



GOVERNMENT OF SAMOA

**SAMOA SECOND INFRASTRUCTURE AND ASSET
MANAGEMENT PROJECT (SIAM II)**

COMPONENT 5.01: LAND ADMINISTRATION AND SURVEY

**TITLE REGISTRATION ACT
(Draft Version 4)
TITLE REGISTRATION REGULATION
(Draft Version 2)**

**TECHNICAL ASSISTANCE REPORT NO. 20
SUBMITTED TO
MINISTRY OF NATURAL RESOURCES, ENVIRONMENT and METEOROLOGY**

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Title Registration Act 2005

SAMOA

**TITLE REGISTRATION ACT
2005, No.**

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AN ACT to provide for:

- (a) The establishment and maintenance of a Register of title to land;**
- (b) The establishment of ownership of interests in land by registration;**
- (c) The recording in the Register of information in respect of transactions with land; and**
- (d) Access to information recorded in the Register.**

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows: -

**PART I
PRELIMINARY**

1. Short title and commencement - (1) This Act may be cited as the Title Registration Act 2005.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Savali. For the purposes of this subsection, different provisions of this Act may be brought into force on different dates.

2. Interpretation - In this Act, unless the context otherwise requires,

(a) the following terms shall bear the respective meanings set against them:

Approved form—Form approved by the Registrar for the purposes of the provision of this or any other Act in relation to which the expression is used.

Caveator—The person by whom or on whose behalf a caveat has been lodged under the provisions of this Act, or any enactment hereby repealed.

Computer folio—A folio of the Register that is not a manual folio.

Computer folio certificate—A certificate issued under section 14.

Court—The District Court or, where necessary, the Supreme Court;

Customary land lease—An interest held in accordance with the proviso to Article 102 of the Constitution in customary land.

Customary land licence—An interest held in accordance with the proviso to Article 102 of the Constitution in customary land.

Fraud—Fraud includes fraud involving a fictitious person.

Government—The Government of Samoa.

Instrument— Any document which is registrable or capable of being made registrable under the provisions of this Act, or in respect of which any recording in the Register is by this or any other Act required or permitted to be made.

Interest— Any estate or right in, over or under land recognised under law.

Land—Land, messuages, tenements, and hereditaments corporeal and incorporeal of every kind and description or any estate therein, together with all paths, passages, ways, watercourses, liberties, privileges, easements, plantations, gardens, mines, minerals, quarries, and all trees and timber thereon or thereunder lying or being unless any such are specially excepted.

Lease - The grant with or without consideration, by the owner of land of the right to the exclusive possession of his land, and includes the right so granted and the instrument granting it, and also includes a sublease but does not include an agreement for lease;

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

Manual folio—A folio of the Register maintained by the Registrar wholly in the form of a document in writing.

Minister—The Minister of Natural Resources, Environment and Meteorology.

Mortgage—Any charge on land created merely for securing the payment of a debt.

Mortgagor—The proprietor of land or of any estate or interest in land pledged as security for the payment of a debt.

Mortgagee—The proprietor of a mortgage.

Ordinary folio—A folio of the Register that is not a qualified folio.

Proprietor—Any person seised or possessed of any freehold or other estate or interest in land at law or in equity in possession in futurity or expectancy.

Qualified folio—A folio of the Register in which the land is held subject to subsisting interests, whether recorded in the folio or not.

Registrar—The Registrar of Land appointed under section 3(1) of this Act, and includes any person designated pursuant to section 4 of this Act as an Assistant Land Registrar when acting within the scope of their delegated authority.

Registration—The administrative process which, under this Act, affects, confers, confirms or terminates interests by means of entries in the Register.

Regulations—The regulations made under this Act.

Solicitor—A Solicitor or a Barrister and Solicitor of the Supreme Court of Samoa.

Subsisting interest—In relation to land for which a qualified folio of the Register has been created, means:

- (i) any contingent or vested estate or interest in that land that was in existence at the date on which the qualified folio of the Register was created and would have been enforceable against the person for the time being registered in that qualified folio as the proprietor had that qualified folio not been created; and
- (ii) any estate or interest in that land, arising by prescription or under any statute of limitations, that was in existence or in the course of being acquired at the date on which the qualified folio of the Register was created.

The Register—The Land Register required to be maintained by section 9

This Act—Includes any regulations made under this Act.

Transfer—The passing of any estate or interest in land under this Act whether for valuable consideration or otherwise.

Transmission—The process of creating or passing an interest in land by operation of law, and includes the passing of an interest.

Writ—A writ that issues out of a court of competent jurisdiction and authorises the sale of land for the purpose of satisfying a judgment debt, including a renewal of a writ and a second or subsequent writ issued on a judgment.

(b) The describing of any person as a proprietor, transferor, transferee, mortgagor, mortgagee, lessor, or lessee, or as seised of having or taking any estate or interest in any land shall be deemed to include the executors, administrators, and assigns of such person.

PART 2 ADMINISTRATION

3. The Registrar - There shall continue to be a Registrar of Land who shall be the Chief Executive Officer for the time being of the Ministry of Natural Resources, Environment and Meteorology and who shall be responsible for the administration of this Act.

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

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

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

5. Functions of the Registrar - (1) The functions of the Registrar are -

- (a) To establish and maintain the Register;
- (b) To administer the registration system established by this Act and ensure that it operates efficiently, effectively, and economically;
- (c) To ensure that this Act is administered in the best way calculated to achieve its objects in a cost effective manner.

(2) Where a vacancy occurs for any reason in the office of Registrar, or in the absence of the Registrar, and for so long as the vacancy or absence continues, the Assistant Land Registrar has and may exercise and perform all the powers, functions, and duties of the Registrar.

(3) The fact that an Assistant Land Registrar exercises or performs any power, function, or duty of the Registrar is conclusive evidence of the authority of the Assistant Land Registrar to do so.

6. Powers of the Registrar – (1) The Registrar may exercise the following powers in addition to any other powers conferred on him by this Act-

- (a) The Registrar may require any person to produce any instrument or other document or plan relating to the registered interest and that person shall produce the same;
 - (b) The Registrar may summon any person to appear and give any information or explanation respecting a registered interest, and such person shall appear and give such information or explanation;
 - (c) The Registrar may refuse to proceed with any registration if any instrument, or other document, or plan, information or explanation required to be produced or given is withheld or any act required to be performed under this Act is not performed;
 - (d) The Registrar may require that any proceeding, information or explanation affecting registration shall be verified on oath or by declaration;
 - (e) The Registrar may, subject to this section and upon such evidence as appears to the Registrar sufficient, correct errors and omissions in the Register.
 - (f) The Registrar may order that the costs, charges and expenses incurred by him or by any person in connection with any investigation or hearing held by him for the purposes of this Act shall be borne and paid by such persons and in such proportions as he may think fit;
 - (g) The Registrar may, where the Registrar is satisfied that an estate or interest has been extinguished by merger, make such recording in the Register as the Registrar considers appropriate.
 - (h) The Registrar may give notice, whenever and to whomever the Registrar thinks appropriate, of the intended exercise or performance of any power, authority, duty or function conferred or imposed by this Act.
 - (i) The Registrar may, at his discretion, dispense, with the production of any signature, or the supply of any information or any advertisement or notice required by this Act; and
 - (j) The Registrar may state any case or reserve any question for consideration by the Court.
 - (k) The Registrar may maintain a record of powers of attorney, with the verifications, if any, of the due execution of the same, deposited with the Registrar for safe keeping.
 - (l) The Registrar may maintain a record of customary land showing location, description, details of persons having administrative or trustee responsibilities in respect of the land and such other details as the Registrar sees fit to include.
- (2) Every Registrar and Assistant Registrar appointed under this Act is authorised to take any statutory declarations required for the purposes of this Act and is deemed to be

a person authorised to take and record a statutory declaration under section 21 of the Oaths, Affidavits and Declarations Act 1963.

(3) Where a person required to produce an instrument pursuant to paragraph (a) of subsection (1) fails to produce the instrument or to allow it to be inspected or, being summoned pursuant to paragraph (b) of that subsection, refuses or neglects to give an explanation which the person is, pursuant to that paragraph, required to give, or knowingly misleads or deceives any person authorised to demand any such explanation, the person shall for each such offence incur a penalty not exceeding \$200, and the Registrar, if the instrument or information withheld appears to the Registrar material, may reject the relevant dealing referred to in that subsection.

(4) Where the Registrar, in the exercise of the powers conferred upon the Registrar by subsection (1) (e), makes a correction in the Register:

- (a) the Registrar shall, by an appropriate recording in the Register, authenticate the correction and record the date thereof,
- (b) to the extent that, but for this paragraph, the correction would prejudice or affect a right accrued from a recording made in the Register before the correction, the correction shall be deemed to have no force or effect,
- (c) subject to paragraph (b), the Register shall, as so corrected, have the same validity and effect as it would have had if the error or omission had not occurred, and
- (d) the Registrar shall, while any right preserved by paragraph (b) is subsisting, maintain available for search a record of the date, nature and effect of the correction.

