

Title 37

PROPERTY

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Chapter 01

TITLES TO LAND

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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. 1, § 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 are 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. *Tuui 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. Atuaveao*, 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'aua'a 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. Atuaveao*, 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*, 13 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 posted, 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'aa'ua'a v. Tauilili*, 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; amd 1977, 15-39 § 3, amd 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. Misiata*, 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. Misiata*, 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(c), 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; amd 1977, PL 15-39 § 2: amd 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 “Court House 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, notorious, hostile, exclusive and continuous occupancy of land for 20 years will bar action for recovery of real property and confer title 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. Sesepasara*, 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. Sesepasara*, 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’ivaie*, 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).

Chapter 02

ALIENATION OF LAND

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 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.

37.0201 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 § 12-80; 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. *Craddock 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. Craddock*, 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 § 12-81; 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 § 12-81; 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(c). *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 § 12-82: 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 descendent 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*. 1 ASR 2d 85 (1983).

Conveyance not prohibited to United States government. ASG. or authorized agents. *Burns Philip Co. and ASG v. Mageo*. 1 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 alien ability of land and therefore has no application to Samoan communal property, which are not freely alienable. A.S.C.A. § 37.0204. *Tufeleva 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 § 12-87; 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: § 37.0212 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.

(d) 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; amd 1978, PL 15-88 § 1; amd 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.

Chapters 03-09

(RESERVED)

Chapter 10

MORTGAGES

Sections:

- 37.1001 Lien of mortgages of real property or fixtures-Debts secured-Priority.**
- 37.1002 On what property-Enforceability.**
- 37.1003 After-acquired real property and fixtures.**
- 37.1004 Interests in recorded mortgages and leases.**
- 37.1005 Use and possession of mortgaged property.**
- 37.1006 Interpretation of chapter provisions.**

Reviser's Comment: As required by Art. 1, § 3 and Art. II § 9 of the American Samoa Constitution, this chapter was passed by two successive Legislatures.

37.1001 Lien of mortgages of real property or fixtures-Debts secured-Priority.

(a) Every transfer of an interest in real property or fixtures made as security for the performance of another act or subject to defeasance upon the payment of an obligation, whether the transfer is made in trust or otherwise, is to be considered a mortgage and shall create a lien only as security for the obligation and shall not be deemed to pass title.

(b) A mortgage may secure the repayment of past debt, a debt incurred at the time the mortgage is executed, or a debt incurred for advances which may be made by the mortgagee subsequent to the execution of the mortgage even though the mortgagee is under no contractual duty to make such advances. In any case where the mortgagee is under no such contractual duty, the mortgage lien, to the extent that it secures future advances, shall be superior to any mortgage or any other lien, other than liens for taxes and for public improvements, duly recorded subsequent to the time at which the advance has been made, but in the event the mortgagee is under a contractual duty to make future advances and the maximum amount of the future advances is stated in the mortgage, the lien therefor shall be superior to that of any subsequently recorded mortgage or other lien, except liens for taxes and for public improvements, even though the subsequently recorded mortgage or other lien, except liens for taxes and for public improvements, is recorded prior to the date upon which any advance or advances have been made.

History: 1978, PL 15-83; 1979, PL 16-48 § 1.

37.1002 On what property-Enforceability.

(a) If the mortgage so provides, the lien of the mortgage may attach to additions, improvements, and purchases or substitutions made to supply the place of any real property or fixtures referred to in the mortgage when the mortgagor acquires an interest therein to the extent of the interest, but subject to existing liens and the lien of a purchase money mortgage given by the mortgagor of the after-acquired real property or fixtures.

(b) Any mortgage, except to the extent provided in this chapter, shall be enforceable against the mortgagor, creditors of the mortgagor, and against subsequent purchasers, mortgagees, assignees, and transferees, who take without valuable consideration or with notice, actual or constructive, even though the mortgaged real property or fixtures may have been detached or moved to a location different from that occupied by it at the time of the execution of the mortgage.

History: 1978, PL 15-83; 1979, PL 16-48 § 1.

