 of the Land and Titles Act 1981 apply, no instrument operating merely by way of contract or trust, or any other instrument not affecting the legal title to land, shall 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.

(2) No instrument liable to stamp duty shall be entered in the Land Register, unless the same purports to have been duly stamped, but no registration shall be invalidated by any error in this respect.

12. Special provisions as to second and subsequent mortgages - (1) Where any conveyance by way of mortgage has been registered in respect of any land and the mortgagor purports subsequently to convey that land by way of further mortgage, any such subsequent conveyance shall take effect and be as valid as if it were an assignment by way of mortgage of the mortgagor's equity of redemption or other interest in the land and shall be registerable accordingly, and shall rank in priority in accordance with the provisions of section 28 of

this Act.

(2) This section shall apply to every subsequent conveyance by way of mortgage whether executed or registered before or after the commencement of this Act.

13. Lost instruments - (1) Where any instrument of title having been registered in the Land Register has been lost or destroyed the person entitled to the custody of that instrument may apply to the Registrar for a duplicate of the copy deposited with the Registrar in accordance with section 19 of this Act.

(2) Where the Registrar is satisfied upon such evidence as he may require that the instrument has been lost or destroyed, and that the person applying for the duplicate is the person entitled to the custody of that instrument, he may upon payment of the prescribed fee, issue to that person a duplicate of the copy of that instrument.

(3) Without limiting the generality of subsection (2) of this section the Registrar may require the applicant to produce to him a statutory declaration:

- (a) By the applicant stating:
 - (i) The facts of the case;
 - (ii) The name and address of every person who to his knowledge might have had possession of the instrument since it was last produced to the Registrar;
 - (iii) That the instrument has not been pledged or dealt with in any manner which is not disclosed on the register;
 - (iv) The efforts the applicant has made to locate the instrument.
- (b) By or on behalf of every person in whose possession or control the instrument has been since it was last produced to the Registrar stating how he disposed of that instrument and when.

(4) Every duplicate issued pursuant to this section shall be marked with the words "Certified duplicate of document held in the office of the Registrar of Land, issued for the purposes of section 13 of the Land Registration Act 1992/1993" Such duplicate shall be dated and signed by the Registrar and shall be conclusive evidence for all purposes that the copy of which it purports to be a duplicate was on the date of the certificate held by the Registrar of Lands.

(5) Whenever a duplicate is issued pursuant to this section the Registrar shall forthwith enter a memorial to that effect in the Land Register.

(6) For the purposes of this section "Instrument" includes a duplicate issued pursuant to this section.

PART IV REGISTRATION

14. Register - There shall continue to be a Land Register which shall be the same Land Register as that existing under the same name immediately prior to the commencement of this Act.

15. Inclusion of land - When after the commencement of this Act any land becomes Public land, or freehold land, or any customary land lease is created, it shall be the duty of the Registrar to include such Public land or freehold land or upon application, such customary land lease in the Land Register.

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

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

18. Application for registration of public documents and Orders of the Land and Titles Court - Application for the registration of an Order of the Supreme Court, or other public or official instrument of title or any document required to be registered pursuant to the Land and Titles Act 1981 shall be made by depositing with the Registrar a copy thereof signed by the Head of State or sealed with the seal of Western Samoa or of the Supreme Court, or as the case may be of the Land and Titles Court, and such copy shall be retained by the Registrar as an official record.

19. Application for registration of other instruments - (1)
Application for the registration of any instrument of title not being a document registerable pursuant to section 18 of this Act 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.

(2) Where any instrument produced for registration is executed by an agent on behalf of any person there shall be produced with the instrument, the Power under which the instrument purports to be executed (unless the same has already been deposited pursuant to section 32 of this Act) together with a certificate of non-revocation in the form marked "B" in the Schedule hereto signed by the person executing the instrument.

20. Transmission - (1) 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 receipt of any instrument satisfying him as to the facts, to enter a memorial thereof in the Land Register.

(2) Without in any way limiting the generality of subsection (1) of this section the Registrar may register any instrument which is in a form approved by him and which varies the provisions of a lease or licence or mortgage or which evidences a change of name, address or occupation.

21. **Caveat - (1)** 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 marked "A" in the Schedule hereto.

(2) Notwithstanding any other provision of this Act a caveat may be signed on behalf of the caveator by a Solicitor claiming to be the Solicitor for the caveator and the provisions of this Act shall apply as if that caveat had been signed by the caveator in person.