(5) Upon the recording, pursuant to subsection (1)(g), of the extinction of an estate or interest by merger, that estate or interest shall be deemed to have been extinguished accordingly.

(6) The record which the Registrar may maintain pursuant to subsection (1)(l) is separate from and in addition to, the customary land registration required by section 10 of this Act.

7. Power to serve notice of proposed action - (1) The Registrar may, before taking any action that alters the Register, give notice of the proposed action to any person that the Registrar considers should be notified of it.

(2) Where the Registrar has given notice pursuant to the powers conferred upon the Registrar by subsection (1), the Registrar may refuse to take the action until after the expiration of a period specified in the notice and the Registrar may proceed to take the action at or after the expiration of the period so specified unless the Registrar is first served with, or with written notice of, an order of the Court restraining the Registrar from so doing.

(3) Where a person given notice under subsection (1) does not within the time limited by the notice serve upon the Registrar or give the Registrar written notice of an order made by the Court restraining the Registrar from taking the action, no action by

that person or by any person claiming through or under that person shall lie against the Registrar in respect of the taking of the action specified in the notice.

(4) No action shall lie against the Registrar for failure to give a notice under subsection (1).

8. Indemnity of officers - The Registrar shall not, nor shall any other officer, be liable to any action or proceedings for or in respect of any act or matter done or omitted to be done in good faith in the exercise or intended exercise of his powers under this Act or any order or regulation made thereunder.

PART 3 THE REGISTER

9. The Register - (1) The Registrar must create and maintain the currency of a land register to be known as the Register and which may comprise wholly or partly an electronic or computer system or such other form or forms as the Registrar from time to time considers appropriate for the purposes of this Act.

(2) Every register, document, index, and all information, proceedings, and generally all acts, which were made, created, collected, or originated under or in accordance with the Land Registration Act 1992/1993 or any enactment repealed by that enactment, which subsist or are in force on the date this Act comes into force shall remain in force for all purposes, and where there is a corresponding provision in this Act, are deemed to have been made, created, collected, or originated under or in accordance with that provision.

(3) The Land Register maintained under the Land Registration Act 1992/1993 forms part of the Register created under this Act.

(4) The Registrar -

- (a) Must record in the Register information required to be so recorded by this Act or other law;
- (b) May record in the Register information that is authorised to be so recorded by this Act or other law;
- (c) Subject to this Act or other law, may record in the Register information which the Registrar is satisfied should be recorded in the Register.

(5) The Registrar must maintain such indexes in respect of the information recorded in the Register and in respect of documents and information otherwise held by the Registrar under this Act, a former Act, or other law as in the Registrar's opinion are necessary to ensure the information and the documents are reasonably accessible to the Registrar and to any person authorised by this Act or other law to have access to them.

(6) The Registrar must ensure that all information stored in an electronic or

computerised form remains intact and preserved by means of an appropriate form of computer backup or other duplication.

10. Inclusion of land – (1) When after the commencement of this Act any land becomes Government land, or freehold land, or any customary land lease or licence is created, it shall be the duty of the Registrar to include such Government land or freehold land or such customary land lease or licence in the Register.

(2) The Registrar may also include in the Register customary land in respect of which judgment has been made by the Land and Titles Court concerning the title or status of such land or interest in such land.

(2) When including land in the Register pursuant to subsections (1) and (2), the Registrar may create an ordinary folio of the Register for such land.

11. Folios of the Register - (1) The Registrar creates a folio of the Register for land by making a record of:

- (a) a description of the land and of the estate or interest therein for which it is created,
- (b) a description of the proprietor for the time being of the estate or interest, and
- (c) such particulars, as the Registrar-General thinks fit, of:
 - (i) other estates or interests, if any, affecting the land, and
 - (ii) other information, if any, that relates to the land or any estate or interest therein and is included in that record pursuant to this or any other Act or an instrument made under any such Act,

and by allocating a distinctive reference to the record so made.

(2) Where a person is registered as proprietor of a lease registered under this Act, the Registrar may:

- (a) if the Registrar thinks fit so to do, create a folio or folios of the Register for the estate or interest of that person in some or all of the land leased, and
- (b) for that purpose, require the deposit of a plan of the land .

(3) The Registrar may, if the Registrar thinks it appropriate so to do, create a new folio or new folios of the Register for the whole or any part of the land comprised in one or more of the folios of the Register.

(4) Where, under this Act, the Registrar creates a new folio of the Register for land contained in a previously created folio of the Register, the Registrar shall appropriately cancel the previously created folio.

(5) The Registrar shall have, and shall be deemed always to have had, power to cancel in such manner as the Registrar considers proper any recording in the Register that the Registrar is satisfied does not affect, or has ceased to affect, the land to which the recording purports to relate.

(6) The Registrar shall maintain a record of all dealings recorded in, or action taken in respect of, a computer folio and such other information, if any, relating to the folio as the Registrar thinks fit.

12 Change of name of proprietor - The Registrar may of his own motion, or must on lodgement of an application in the approved form, and on such evidence as appears to the Registrar sufficient, record in the Register any change in the name of a registered proprietor, whether the change is consequent upon the marriage of the proprietor or otherwise.

13. Manual folio to be considered evidence of title - A manual folio shall be received by all Courts or persons having by law or consent of parties authority to hear, receive and examine evidence as evidence of the particulars therein recorded and shall be conclusive evidence that any person recorded in the folio as the registered proprietor of an estate or interest in the land comprised in the folio is the registered proprietor of that estate or interest and that the land comprised in that folio has been duly brought under the provisions of this Act.

14. Computer folio to be considered evidence of title - (1) Where the Registrar is required by law to produce at any place or to any person a computer folio, the Registrar shall comply with that requirement by issuing a computer folio certificate in respect of the folio and by causing the certificate to be produced at that place or to that person.

(2) Where a computer folio certificate is issued in respect of a folio of the Register it shall be received by all courts or persons having by law or consent of parties authority to hear, receive and examine evidence as evidence of the particulars recorded in that folio, and it shall be conclusively presumed that:

- (a) the certificate contains all the information that was recorded in that folio at the time specified in the certificate,
- (b) the land to which the certificate relates was, at that time, under the provisions of this Act, and
- (c) a person recorded in the certificate as the registered proprietor of an estate or interest in the land to which the certificate relates was, at that time, the registered proprietor of that estate or interest.

PART 4 QUALIFIED FOLIOS OF THE REGISTER

15. Land deemed to be qualified title land - Upon the commencement of this Act all land registered in the Land Register under the Land Registration Act 1992/93 shall be deemed to be land comprised in qualified folios of the Register, held subject to any subsisting interests which may exist, whether recorded in the folio or not.

16. Cautions - When creating a new qualified folio of the Register for any land deemed to be land comprised in a qualified folio of the Register, the Registrar shall record in that folio a caution warning persons dealing with the registered proprietor that

the land comprised therein is held subject to any subsisting interest, whether recorded therein or not.

17. Recording of subsisting interests – (1) The Registrar may, at any time after the creation of a qualified folio of the Register, record in that folio any additional subsisting interest in the land comprised therein.

(2) For the purposes of subsection (1), any person claiming an estate or interest in land in a qualified folio of the Register may apply to the Registrar to have that estate or interest recorded in the relevant qualified folio of the Register

18. Caveat against lapsing of caution – Any person claiming an interest in land which was subsisting at the time of creation of the qualified folio of the Register for that land, may so long as the land remains as a qualified folio of the Register, protect that interest by the lodgement of a caveat pursuant to section 51.

19. Lapsing of cautions – (1) Immediately upon the expiration of 12 years after the commencement of this Act;

(a) land in a qualified folio of the Register is held free from any interests that affected the land at the date on which it was brought under this Act by the creation of the qualified folio and which were not shown on the relevant folio of the Register;

(b) any caution recorded on that folio lapses; and

(c) the folio of the Register becomes an ordinary folio of the Register.

(2) Subsection (1) does not apply to a qualified folio of the Register on which a caveat has been entered to protect a subsisting interest in that land.

(3) Any person deprived of land by the operation of this section shall not by reason of that deprivation have a claim for compensation under Part 13 of this Act.

20. Application of provisions of this Act to qualified folio and land therein (1) Except as otherwise provided by this Act:

(a) land comprised in a qualified folio of the Register is subject to the provisions of this Act,

(b) the provisions of this Act relating to ordinary folios of the Register, land comprised in ordinary folios of the Register and to the registration of dealings affecting land comprised in ordinary folios of the Register shall apply to qualified folios of the Register, land comprised in qualified folios of the Register and the registration of dealings affecting land comprised in qualified folios of the Register,

(c) a reference in this and in any other Act to a folio of the Register includes a reference to a qualified folio of the Register, and

(d) a qualified folio of the Register shall be evidence as to title in all respects as if it were an ordinary folio of the Register, except that it shall be subject to every

subsisting interest in the land comprised therein, whether recorded in the Register or not.