Case Notes:

Territorial statute providing that court should set payments on a judgment in accordance with debtor's ability to pay did not defeat creditor's right to foreclose a chattel mortgage. A.S.C.A. §§ 37.1002, 37.1103, 43.1501. R.S.T.T.A.N. Hisatake, Inc., v. Dullabhbai K. Patel & Co., Ltd., 3 A.S.R.2d 99 (1986).

37.1003 After-acquired real property and fixtures.

The mortgage shall operate only as a contract between the parties with respect to and shall not create a lien upon real property or fixtures acquired in any manner by the mortgagor subsequent to the execution of the mortgage, if there are not described therein the real property, the fixtures and the real property to which the fixtures are or will be affixed, unless and until the mortgagor or the mortgagee, at the time of or subsequent to the acquisition, executes and duly records with the Territorial Registrar an instrument or affidavit containing a reference to the book and page number where the mortgage is recorded and also a description of the real property, the fixtures and the real property to which the fixtures are or will be affixed sufficient to identify and locate them, the description of real property may be made by describing the deed or other instrument of conveyance by which the real property was acquired or by describing the land by metes and bounds.

History: 1978, PL 15-43; 1979, PL 16-48 § 1.

Case Notes:

Statute which states that no instrument shall be effective to create a security interest unless it contains a description of items to be mortgaged prevents the creation of a "general mortgage" and reinforces the statutory prohibition against mortgages on after-acquired real property and fixtures, as well as security interests in personal property. A.S.C.A. §§ 27.1510(c), 37.1003. *Shantilal Brothers, Ltd. V. KMST Wholesale*, 15 A.S.R.2d 115 (1990).

The general rule against mortgages of after-acquired real property contains an important exception for cases in which the property to be acquired is described in the mortgage document. A.S.C.A. § 37.1003. *Shantilal Brothers, Ltd. V. KMST Wholesale, Inc.*, 16 A.S.R.2d 103 (1990).

37.1004 Interests in recorded mortgages and leases.

The mortgage shall operate only as a contract between the parties with respect to, and shall not create a lien upon, any recorded mortgage or lease, unless, and until, a specific reference to the mortgage or lease is contained in an instrument or affidavit executed by the mortgagor or mortgagee and duly recorded in the office of the Territorial Registrar.

History: 1978, PL 15-83, 1979, PL 16-48 § 1.

37.1005 Use and possession of mortgaged property.

In the absence of an agreement to the contrary, the mortgagor of real property or fixtures under a duly recorded mortgage is entitled to the use or possession of it until default.

History: 1978, PL 15-83; 1979, PL 16-48 § 1.

Case Notes:

Where owner of mortgaged property retained the right to use and possession of the property until default, and where there was no evidence of default on the debt secured by the mortgage, garnishment by unsecured judgment creditor of rents derived from the property did not interfere with the rights of the mortgagee. A.S.C.A. § 37.1005. *Landrigan v. Opelle*, 5 A.S.R.2d 155 (1987).

37.1006 Interpretation of chapter provisions.

Nothing in this chapter is considered to modify or amend 4.0325, 4.1101 through 4.1106 or 37.0210.

History: 1978, PL 15-83; 1979, PL 16-48 § 1.

Chapter 11

MORTGAGE FORECLOSURES

Sections:

- 37.1101 Foreclosure by action.**
- 37.1102 Other mortgages joined.**
- 37.1103 Proceeds-How applied.**
- 37.1004 Defenses.**
- 37.1105 Foreclosure under power of sale-Notice-Affidavit after sale.**
- 37.1106 Notice to mortgage creditors.**
- 37.1107 Affidavit as evidence.**
- 37.1108 Dower barred.**
- 37.1109 Power unaffected by transfer-Surplus after sale.**
- 37.1110 Transfer of mortgaged interests-Individually owned land-Marketability.**
- 37.1111 Definitions.**

Reviser's Comment: As required by Art. I, § 3 and Art. 11, § 9 of the American Samoa Constitution, this chapter was passed by two successive Legislatures.