22. **Registrar's caveat** - The Registrar may deposit a caveat 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 Government, 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.

23. **Effect of caveat - (1)** 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.

(2) For the purposes of this section a caveat which is registered the Registrar shall be deemed to have come into force at the time it presented for registration.

24. Notice and removal of caveat -

- (a) Upon the receipt of any caveat the Registrar shall enter a memorial thereof in the Land Register and shall give notice of the same to the person against whose estate or interest the caveat has been lodged;
- (b) The person to whom such notice is given or any other person having any registered estate or interest in the estate or interest protected by the caveat may, if he thinks fit, apply to the Supreme Court or a Judge thereof for an order that the caveat be removed;
- (c) Such Court or Judge, upon proof that notice of the application has been served on the caveator or the person on whose behalf the caveat has been lodged, may make such order as the Court or Judge deems just.

25. 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 Act 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 Supreme Court or a Judge thereof, and such order is made and served on the Registrar within a further period of 28 days.

26. Caveat may be withdrawn - Any caveat may be withdrawn by the caveator or by his Solicitor, and either as to the whole or part of the land affected, or the consent of the caveator may be given for the registration of any particular dealing expressed to be made subject to the rights of the caveator.

27. Refusal of registration - The Registrar may refuse to accept for registration any instrument 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 section 18 of this Act) the copy deposited with the Registrar under clause 19 of this Act 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 Act.

28. Priority - Instruments 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.

29. Fees - On the registration of any instrument 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.

PART V **GENERAL**

30. Errors in Land Register may be corrected - The Registrar may upon such evidence as appears to him to be sufficient subject to any regulations under this Act, correct errors and suppress omissions in the Land Register.

31. Power of Registrar to apply to Court - (1) The Registrar may apply to the Supreme Court for directions in respect of any matter which:

- (a) Relates to an alteration or amendment of the Land Register or any other record in any case where any person who might be adversely affected by such amendment objects to, or fails to agree to such amendment;
- (b) Is, in the opinion of the Attorney-General (conveyed in writing to the Registrar) of such significance that a judicial precedent ought to be established; or
- (c) Directly affects the interest of the Independent State of Western Samoa.

and upon such application the Court may give such directions and make such orders, including orders as to costs, as it deems just and expedient.

(2) The Registrar shall act on every such direction or order in accordance with its tenor, and where he deems it necessary he shall register a copy under the Seal of the Court of any such direction or order.

32. 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.

33. Search - The Land Register and all deposited copies of instruments of title, and all other instruments or copies thereof deposited with the Registrar, shall be open to search and inspection on payment of such fees as may be prescribed.

34. Search copies - (1) Upon receipt of the prescribed fee the Registrar may issue to any person an uncertified copy of:

- (a) An instrument or copy thereof which has been deposited with him pursuant to this Act; or
- (b) A folio of the Register or part thereof.

(2) Every copy issued pursuant to this section shall be endorsed with the words "Search copy only"

35. Acting as a conveyancer - No person shall act as a conveyancer in connection with any instrument capable of being registered under this Act who is not a Solicitor.

36. How notice to be given - Where any notice is required to be given under this Act, such notice shall be given:

- (a) To any caveator where an address for service is shown in the caveat by delivering a copy thereof to that address between the hours of 8.30 a.m. and 4.30 p.m. on any day other than a

Saturday, Sunday or Public Holiday, and there leaving the same with some person at that address, or if no person is then present by affixing the same to the door of the premises at that address (or if the premises have no door, to a portion of the premises adjacent to an entrance).

- (b) To any other person:
 - (i) Either by delivering a copy thereof to the Solicitors for that other person (if known to the Registrar); or
 - (ii) At the option of the Registrar by publication of that notice in a newspaper published in Western Samoa or by means of a notice broadcast by radio or television.

37. Declarations may be made before Registrar - Notwithstanding the provisions of the Oaths, Affidavits and Declarations Act 1963 any person who is required to make a declaration for the purposes of this Act may make the same before any person referred to in sections 21 or 22 of the Oaths, Affidavits and Declarations Act 1963, or before the Registrar.

38. Government not liable - The Government is not liable in any civil proceedings for any damage done or for any loss suffered as result of any act, omission or default of the Registrar or any of his subordinates.

39. Loss or destruction of deposited copies of instruments - (1) Where the copy of an instrument lodged with the Registrar has been lost or destroyed, or so damaged as to require replacement, the Registrar may give written notice to the person who has possession of the original thereof, requiring him to deliver the same to the Registrar for copying.