PART 5 INSTRUMENTS GENERALLY

21. Execution of instruments - (1) No interest in land can be created or disposed of except by an instrument in writing signed by the person creating or conveying the same, or by the person's agent lawfully authorised in writing, and attested in the prescribed manner.

(2) Subsection (1) does not apply to the creation or disposition of an interest by will, by operation of law or by order of Court.

22. Execution of instrument by agent – Where an instrument or other document purports to have been signed or otherwise executed under a power of attorney or under any other power or authority, whether statutory or not, the Registrar may assume that the instrument or other document was so signed or otherwise executed and that there was sufficient power or authority for it being signed or otherwise executed.

22. Seal of corporation substituted for signature - (1) A corporation for the purpose of dealing with land under the provisions of this Act, in lieu of signing the proper instrument for such purpose, may affix thereto the common seal of such corporation.

(2) Where:

- (a) a seal purporting to be the seal of a corporation, whether sole or aggregate, has been affixed to a plan or instrument lodged for registration or recording, and
- (b) the affixing of the seal purports to have been attested by a person or persons holding office in the corporation or by a person or persons authorised to attest the affixing of the seal,

the Registrar may assume:

- (c) that the seal and attestation are genuine and were lawfully affixed or subscribed, as the case may be, to or on the plan, dealing, caveat or other document, and
- (d) that the person or persons purporting to have attested the affixing of the seal had sufficient authority to attest the affixing of the seal in the capacity in which the person or persons purported so to do.

23. Unregisterable instruments - (1) Except where any of sections 11, 12 and 13, of the Land and Titles Act 1981 apply, no instrument operating merely by way of contract or trust shall be registered in the Register and the Registrar shall not record in the Register any notice of trusts whether express, implied, or constructive

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

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

25. Certificate of correctness - (1) Subject to subsection (2), any instrument affecting any estate or interest in land must have endorsed thereon and signed by the solicitor for the party claiming under or in respect of the instrument a certificate of correctness in the prescribed form.

(2) Notwithstanding the provisions of subsection (1), where no solicitor acts or has acted in respect of the instrument on behalf of the party claiming under or in respect of the same, the certificate may be signed by that party, or if more than one, by any or all of them.

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

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

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

(6) Such penalty shall not prevent the person who may have sustained any damage or loss in consequence of error or mistake in any such certified instrument from recovering damages against the person who has certified the same.

PART 6 REGISTRATION

26. Lodgment and registration of documents - (1) When the Registrar accepts an instrument presented for lodgment, the Registrar shall allot thereto a distinctive reference.

(2) An instrument is lodged, within the meaning of this Act, only when the Registrar has, under subsection (1), allotted thereto a distinctive reference.

(3) The Registrar may refuse to accept an instrument presented for lodgment if it does not comply with any requirement made, with respect to the instrument, by or under this or any other Act.

(4) The Registrar shall register an instrument lodged for registration if:

(a) it comprises an interest in land; and

(b) the instrument complies with the requirements made, with respect to the instrument, by or under this or any other Act.

- (5) Where two or more instruments which affect the same land have been lodged and are awaiting registration, the Registrar may register those instruments in the order which will give effect to the intentions of the parties as expressed in, or apparent to the Registrar from, the instruments.
- (6) Subject to section 7, where the intentions of the parties to instruments referred to in subsection (5) appear to the Registrar to conflict, the order of registration shall be the order in which the instruments were lodged in registrable form.
- (7) For the purposes of this section:
 - (a) an instrument that is lodged in registrable form and is subsequently uplifted shall be deemed not to be in registrable form until relodged in a manner approved for the time being by the Registrar and in registrable form,
 - (b) an instrument shall be deemed not to be in registrable form:
 - (i) if, notwithstanding anything done under section 30(3), the instrument requires a material correction, alteration or addition, and
 - (ii) unless the instrument is in the approved form, and
 - (c) notwithstanding that it may have been accepted for lodgment by the Registrar, an instrument that is not in registrable form shall, where it is not uplifted, be deemed not to have been lodged with the Registrar until it is in registrable form.
- (8) A caveat that is lodged with the Registrar and is subsequently uplifted is ineffective to prohibit the recording or registration of any instrument, the recording or registration of which is prohibited by the caveat, until the caveat is relodged with the Registrar.
- (9) An instrument is registered when the Registrar has made such recording in the Register with respect to the dealing as the Registrar thinks fit.
- (10) Instruments registered with respect to, or affecting the same estate or interest shall, notwithstanding any notice (whether express, implied or constructive), be entitled in priority the one over the other according to the order of registration thereof and not according to the dates of the instruments.
- (11) Upon registration, an instrument shall have the effect of a deed duly executed by the parties who signed it.
- (12) Upon registration of an instrument the Registrar shall deliver a computer folio search in respect of the folio of the register the subject of the instrument to the person by whom that instrument was lodged or to the person's solicitor, known agent or attorney.

27. Transactions effecting the subdivision of land - The Registrar may refuse to accept an instrument for registration in the Register if the land described in the instrument does not comprise one or more existing lots in a plan deposited under the Survey Ordinance 1961.

28. Registrar may require plan - The Registrar may require the proprietor of any land subject to the provisions of this Act, or any estate or interest therein, desiring to transfer or otherwise to deal with the same or any part thereof to deposit under the Survey Ordinance 1961 a plan of such land.

29. Recording of instruments - (1) Subject to the **Public Records Act** the Registrar may:

- (a) destroy any instrument that the Registrar is not under a duty to deliver or issue to any person, whether or not it is part of the Register, or
- (b) deliver to a person who, in the Registrar's opinion, intends to preserve it for historical purposes any document that, by paragraph (a), the Registrar is empowered to destroy.

(2) The Registrar shall, before destroying an instrument under subsection (1)(a), make a reproducible copy of that document if:

- (a) it evidences a subsisting interest in land comprised in a folio of the Register, or
- (b) where the Registrar would, but for subsection (1)(a), have a duty to preserve it.

(3) The Registrar shall preserve a reproducible copy of any document referred to in subsection (2) (a) or (b) for as long as the interest evidenced by the document subsists or for as long as the Registrar would, but for subsection (1)(a), have had a duty to preserve the document, as the case may be.

(4) In this section:

reproducible copy means a copy of a document that is captured and retained in a manner that enables the document to be reproduced.

30. Treatment of instruments that do not comply with requirements - (1) The Registrar shall not register any instrument purporting to transfer or otherwise to deal with or affect any estate or interest in land under the provisions of this Act, except in the manner herein provided, and the Registrar may reject any instrument which the Registrar is satisfied should not be registered.

(2) The Registrar may, at the Registrar's discretion, register an instrument notwithstanding any error therein or omission therefrom and, in such case, the error or omission shall not invalidate the registration of the instrument.

(3) Instead of rejecting any instrument containing a patent error, the Registrar may of the Registrar's own motion correct the error by marginal notation on the instrument, and the instrument so corrected shall have the like validity and effect as if the error had not been made.

(4) The Registrar may register an instrument containing departures from an approved form, not being in matters of substance.

PART 7 EFFECT OF REGISTRATION

31. Instruments not effectual until recorded in Register - (1) No instrument, until registered in the manner provided by this Act, shall be effectual to pass any estate or interest in any land under the provisions of this Act, or to render such land liable as security for the payment of money, but upon the registration of any instrument in the manner provided by this Act, the estate or interest specified in such instrument shall pass, or as the case may be the land shall become liable as security in manner and subject to the covenants, conditions, and contingencies set forth and specified in such instrument, or by this Act declared to be implied in instruments of a like nature.

(2) Subsection (1) does not apply to an instrument creating a leasehold interest not exceeding three years where there is actual occupation of the land under the instrument.

32. Estate of registered proprietor paramount - (1) Notwithstanding the existence in any other person of any estate or interest which but for this Act might be held to be paramount or to have priority, the registered proprietor for the time being of any estate or interest in land recorded in a folio of the Register shall, except in case of fraud, hold the same, subject to such other estates and interests and such entries, if any, as are recorded in that folio, but absolutely free from all other estates and interests that are not so recorded except:

- (a) the estate or interest recorded in a prior folio of the Register by reason of which another proprietor claims the same land,
- (b) in the case of the omission or misdescription of an easement subsisting immediately before the land was brought under the provisions of this Act or validly created at or after that time under this or any other Act ,
- (c) as to any portion of land that may by wrong description of parcels or of boundaries be included in the folio of the Register or registered dealing evidencing the title of such registered proprietor, not being a purchaser or mortgagee thereof for value, or deriving from or through a purchaser or mortgagee thereof for value,
- (d) any right granted by or under an Act:
 - (i) to enter, go across or do things on land for the purpose specified in the Act,
 - (ii) to recover taxes, duties, charges, rates or assessments by proceedings in respect of land,
 - (iii) to expropriate land, or
 - (iv) to restrict the use of land.
- (e) a tenancy for a term of three years or less where:
 - (i) there is actual possession of the land under the tenancy; and
 - (ii) that possession could be discovered through reasonable investigation.