37.1101 Foreclosure by action.

The High Court may assess the amount due upon a mortgage whether of real or personal property, and shall render judgment for the amount awarded, and the foreclosure of the mortgage. Execution may be issued on the judgment, as ordered by the court.

History: 1978, PL 15-83, 1979, PL 16-48 § 1.

37.1102 Other mortgages joined.

All prior and subsequent mortgage creditors, whose names are or can be discovered by the party foreclosing a mortgage, shall be made parties to the action.

History: 1978, PL 15-83, 1979, PL 16-48 § 1.

37.1103 Proceeds-How applied.

Mortgage creditors shall be entitled to payment according to the priority of their liens, and not pro rata; and judgments of foreclosure shall operate to extinguish the liens of subsequent mortgages of the same property, without forcing prior mortgagees to their right of recovery. The surplus after payment of the mortgage foreclosed shall be applied pro tanto to the next junior mortgage, and so on to payment, wholly or in part, of mortgages junior to the one assessed.

History: 1978, PL 15-83; 1979, PL 16-48 § 1.

Case Notes:

Territorial statute providing that court should set payments on a judgment in accordance with debtor's ability to pay did not defeat creditor's right to foreclose a chattel mortgage. A.S.C.A. §§ 37.1002, 37.1103, 43.1501. R.S.T.T.A.N. Hisatake, Inc., v. Kullabhbai K. Patel & Co., Ltd., 3 A.S.R.2d 99 (1986).

37.1104 Defenses.

The mortgagor, or any subsequent mortgagee, may defend the action for foreclosure, and may show any matter in legal or equitable avoidance of the mortgage.

History: 1978, PL 15-83; 1979, PL 16-48 § 1.

37.1105 Foreclosure under power of sale-Notice-Affidavit after sale.

(a) When a power of sale is contained in a mortgage, the mortgagee, or his successor in interest, or any person authorized by the power to act in the premises, may, upon a breach of the condition, give notice of his intention to foreclose the mortgage and of the sale of the mortgaged property, by publication of the notice once in each of 3 successive weeks (3 publications), the last publication to be not less than 14 days before the day of sale, in a newspaper having a general circulation in the territory; and also give such notices and do all such acts as are authorized or required by the power contained in the mortgage. A copy of the notice shall be posted on the premises not less than 21 days before the day of sale. Any sale, of which notice has been given as aforesaid, may be postponed from time to time by public announcement made by the mortgagee or by some person acting on his behalf. He shall, within 30 days after selling the property in pursuance of the power, file a copy of the notice of sale and his affidavit setting forth his acts in the premises fully and particularly, with the Territorial Registrar. The affidavit and copy of the notice shall be recorded and indexed by the registrar, in the manner provided under 3.0325, 4.1101 through 4.1106 or 37.0210.

(b) This section is inapplicable if the mortgagee is foreclosing as to personal property only.

History: 1978, PL 15-83; 1979, PL 16-48 § 1.

37.1106 Notice to mortgage creditors.

(a) Whenever a mortgage creditor having a mortgage lien on certain premises desires notice that another mortgage creditor having a mortgage lien on the same premises intends to foreclose the mortgage and sell the mortgaged property under a power of sale under 37.1105, he may submit a written request to the mortgagee foreclosing or who may foreclose the mortgage by power of sale, to receive notice of the mortgagee's intention to foreclose the mortgage under power of sale. This request for notice may be submitted any time after the recordation or filing of the mortgage with the Territorial Registrar, but must be submitted prior to the completion of the publication of the mortgagee's notice of intention to foreclose the mortgage and of the sale of the mortgaged property. This request shall be signed by the mortgage creditor, or its authorized representative, desiring to receive notice, specifying the name and address of the person to whom the notice is to be mailed. The mortgagee receiving the request shall thereafter give notice to all mortgage creditors who have timely submitted their request. The notice shall be sent by mail or otherwise communicated to the mortgage creditors, not less than 7 calendar days prior to the date of sale.