(2) Forthwith upon receipt of an instrument delivered pursuant to subsection (1) of this section the Registrar shall cause a copy thereof to be made and deposited, and shall within 14 days of such receipt return the original instrument to the person who delivered the same to him, or to such other person as may be nominated in writing by the person who

delivered it.

(3) A person in possession of an instrument to whom notice in respect of that instrument is given pursuant to subsection (1) of this section and who fails without reasonable cause (the proof whereof shall be upon him) to comply with the notice within 14 days of receipt of the same by him commits an offence and is liable on conviction to a fine not exceeding \$500.

40. Registrar not civilly liable - Neither the Registrar nor any subordinate is personally liable in any civil proceedings for any damage done or for any loss suffered as a result of any act, omission or default of the Registrar or subordinate, unless that act, omission or default arose from the wilful misconduct of the person who is sought to be made liable.

41. Validation of prior informal appointments of Registrars - (1) In any case where prior to the commencement of this Act the Director or any other person with the ostensible authority of the Government has acted as Registrar without having been appointed by the Minister of External Affairs as hitherto required by the Samoa Land Registration Order 1920 (N.Z.) he shall be deemed to have been validly appointed as Registrar and all acts done and decisions made by him or done or made by a person acting under his authority shall be deemed to have been as validly done and made as if he had been appointed in accordance with the provisions of that Order.

(2) For the purposes of this section, "Director" means the Director of Lands Surveys and Environment and includes every person previously known as the Director of Lands, or the Director of Lands and Environment.

42. Regulations - The Head of State, acting on the advice of Cabinet may from time to time make such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

43. Repeals, revocations and savings - (1) The Fees for Land Registration Ordinance 1952 (as amended by the Ordinance Amendment Ordinance 1956, the Decimal Currency Act 1966, the Fees for Land Registration Amendment Act 1983, and the Omnibus Fees and Charges Amendment Act 1988) is repealed.

(2) Section 135 of the Property Law Act 1952 (N.Z.) shall be read subject to subsection (2) of section 19 of this Act.

(3) The Samoa Land Registration Order 1920 (N.Z.) [as amended by the Samoa Land Registration Amendment Order 1921 (N.Z.), the Samoa Land Registration Amendment Order 1924 (N.Z.), the Samoa Land Registration Amendment Order 1927 (N.Z.), the Samoa Land Registration Amendment Order 1938 (N.Z.), the Samoa Land Registration Amendment Order 1946 (N.Z.)] is revoked.

(4) Where any document has been executed before the commencement of this Act, and would not, except for this section, be registerable under this Act but would have been registerable as an instrument of title under the Samoa Land Registration Order 1920 (N.Z.), that document shall be registerable under this Act as if the said Order had not been revoked by this Act.

(5) A document shall not be deemed to have been unregistrable under the Samoa Land Registration Order 1920 (N.Z.), only because of an accidental misdescription of the parties, or the land affected, or because of any technical or minor defect, and any such error may be rectified after the commencement of this Act, in the same manner as it might have been rectified before the commencement of this Act, so as to give effect to the true spirit and intent of the document.

(6) Nothing in this Act shall be deemed to repeal or modify the provisions of any sections 11, 12 or 13 of the Land and Titles Act 1981.

(7) Wherever in any Enactment there appears a reference to the Samoa Land Registration Order 1920 it shall be read and construed as if it were a reference to this Act and any reference to a provision in that Order shall be deemed to be a reference to the corresponding provision (if any) in this Act.

SCHEDULE

FORM A

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 Supreme Court or a Judge thereof, or until the same has lapsed under the provisions in that behalf contained in the Land Registration Act 1992/1993.

And I appoint [Here state an address of premises 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 19

Signed by the above-named)
as caveator, in the presence of-)

Witness
Occupation
Address

FORM B

**CERTIFICATE OF NON-REVOCATION OF POWER
OF ATTORNEY**

I, [Name of person giving certificate] of [Occupation and address] do hereby certify that:

1. I have executed the above (or attached, or within written) Deed (or other document as the case may be) as the Attorney and in the name of the therein named and described [name and description of principal] under and by virtue of a certain Power of Attorney dated the day of 19 (a copy of which is deposited in the Land Register

Office under No.).

2. I have not received any notice or information of the revocation of the said Power of Attorney by death or otherwise [or in the case of a Corporation, by the dissolution or the winding up of the said Corporation] and I verily believe it to be in full force and effect.

Dated this day of 19

.....
(Signature)