(2) In subsection (1), a reference to an estate or interest in land recorded in a folio of the Register includes a reference to an estate or interest recorded in a registered

mortgage, or lease that may be directly or indirectly identified from a distinctive reference in that folio.

(3) Nothing in this Act confers on a registered owner, claiming otherwise than as a purchaser for valuable consideration, any better title than was held by his immediate predecessor in title.

(4) Subsection (1) does not operate to defeat:

(a) any claim based on a subsisting interest affecting land comprised in a qualified folio of the Register; or

(b) any estate or interest in that land, arising by prescription or under any statute of limitations, in existence in respect of an ordinary folio of the Register.

33. Purchaser from registered proprietor not to be affected by notice – (1)

Except in the case of fraud no person contracting or dealing with or taking or proposing to take a transfer from the registered proprietor of any registered estate or interest shall be required or in any manner concerned to inquire or ascertain the circumstances in or the consideration for which such registered owner or any previous registered owner of the estate or interest in question is or was registered, or to see to the application of the purchase money or any part thereof, or shall be affected by notice direct or constructive of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

(2) No person contracting or dealing in respect of an estate or interest in land under the provisions of this Act shall be affected by notice of any instrument, fact, or thing merely by omission to search in a register not kept under this Act.

(3) Subsections (1) and (2) do not operate to defeat any claim based on a subsisting interest, affecting land comprised in a qualified folio of the Register.

34. Registered proprietor suing for specific performance - (1)

In any proceedings for specific performance brought by a registered proprietor of any land under the provisions of this Act, against a person who may have contracted to purchase such land not having notice of any fraud or other circumstances which according to the provisions of this Act would affect the right of the vendor, the folio of the Register or a computer folio certificate evidencing the title of such registered proprietor shall be held in every Court to be conclusive evidence that such registered proprietor has a good and valid title to the land and for the estate or interest therein mentioned or described, and production to the Court of any such folio or certificate, as the case may be, shall entitle such registered proprietor to judgment for the specific performance of such contract.

(2) Subsection (1) does not operate to defeat any claim based on a subsisting interest affecting land comprised in a qualified folio of the Register.

35. Bona fide purchasers and mortgagees protected - (1)

Except to the extent to which this Act otherwise expressly provides, nothing in this Act is to be construed so as to deprive any purchaser or mortgagee bona fide for valuable consideration of any

estate or interest in land under the provisions of this Act in respect of which the person is the registered proprietor.

(2) Despite any other provision of this Act, proceedings for the recovery of damages, or for the possession or recovery of land, do not lie against a purchaser or mortgagee bona fide for valuable consideration of land under the provisions of this Act merely because the vendor or mortgagor of the land:

(a) may have been registered as proprietor through fraud or error, or by means of a void or voidable instrument, or

(b) may have procured the registration of the relevant transfer or mortgage to the purchaser or mortgagee through fraud or error, or by means of a void or voidable instrument, or

(c) may have derived his or her right to registration as proprietor from or through a person who has been registered as proprietor through fraud or error, or by means of a void or voidable instrument.

(3) Subsection (2) applies whether the fraud or error consists of a misdescription of the land or its boundaries or otherwise.

PART 8 INSTRUMENTS

Division 1 Transfers

36. Transfers - Where land under the provisions of this Act is intended to be transferred, or any easement affecting land under the provisions of this Act is intended to be created, the proprietor shall execute a transfer in the approved form.

37. Interest and rights of transferor pass to transferee - Upon the registration of any transfer, the estate or interest of the transferor as set forth in such instrument, with all rights, powers and privileges thereto belonging or appertaining, shall pass to the transferee, and such transferee shall thereupon become subject to and liable for all and every the same requirements and liabilities to which the transferee would have been subject and liable if named in such instrument originally as mortgagee or lessee of such land, estate, or interest.

38. Transfer of mortgage or lease transferee's right to sue - (1) By virtue of every such transfer, the right to sue upon any mortgage or other instrument and to recover any debt, sum of money, annuity, or damages thereunder (notwithstanding the same may be deemed or held to constitute a chose in action), and all interest in any such debt, sum of money, annuity, or damages shall be transferred so as to vest the same at law as well as in equity in the transferee thereof.

(2) Nothing herein contained shall prevent a Court from giving effect to any trusts affecting the said debt, sum of money, annuity, or damages, in case the transferee shall hold the same as a trustee for any other person.

Division 2 Leases

39. Form of lease - (1) When any land under the provisions of this Act is intended to be leased or demised for a life or lives or for any term of years exceeding three years, the proprietor shall execute a lease in the approved form.

(2) A lease of land which is subject to a mortgage is not valid or binding on the mortgagee unless the mortgagee has consented to the lease before it is registered.

40. Registration of variation of lease - (1) A lease that is registered under this Act may, by a variation of lease in the approved form, be varied so as:

- (a) to increase or reduce the rent payable under the lease, or
- (b) to increase or reduce the period for which the lease is to have effect, or
- (c) to otherwise vary, omit or add to the provisions of the lease.

provided the variation instrument is lodged for registration before the expiry of the then current term of the lease.

(2) The Registrar may make such recordings in the Register as are necessary to give effect to a variation of lease.

(3) A variation of lease is not valid or binding against the registered proprietor of any prior estate or interest recorded in a folio of the Register in respect of the land to which the lease relates unless that proprietor has consented in writing to the variation before it is registered.

41. Sub-leases - (1) The registered proprietor of any lease may, subject to any provision in his lease affecting his right so to do, sub-let for any term of not less than three years by an instrument in an appropriate approved form.

(2) Save as otherwise expressly provided the provisions of this Act affecting leases lessors and lessees shall apply to sub-leases sub-lessors and sub-lessees with such adaptations as are necessary.

(3) If a lease is determined by forfeiture or operation of law or by surrender under any Act or law relating to bankrupts such determination shall determine the sub-lease.

(4) In addition to the covenants specified by this Act to be implied in leases, there shall be implied in every sub-lease under this Act a covenant that the sub-lessor will during the term thereby granted pay the rent reserved by and perform and observe the covenants and agreements contained in the original lease and on his part to be paid performed and observed.

40. Lease may be surrendered by execution of surrender in approved form –

(1) Whenever any lease which is required to be registered by the provisions of this Act is intended to be surrendered, and the surrender thereof is effected otherwise than through the operation of a surrender in law or than under the provisions of any law at the time being in force relating to bankrupt estates, the lessee and lessor shall execute a surrender of the lease in the approved form.

(2) Upon registration of any such surrender, the estate or interest of the lessee in such land shall revert in the lessor, or in the person in whom having regard to intervening circumstances (if any) the said land would have vested if no such lease had ever been executed.

(3) A lease subject to a mortgage shall not be so surrendered without the consent of the mortgagee.

43. Registrar to note particulars of re-entry in Register - The Registrar upon application in the approved form accompanied by proof to the Registrar's satisfaction of lawful re-entry and recovery of possession by a lessor shall make such recording in the Register with respect to the re-entry and recovery as the Registrar thinks fit, and the estate of the lessee in such land shall thereupon determine but without releasing the lessee from the lessee's liability in respect of the breach of any covenant in such lease expressed or implied, and the Registrar shall cancel such lease if delivered up to the Registrar for that purpose.

Division 3 Mortgages

44. Lands under this Act: how mortgaged or encumbered – (1) Whenever any land or estate or interest in land under the provisions of this Act is intended to be charged with, or made security for, the payment of a debt, the proprietor shall execute a mortgage in the approved form.

(2) A mortgage under this Act has effect as a security but does not operate as a transfer of the land mortgaged.

45. Mortgages under general law deemed to be mortgages under this Act –

(1) On the commencement of this Act any legal mortgage which existed at that commencement and which is recorded on a folio of the Register, is deemed to be a mortgage registered under section 44.

(2) Any second or subsequent conveyance by way of mortgage registered prior to the commencement of this Act affecting the land in a folio of the Register is deemed to be a second or subsequent mortgage registered under section 44.

46. Application of Property Law Act 1952 to mortgages under this Act – (1)

The provisions of Part VII of the Property Law Act 1952 shall apply to mortgages registered under the provisions of this Act.

(2) In every mortgage of land under this Act there shall be deemed to be included the covenant and proviso implied by section 78 of the Property Law Act 1952.