(b) No request for copy of any notice under this section nor any statement or allegation in any request nor any record of it shall affect the title to real property or be considered notice to any person that any party requesting copy of the notice has or claims any right, title, or interest in, or lien or charge upon the property described in the mortgage referred to in it.

37.1107 Affidavit as evidence.

If it appears by the affidavit that the affiant has in all respects complied with the requirements of the power of sale and the statute, in relation to all things to be done by him before selling the property, and has sold the same in the manner required by the

power, the affidavit, or a duly certified copy of the record thereof, shall be admitted as evidence that the power of sale was duly executed.

History: 1978, PL 15-83; 1979, PL 16-48 § 1.

37.1108 Dower barred.

If the mortgage was executed by a man having at the time no lawful wife, or if the mortgagor being married, his wife joined in the deed in token of her release of dower, the sale of the property in this manner shall be effectual to bar all claim and possibility of dower in the property.

History: 1978, PL 15-83; 1979, PL 16-48 § 1.

37.1109 Power unaffected by transfer-Surplus after sale.

No sale or transfer by the mortgagor shall impair or annul any right or power of attorney given in the mortgage to the mortgagee to sell or transfer the mortgaged property, as attorney or agent of the mortgagor. When public sale is made of the mortgaged property under this chapter, the remainder of the proceeds, if any, shall be paid over to the owner of the mortgaged property, after deducting the amount of claim and all attendant expenses.

History: 1978, PL 15-83; 1979, PL 16.48 § 1.

37.1110 Transfer of mortgaged interests-Individually owned land-Marketability.

Any person who is a mortgagee, or a federal mortgage insurer or other person which succeeds to the interest of a mortgage, including persons not qualified to acquire title under section 37.0204, to whom by deed or other instrument title to individually owned land is transferred by means of or after the foreclosure of a mortgage on such land shall have the power to receive and hold title to such land for the unexpired term of such mortgage plus an additional period of up to ten years and to transfer title to the entire interest which was pledged as security for the mortgage to any person qualified to acquire title to such interest. No title received, held, or transferred in accordance with this section shall be deemed unmarketable merely because of the restrictions on alienation in section 37.0204.

History: 1988 PL 20-73; amd 1989 PL 21-23.

37.1111 Definitions.

(a) "Federal mortgage insurer" means any agency or instrumentality of the Government of the United States of America, which insures or guarantees mortgages or other loans for residential housing.

(b) "Individually owned land" means land registered as individual property of a person or determined to be individual property of a person by a final decision of the Court of American Samoa.

History: 1988 PL 20-73; and 1989 PL 21-23.

Chapters 12-14

(RESERVED)

Chapter 15

SEPARATION OF STRUCTURES FROM COMMUNAL LAND

Sections:

- 37.1501 Definitions.**
- 37.1502 Power and authority for agreement of separation-Recording agreement-Encumbrances.**
- 37.1503 Execution of agreement.**
- 37.1504 Notice of receipt of instrument.**
- 37.1505 Recordation of separation not objected to.**
- 37.1506 Objections-Hearing-Decision.**

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 10-56.

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 (mciii)*, 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 of 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. *Shantil 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 Court House 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.

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

Amendments: 1977, 1979 Subsections (a) and (b): amended “Administration Building in Utulei” to “Court House 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; amd 1977, PL 15-39 § 1; amd 1979, PL 16-5 § 1

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).

Chapters 16-19

(RESERVED)

Chapter 20

GOVERNMENT LAND TRANSACTIONS

Sections:

- 37.2001 Eminent domain-Compensation.**
- 37.2010 Authority to purchase property-Transfer of title.**
- 37.2020 Four-year lease.**
- 37.2025 Six-year lease.**
- 37.2030 Ten-year lease.**
- 37.2040 Relocation and assistance.**
- 37.2050 Highway-Establishment.**
- 37.2051 Highway-Construction and repair-Interference.**
- 37.2052 Highway-Erection of private structures-Penalty.**

Reviser’s Comment: The law dealing with alienation of land contained in 37.2001—37.2040 of the A.S.C.A. 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.