(3) For the purpose of this section, and without in any way limiting its generality, unless the context or subject matter otherwise indicates or requires, where used in the Property Law Act 1952:

- (a) 'mortgage' includes mortgages under this Act and "mortgagor" and "mortgagee" have corresponding meanings;
- (b) "deed" includes any instrument registered under this Act;
- (c) "conveyance" includes an instrument of transfer of land under this Act; and

(d) "reconveyance" includes a discharge of mortgage as provided by this Act.

(4) To the extent to which any provision of the Property Law Act 1952 is inconsistent with a provision of this Act the latter shall prevail.

47. Registration of mortgagor as proprietor - Where land is affected by a mortgage which is a conveyance by way of mortgage and, at the time of commencement of this Act, a folio of the Register existed for the estate or interest of the mortgagee entitled under the mortgage, the Registrar may, when creating any new folio of the Register for that land, record the mortgagor as the proprietor of that estate or interest.

48. Variation of mortgage —(1) A mortgage registered under this Act may be varied as regards:

- (a) the amount secured by the mortgage; or
- (b) the rate of interest; or
- (c) the term or currency of the mortgage; or
- (e) the covenants, conditions, and powers contained or implied in the mortgage,

by a variation of mortgage in the approved form.

(2) A mortgage variation instrument must contain the following information:

- (a) reference to the mortgage and the relevant folio of the Register; and
- (b) the nature of the variation.

(3) A mortgage variation instrument must be executed by—

- (a) the mortgagor, except where the variation only operates to reduce the amount secured or rate of interest; and
- (b) the mortgagee, except where the variation only operates to increase the amount secured or rate of interest.

(4) If the land is subject to another mortgage, the consent of the mortgagee under that mortgage must be obtained.

49. Postponement of mortgage - (1) If two or more mortgages registered under this Act affect the same land, the mortgage which for the time being has priority over the other or others may, by a memorandum in the approved form registered under this Act, be postponed to the other or others.

(2) Subsection (1) applies whether or not any one or more of the mortgages which affect the same land affects or affect other land.

(3) A memorandum under this section shall not be registered when any registered mortgage intervenes between the mortgage to be postponed and the mortgage intended to have benefit of the postponement, unless the proprietor of the intervening mortgage joins in the memorandum.

(4) After registration of a memorandum under this section, the mortgages affected by the postponement shall be entitled in priority the one over the other as if they had been registered in the order in which by the memorandum they are expressed to have priority.

50. Discharge of mortgage - (1) Whenever a mortgage registered under this Act is intended to be discharged wholly or partially the mortgagee shall execute a discharge in the approved form.

(2) Upon registration of a discharge of mortgage the mortgaged estate or interest shall, to the extent specified in the discharge, cease to be charged with any moneys secured by the mortgage.

Division 4 Caveats

51. Caveat - (1) Any person -

(a) claiming to be entitled to or to be beneficially interested in any land, estate, or interest authorised to be included in the Register by virtue of any unregistered agreement or other instrument or transmission or of any trust, expressed or implied, or otherwise howsoever; or

(b) transferring or conveying any estate or interest in land authorised to be included on the Register to any other person to be held in trust,

may at any time lodge with the Registrar a caveat in the approved form.

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

52. Registrar's caveat - The Registrar may deposit a caveat for the protection of any person who is under the disability of infancy, lunacy, unsoundness of mind, or absence from Samoa, or on behalf of the Government, to prohibit the transfer or conveying or dealing with any land belonging or supposed to belong to any such persons as hereinbefore mentioned, and also to prohibit the dealing with any land for the prevention of any fraud or improper dealing.

53. Effect of caveat - (1) Subject to subsection (2), so long as a caveat remains in force the Registrar shall not, except in accordance with the provisions of the caveat or with the consent in writing of the caveator, register any instrument affecting the estate or interest protected by such caveat.

(2) Nothing herein shall prevent the completion of

(a) the registration of an instrument which has been lodged in registrable form within the meaning of section 26(7) before the receipt of the caveat;

(b) a transmission application under Division 5 of Part 8 of this Act.

(c) any instrument expressed to be made subject to the rights of the caveator.

(d) any instrument which is shown to the satisfaction of the Registrar not to be to the prejudice of the person for whose protection the caveat has been lodged.

(3) Where a caveat lodged under section 51 purports to protect a subsisting interest in land described in a qualified folio of the Register, the Registrar shall not:

- (a) cancel any caution recorded in that folio; or
- (b) create an ordinary folio of the Register for that land.

(4) For the purposes of this section a caveat which is recorded by the Registrar shall be deemed to have come into force at the time it was presented for recording.

54. Notice and removal of caveat -

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

55. Notice by Registrar - (1) Except in the case of a caveat lodged by the Registrar the caveatee or his agent may make application in writing to the Registrar to remove the caveat, and thereupon the Registrar shall give twenty-one days' notice in writing to the caveator requiring that the caveat be withdrawn and, after the lapse of twenty-one days from the date of the service of such notice at the address mentioned in the caveat, the Registrar shall remove the caveat from the register by entering a memorandum that the same is discharged unless he has been previously served with an order of the Court extending the time as herein provided.

(2) Every such application shall contain an address in Samoa at which notices and proceedings may be served.

(3) The caveator may either before or after receiving notice from the Registrar apply by summons to the Court for an order to extend the time beyond the twenty-one days mentioned in such notice, and the summons may be served at the address given in the application of the caveatee, and the Court, upon proof that the caveatee has been duly served and upon such evidence as the Court may require, may make such order in the premises either *ex parte* or otherwise as the Court thinks fit.

56. Compensation for lodging caveat without reasonable cause - Any person lodging any caveat with the Registrar without reasonable cause shall be liable to make, to any person who may have sustained damage thereby, such compensation as the Court shall order and such compensation may be recovered by proceedings at law if the caveator has withdrawn such caveat and no proceedings have been taken by the caveatee as herein provided but, if proceedings have been taken by the caveatee, then such compensation shall be decided by the court acting in the same proceedings.

57. Lapse of caveat - Except in the case of a caveat lodged by or on behalf of a beneficiary claiming under any will or settlement, or for the protection of any trust, or by

the Registrar in exercise of the powers by this Act given to him in that behalf, every caveat shall, upon the expiration of 14 days after notice given to the caveator that application has been made for the registration of any instrument affecting the land, estate, or interest protected thereby, be deemed to have lapsed as to such land, estate, or interest, or so much thereof as is referred to in such notice, unless notice is within the said 14 days given to the Registrar that application for an order to the contrary has been made to the Court or a Judge thereof, and such order is made and served on the Registrar within a further period of 28 days.

58. Caveat may be withdrawn - Any caveat may be withdrawn by the caveator or by a solicitor acting on instructions of the caveator, and either as to the whole or part of the land affected, or the consent of the caveator may be given for the registration of any particular dealing expressed to be made subject to the rights of the caveator.

Division 5 Transmissions

59. Transmission on bankruptcy - (1) The Official Assignee in Bankruptcy, a trustee, or any other person claiming to be entitled to land under the provisions of this Act by virtue of the operation of the Bankruptcy Act 1908, or of anything done thereunder, may apply in the approved form to the Registrar to be registered as proprietor of that land.

(2) On being satisfied that an applicant under subsection (1) is entitled to be registered as proprietor of the land to which the application relates, the Registrar may record the applicant in the Register as proprietor.

60. Transmission on death of proprietor - (1) Upon the death of a registered proprietor, the executor, administrator or other person claiming consequent upon the death, will or intestacy of that deceased proprietor, or otherwise, to be entitled to be registered as proprietor may apply in the approved form to the Registrar to be registered as proprietor of all or part of the estate or interest of that deceased proprietor.

(2) An application under subsection (1) shall be:

(a) supported by such evidence as the Registrar may require, and

(b) accompanied by the consent of the executor or administrator of the deceased proprietor where the applicant claims otherwise than as executor, administrator or trustee unless the Registrar thinks fit to dispense with that consent.

(3) The Registrar, on being satisfied that an applicant under subsection (1) is entitled to the estate or interest claimed in the application, shall record the applicant in the Register as proprietor of that estate or interest.

61. Trusts protected - A fiduciary registered as proprietor pursuant to section 60 shall hold the estate or interest in respect of which the fiduciary is so registered in trust for the persons for whom and purposes for which that estate or interest is applicable by law, but for the purposes of any dealing therewith the fiduciary shall be deemed to be absolute proprietor thereof.

62. Registration of survivor of joint proprietors - Where a person becomes entitled to an estate or interest in land:

- (a) upon the death of a person registered with the person as joint proprietor of that estate or interest, or
- (b) by the determination or defeasance, by death or the occurrence of some other event, of an estate or interest in land,

the Registrar may, upon application in the approved form by the person so entitled and proof to the Registrar's satisfaction of the death or other event, as the case may require, register that person as proprietor of the estate or interest.

63. Registration of public documents and Orders of the Land and Titles Court –

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

(2) No vesting order made by the Court shall have any effect in transferring or otherwise vesting any registered interest until the same has been registered.

64. Registration as proprietor of person who is entitled to land by operation of statute -

(1) Where, by the operation of a statute, either directly or by reason of anything done in pursuance thereof land under the provisions of this Act becomes, vested in a person (other than the registered proprietor of the land) either alone or jointly or in common with that registered proprietor, the Registrar may, of the Registrar's own motion, and shall, on application in the approved form by a person in whom there has been such a vesting, on such evidence as appears to the Registrar sufficient, and after such notice (if any) to such person as the Registrar deems proper, register the person in whom any such land is vested as the proprietor of such estate therein as the Registrar deems to be appropriate, and for that purpose the Registrar may make such recordings in the Register and create such folios of the Register, as appears to the Registrar to be necessary or proper.

**PART 9
EASEMENTS AND RESTRICTIONS AS TO USER**

65. Easements - (1) The registered proprietor of land under the provisions of this Act may, by a transfer in the approved form, grant an easement over that land to the registered proprietor of other land for the benefit of that other land.

(2) Any proprietor transferring land under the provisions of this Act may, in the transfer, grant an easement for the benefit of the land transferred over land retained by him, or reserve an easement for the benefit of land retained by him.

(3) The instrument creating the easement shall specify clearly-

- (a) the nature of the easement, the period for which it is granted and any conditions, limitations or restrictions intended to affect its enjoyment; and
- (b) the land burdened by the easement and the site of the easement; and
- (c) the land which enjoys the benefit of the easement;

and shall if so required by the Registrar, define the easement by reference to a plan showing the site of the easement.

(4) The grant or reservation of the easement shall be completed by its registration as an encumbrance in the folio of the Register for the land burdened and in the folio of the Register for the land which benefits.

66. Construction of expressions used to create easements – (1) In an instrument taking effect after the commencement of this Act and purporting to create a drainage easement or right of way the expressions “drainage easement” and “right of way” shall, unless a contrary intention is expressed, have the same effect as if there had been inserted in lieu thereof respectively the words contained in Schedule 1.

(2) In this section the term instrument includes a plan of subdivision deposited pursuant to the Survey Ordinance 1961.

67. Restrictions as to user – (1) Any registered proprietor transferring land under the provisions of this Act may, in the transfer, enter into an agreement creating a restriction as to user for the benefit of the land transferred over land retained by him, or for the benefit of land retained by him over the land transferred.

(2) The registered proprietors of land may enter into a deed of restriction as to user of land which may be lodged with the Registrar under cover of an application in the approved form for the recording of the restriction in the Register.

(3) Any instrument creating a restriction as to user shall specify clearly-

- (a) the nature of the restriction, the period for which it is granted and any conditions, limitations or restrictions intended to affect its enjoyment; and
- (b) the land burdened by the restriction; and
- (c) the land which enjoys the benefit of the restriction.

(4) The creation of the restriction shall be given effect to by its recording as an encumbrance in the folio of the Register for the land burdened.

(5) The recording in the Register of the restriction shall not give it any greater effect than it has under the instrument creating it.

(6) Every such restriction recorded in a folio of the Register shall be deemed to be an interest in land within the meaning of section 32.

68. Release and extinguishment of easements and restrictions as to user - (1) Upon presentation of an application in the approved form, accompanied by a deed of release, duly executed by the registered proprietor of the land having the benefit of an easement or restriction as to user and any person having a registered interest in the land, the Registrar may record on the relevant folios of the Register the extinguishment of the easement or restriction as to user.

(2) On the application in the approved form made by the proprietor of any land affected

thereby, the Registrar may cancel the registration of an easement or restriction as to the user of land upon proof to his satisfaction that-

- (a) the period of time for which it was intended to subsist has expired; or
- (b) the event upon which it was intended to determine has occurred; or
- (c) it has been abandoned.

69. Extinguishment and modification of easements and restrictions as to user

Where an easement or restriction as to user of land affecting land under the provisions of this Act has been modified or extinguished by order of Court the Registrar may, on application in the approved form by the proprietor of any land affected, accompanied by a copy of the order, record the effect of the order on the relevant folios of the Register.

**PART 10
JUDGMENTS AND EXECUTION**

70. Enforcement of judgments, etc. against land .-(1) No judgment, decree or order for the payment of money, the sale of land or a sale in pursuance of an execution under any such judgment, decree or order issued prior to or after the commencement of this Act shall bind, charge or affect any estate or interest in land subject to the provisions of this Act unless and until the Registrar has been served with a copy of a writ of sale, certified by the court and accompanied by a statement signed by any party interested or his solicitor or agent specifying-

- (a) the estate or interest sought to be affected thereby;
- (b) the name, address and description of the person by whom or on whose behalf the same is lodged; and
- (c) an address or place within Samoa at which notices and proceedings relating thereto may be served.

(2) The Registrar, on being served with a copy of a writ of sale and on being satisfied that an interest which is entered on a folio of the Register is affected thereby, shall enter a recording thereof on the folio of the Register.

(3) With effect from the time of service thereof upon the Registrar such writ of sale, subject to the provisions of subsection (7) have the effect of, and be deemed to be, a caveat lodged under the provisions of section 51, subject to any prior registered mortgage or charge, forbidding the registration of any person as transferee or proprietor of and of any interest affecting, the estate or interest affected by such judgment, decree or order other than in pursuance of such judgment, decree or order.

(4) Upon the estate or interest in respect of which a writ of sale has been recorded under the provisions of subsection (2) having been sold pursuant to such judgment, decree or order, the Registrar shall, on receiving a transfer thereof in the approved form (which transfer shall have the same effect as if made by the proprietor) enter a memorial of such transfer in the folio of the Register; and on such entry being made the purchaser

shall become the transferee and be deemed to be the registered proprietor of such estate or interest as if the transfer were a transfer for value by the registered owner.

(5) After the commencement of this Act, no unregistered instrument, document or writing and no equitable mortgage by deposit or otherwise without writing affecting any estate or interest in land shall prevail against a sale under the authority of a writ of sale unless a caveat in respect of such unregistered instrument, document or writing or equitable mortgage shall have been lodged with the Registrar in pursuance of the provisions of section 51 before the service of the copy of the said judgment, decree or order on the Registrar but, in the absence of a caveat, all of the estate and interest of the judgment debtor as well as of any unregistered purchaser, transferee, mortgagee or other person claiming through or under him shall be extinguished and shall pass to the purchaser by virtue of a transfer under the provisions of this section.

71. Cancellation of recording - The Registrar may cancel a recording in the Register of a writ if application for the cancellation of the recording is made in the approved form and:

- (a) the application incorporates or is accompanied by:
 - (i) a withdrawal of the writ signed by the judgment creditor, and
 - (ii) a statutory declaration that satisfies the Registrar that the writ has not been executed by sale of the land to which the application relates and has been returned to the court out of which it issued,
- (b) the application incorporates or is accompanied by:
 - (i) evidence that satisfies the Registrar that the writ has been satisfied otherwise than by sale of the land to which the application relates, and
 - (ii) a statutory declaration that satisfies the Registrar that the writ has been returned to the court out of which it issued, or
- (c) the writ has lapsed and the application is supported by such evidence as the Registrar may require.

PART 11 SEARCHES AND CERTIFICATES

72. Access to the records - (1) The Register and all deposited copies of instruments of title and all other instruments and plans deposited with the Registrar shall be a public record and shall be open to search and inspection at the prescribed times, in the prescribed manner.

73. Search of computer folio - Where an application is lodged for a search in respect of the title to the whole or any part of land comprised in a computer folio specified in the application, the Registrar shall issue to the person who lodged the application a computer folio certificate setting forth the information recorded in the folio, pursuant to or under this or any other Act, at the time specified in the certificate.

74. Search of historical record - Where land is comprised in a computer folio and an application is lodged with the Registrar for the issue, under this section, of a certificate in respect of any part of the record required, by section 11(6) to be maintained by the Registrar, the Registrar shall issue to the person who lodged the application a certificate setting forth particulars of that part of that record.

75. Certified copies to be furnished by Registrar and to be evidence - (1)

The Registrar, upon payment of the prescribed fee, shall furnish to any person applying for the same a certified copy of any registered or recorded instrument or plan affecting land under the provisions of this Act.

(2) Every such certified copy signed by the Registrar and sealed with the Registrar's seal shall be received in evidence in any Court or before any person having, by law or by consent of parties, authority to receive evidence as prima facie proof of all the matters contained or recited in or recorded on the original instrument.

PART 12 CIVIL RIGHTS AND REMEDIES

Division 1 Proceedings for the possession or recovery of land

76. Registered proprietor protected except in certain cases - (1) Proceedings for the possession or recovery of land do not lie against the registered proprietor of the land, except as follows:

- (a) proceedings brought by a mortgagee against a mortgagor in default,
 - (b) proceedings brought by a lessor against a lessee in default,
 - (c) proceedings brought by a person deprived of land by fraud against:
 - (i) a person who has been registered as proprietor of the land through fraud,
or
 - (ii) a person deriving (otherwise than as a transferee bona fide for valuable consideration) from or through a person registered as proprietor of the land through fraud,
 - (d) proceedings brought by a person deprived of, or claiming, land that (by reason of the misdescription of other land or its boundaries) has been included in a folio of the Register for the other land against a person who has been registered as proprietor of the other land (otherwise than as a transferee bona fide for valuable consideration),
 - (e) proceedings brought by a registered proprietor under an earlier folio of the Register against a registered proprietor under a later folio of the Register where the two folios have been created for the same land.
- (2) Despite any rule of law or equity to the contrary:
- (a) the production of a manual folio is an absolute bar and estoppel to any such proceedings commenced before the production of the folio against the person named in the folio as a registered proprietor or lessee of the land, and
 - (b) the production of a computer folio certificate for a computer folio is an absolute bar and estoppel to any such proceedings commenced before the time

specified in the certificate against the person named in the certificate as a registered proprietor or lessee of the land.

(3) Subsection (2) does not apply to proceedings of the kind referred to in subsection (1) (a)–(f).

(4) This section does not affect any proceedings in relation to land for which a qualified folio of the Register has been created, being proceedings based on a subsisting interest.

Division 2 Proceedings for compensation

77. Proceedings for compensation - (1) Any person who suffers loss or damage as a result of the operation of this Act in respect of any land, where the loss or damage arises from:

- (a) fraud, or
- (b) any error, misdescription or omission in the Register, or
- (c) the registration of some other person as proprietor of the land, estate or interest,

may take proceedings in any court of competent jurisdiction for the recovery of damages.

(2) Such proceedings may be taken:

- (a) against the person whose acts or omissions have given rise to the loss or damage referred to in subsection (1), or
- (b) against the Registrar.

(3) Proceedings against the Registrar are to be taken in accordance with Part 13.

PART 13 COMPENSATION BY THE GOVERNMENT

78. Definitions

(1) In this Part:

administrative proceedings means proceedings on a claim referred to in section 80.

compensable loss means loss or damage of the kind referred to in section 79(1), other than loss or damage of the kind referred to in section 79(2).

compensation means compensation by the Government to which a person is entitled under section 79.

professional indemnity insurer means an insurer, scheme or fund (whether or not established by or under any Act or law) by or from which claims are payable, being claims made by persons sustaining loss or damage owing to any fraudulent, wilful or negligent act or omission by a person carrying on business in a particular profession, trade or calling.

79. Circumstances in which compensation payable - (1) Any person who suffers loss or damage as a result of the operation of this Act in respect of any land, where the loss or damage arises from:

- (a) any act or omission of the Registrar in the execution or performance of his or her functions or duties under this Act in relation to the land, or
- (b) the registration of some other person as proprietor of the land, or of any estate or interest in the land, or
- (c) any error, misdescription or omission in the Register in relation to the land, or
- (d) the person having been deprived of the land, or of any estate or interest in the land, as a consequence of fraud, or
- (e) an error or omission in a computer folio certificate in relation to the land,

is entitled to payment of compensation by the Government.

(2) Compensation is not payable in relation to any loss or damage suffered by any person:

- (a) to the extent to which the loss or damage is a consequence of any act or omission by that person, or
- (b) to the extent to which the loss or damage:
 - (i) is a consequence of any fraudulent, wilful or negligent act or omission by any solicitor, licensed conveyancer or real estate agent, and
 - (ii) is compensable under an indemnity given by a professional indemnity insurer, or
- (c) to the extent to which that person has failed to mitigate the loss or damage, or
- (d) to the extent to which the loss or damage arises because of an error or miscalculation in the measurement or area of land, or
- (e) to the extent to which the loss or damage arises from the breach by a registered proprietor of any trust (whether express, implied or constructive), or
- (f) to the extent to which the loss or damage arises from circumstances in respect of which this Act provides that proceedings against the Registrar do not lie, or
- (g) to the extent to which the loss or damage arises from an error contained in a plan deposited in accordance with section 7 of the Survey Ordinance 1961.

80. Administrative proceedings for recovery of compensation - (1) A person who has suffered compensable loss may lodge a claim for compensation with the Attorney General and Registrar.

- (2) Such a claim may not be made more than 6 years after:
- (a) the date on which the act or omission giving rise to the compensable loss occurred, or
 - (b) if the compensable loss arose after the date on which that act or omission occurred, the date on which the compensable loss arose.

- (3) A claimant must co-operate fully with the Attorney General and Registrar for the purpose of ensuring that the Attorney General and Registrar have sufficient information to be able:
 - (a) to assess the validity of the claim, and
 - (b) to assess the claimant's compensable loss, and
 - (c) to make an informed offer of compensation.
- (4) For the purposes of section 81 a claim is taken to have been refused if it is not determined within 12 months after the claim was made.
- (5) Subsection (4) does not prevent a claim from being determined under this section in favour of the claimant after the expiry of the relevant period limited by that subsection, if the claimant has not commenced proceedings under section 81.
- (6) The Attorney General and Registrar may determine a claim by making an offer of settlement or by refusing the claim.
- (7) Where the Attorney-General and the Registrar concur that such claim ought to be admitted as to the whole or any part thereof without suit or action and jointly certify to that effect, and the offer of settlement is accepted, the Government may make payment accordingly.
- (8) Interest at the rate of five per cent per annum is payable on an offer of compensation that has been accepted by the claimant in administrative proceedings to the extent to which the amount accepted remains unpaid at the end of 28 days after the date on which it was accepted.

81. Court proceedings for the recovery of compensation - (1) Proceedings before a court for the payment of compensation are to be taken against the Registrar as nominal defendant.

- (2) Court proceedings may not be commenced:
 - (a) unless administrative proceedings have been commenced and determined in relation to the compensable loss, or
 - (b) more than 12 months after the date on which administrative proceedings have been determined in relation to the compensable loss,except by leave of the court or with the consent of the Registrar.
- (3) Court proceedings may be commenced at any time during the period of 12 months referred to in subsection (2) (b) despite any provision of the Limitation Act 1975 to the contrary.
- (4) In any court proceedings, the Registrar is not bound by any prejudicial act or omission by any party to the proceedings, such as:
 - (a) entering into, or offering to enter into, a compromise, or
 - (b) granting, or offering to grant, a release or waiver.

- (5) If court proceedings are commenced following administrative proceedings that have been determined by the offer of compensation and the compensation awarded by the court is less than the compensation offered by the determination:
- (a) the claimant's costs in the court proceedings are not payable by the Registrar, and
 - (b) the Registrar's costs are payable by the claimant,
- unless the court orders otherwise.

82. Subrogation of rights to claim compensation

- (1) A professional indemnity insurer cannot be subrogated to any other person in respect of that other person's right to claim compensation from the Government in relation to compensable loss.
- (2) If administrative proceedings or court proceedings are commenced in relation to a claimant's compensable loss, the Registrar is subrogated to the claimant in respect of the claimant's rights and remedies in relation to that loss:
- (a) against any person against whom the claimant has a cause of action in respect of that loss, and
 - (b) against any relevant professional indemnity insurer.
- (3) In the case of a deceased person, the compensation may be recovered from the deceased person's estate by proceedings taken against the deceased person's personal representative.
- (4) The Registrar may join any person in any court proceedings if of the opinion that the claimant has a cause of action against that person in respect of the compensable loss to which the proceedings relate.

83. Payment by Government - The following amounts are payable out of the Treasury Fund:

- (a) any amount offered by the Attorney General and Registrar and accepted by a claimant by way of settlement of a claim under section 80;
- (b) any amount awarded by the Court by way of compensation pursuant to Court proceedings under section 81; and
- (c) any costs and expenses incurred by the Registrar in connection with any claim for compensation from the Fund, including the payment of compensation in settlement of any such claim,

84. Measure of damages — The compensation shall be,

- (a) if a person is deprived of an interest in land, the value of the interest, or
- (b) if the priority of an interest in land is subordinated, the reduction in the value of the interest,

determined as of

- (c) the date on which the person submits a claim for compensation to the Registrar, or

(d) the date on which the person commences an action for compensation, whichever is the earlier, with interest at the rate of 5 percent per annum to the date of judgment recovered.

PART 14 REVIEW BY COURT

85. Registrar to supply reasons for certain decisions - (1) A person who is dissatisfied with the Registrar's decision:

- (a) to have any dealing registered or recorded, or
- (b) to have exercised or performed in relation to land any function or duty which, by this Act, is required to be exercised or performed by the Registrar,

may apply to the Registrar for a copy of the Registrar's reasons for the decision.

(2) It is the Registrar's duty to provide the person with those reasons.

86. Review of decisions by Court

(1) A person who is dissatisfied with a decision referred to in section 85 may apply to the Court for a review of the decision.

(2) For the purpose of conducting such a review, the Court may reconsider and determine any question of fact involved in the decision.

(3) If the Registrar has provided reasons for the decision, the Registrar may not rely on any grounds that are not set out in those reasons except by leave of the Court.

(4) After reviewing the Registrar's decision on an application under this section, the Court:

- (a) may uphold the decision, or
- (b) may order that the Registrar take such action in relation to the matters raised by the application as the Court considers appropriate, being action that the Registrar could, but for the order, have taken,

and may make such further or other orders as the Court considers appropriate.

87. Court may direct cancellation of folios and other actions related to folios -

(1) A Court may, in proceedings for the recovery of any land, estate or interest from the person registered as proprietor of the land, make ancillary orders of the kind set out in subsection (2), if the Court is of the opinion that the circumstances of the case require any such order to be made.

(2) A Court may order the Registrar to do one or more of the following:

- (a) cancel, amend or make a recording in a folio of the Register, or
- (b) create a new folio of the Register,

(3) The Registrar must give effect to any such order.

- (4) An action does not lie against the Registrar for recovery of damages sustained through deprivation of land, or any estate or interest in land, because of compliance by the Registrar with an order under this section.

PART 15 MISCELLANEOUS

88. Fees - (1) Where the Registrar is empowered by this or any other Act, to do something for which a fee is payable, the Registrar may refuse to do that thing until the fee is paid or suitable arrangements have been made for the payment of the fee.

(2) Where the Registrar is satisfied that in all the circumstances it is just and fair to do so, the Registrar may:

- (a) dispense with the payment of all or any part of any fee payable under this Act;
or
- (b) refund all or any part of any fee paid under this Act.

PART 16 CRIMINAL PROVISIONS

89. Certain fraudulent acts to be deemed indictable offences - (1) If any person:

- (a) fraudulently procures, assists in fraudulently procuring or is privy to the fraudulent procuring of:
 - (i) the creation of a folio of the Register,
 - (ii) a recording in the Register, or
 - (iii) any alteration in any instrument or form issued by the Registrar,
- (b) fraudulently uses, assists in fraudulently using, or is privy to the fraudulent using of any form purporting to be issued or sanctioned by the Registrar, or
- (c) knowingly misleads or deceives any person hereinbefore authorised to demand explanation or information in respect to any land or the title to any land in respect to which any instrument is proposed to be registered or recorded,

he or she shall be guilty of an indictable offence, and shall incur a penalty not exceeding \$10,000 or may, at the discretion of the Court before whom the case may be tried, be imprisoned for any period not exceeding three years.

(2) Any folio of the Register, recording or alteration, the creation of which, or the making of which, as the case may be, has been procured by fraud shall be void as between all parties or privies to the fraud.

90. Conviction not to affect civil remedy - No proceeding or conviction of an indictable offence against this Act shall affect any remedy which any person aggrieved or injured by the offence may be entitled to at law or in equity against the person who has committed the offence or against the estate of the person who has committed the offence.

91 Prosecutions and recovery of penalties - Except in any case herein otherwise expressly provided, all offences against the provisions of this Act may be prosecuted, and all penalties or sums of money imposed or declared to be due or owing by or under the provisions of the same may be sued for and recovered in the name of the Attorney General before any Court having jurisdiction for punishment of offences of the like nature or for the recovery of penalties or sums of money of the like amount.

PART 17 REGULATIONS

92. Regulations - The Head of State, acting on the advice of the Cabinet, may make Regulations for all or any of the following purposes -

- (a) Prescribing fees or a basis for calculating fees for the purposes of this Act;
- (b) Generally prescribing any matter, form, or thing required, authorised, or necessary to be prescribed for the purposes of this Act and for its effective and efficient administration; or
- (c) Prescribing any remuneration for services carried out by any person under this Act.
- (d) Prescribing a maximum amount payable for compensation payable under Part 13

PART 18 REPEALS, TRANSITIONAL PROVISIONS AND AMENDMENTS TO OTHER ACTS

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

94. Repeal of the Land Registration Act 1992/1993 - (1) The Land Registration Act 1992/1993 is repealed.

(2) All entries, registers, notices, instruments, information, search copies and proceedings and generally all acts of authority which were made, or originated, under the Land Registration Act 1992/1993 or any enactment repealed by that enactment, which subsist or are in force on the date this Act comes into force shall remain in force for all purposes, and where there is a corresponding provision in this Act, are deemed to have originated with that provision.

95. Instruments executed prior to commencement of Act – (1) Any instrument executed prior to the commencement of this Act may, if otherwise in order, be accepted for registration notwithstanding that it is not in the approved form.

(2) Where a conveyance by way of mortgage executed prior to the commencement of this Act is registered under this Act it shall be deemed to be a mortgage registered pursuant to section 43 and the Registrar may record the mortgagor as the proprietor of the estate or interest the subject of the mortgage.

96. Superseded references - On and after the commencement of this Act, unless inconsistent with the context or subject-matter, in any Act other than this Act, Regulations, or any other document, a reference to -

(a) The Land Registration Act 1992/1993 is deemed to be a reference to the Land Titles Act 2005; and

(b) The Land Register is deemed to be a reference to the Land Register established under Part 3 of this Act; and

(c) The Registrar of Land holding office under the Land Registration Act 1992/1993 is deemed to be a reference to the Registrar of Land appointed under the Land Titles Act 2005.

97. Consequential amendments – (1) An Act specified in the heading to an item in the Schedule 2 is amended as set out in that item.

(2) Section 135 of the Property Law Act 1952 shall be read subject to section 22 of this Act.

SCHEDULE 1

Part 1

RIGHTS IMPLIED IN DRAINAGE EASEMENT

Full and free right for every person who is at any time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement (hereinafter referred to as the grantee) or any part thereof with which the right shall be capable of enjoyment, and every person authorised by that person, from time to time and at all times to drain water (whether rain, storm, spring, soakage, or seepage water), sewerage or other effluent in any quantities across and through the land herein indicated as the servient tenement, together with the right to use, for the purposes of the easement, any line of pipes already laid within the servient tenement for the purpose of drainage or any pipe or pipes in replacement or in substitution therefor and where no such line of pipes exists, to lay, place and maintain a line of pipes of sufficient internal diameter beneath or upon the surface of the servient tenement, and together with the right for the grantee and every person authorised by the grantee, with any tools, implements, or machinery, necessary for the purpose, to enter upon the servient tenement and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining, or renewing such pipe line or any part thereof and for any of the aforesaid purposes to open the soil of the servient tenement to such extent as may be necessary provided that the grantee and the persons authorised by the grantee will take all reasonable precautions to ensure as little disturbance as possible to the surface of the servient tenement and will restore that surface as nearly as practicable to its original condition.

Part 2

RIGHTS IMPLIED IN RIGHT OF WAY

1. The right of the proprietor of the dominant tenement, that proprietor's servants, tenants, agents, workmen, licensees, and invitees (in common with the proprietor of the servient tenement, that proprietor's tenants, and any other person lawfully entitled) at all times by day and by night to go, pass, and repass, with or without vehicles, machinery, and implements of any kind, over and along the land over which the right of way is granted.

2. The following rights of the occupiers of the land for the benefit of which, and the land over which, the right of way is granted.

(a) The right to establish a driveway, and to effect necessary repairs to any existing driveway, and to carry out any necessary maintenance and upkeep, where necessary altering the state of the land over which the right of way is granted; and any necessary rights of entry on the land over which the right of way is granted with or without machinery, plant, and equipment.

(b) The right to have that land over which the right of way is granted kept clear at all times of obstructions whether caused by parked vehicles, deposit of materials, or unreasonable impediment to the use and enjoyment of the driveway.

(c) The right to a reasonable contribution from other occupiers towards the cost of establishment, maintenance, upkeep, and repair of the driveway to an appropriate standard.

(d) The right to recover from the other occupiers the cost of repairs to the driveway occasioned by any wilful or negligent act, and all such costs occasioned by them, their agents, servants, contractors, permitted occupants, residents, or invitees arising out of the use of the driveway.

(e) Where work is carried out by one occupier on the land of an adjoining owner pursuant to paragraph (b) of this clause or to any order of a Court, the right of the latter owner or occupier to have the land restored as far as possible to its former condition after the completion of the work, subject to the right of contribution described in paragraph (c) of this clause.

Part 3

RIGHTS IMPLIED IN EASEMENT FOR DRAINAGE IN GROSS Full and free right for the body in whose favour the easement is created (hereinafter referred to as the grantee) and every person authorised by it, from time to time and at all times to drain water (whether rain, storm, spring, soakage, or seepage water), sewerage or other effluent in any quantities across and through the land herein indicated as the servient tenement, together with the right to use, for the purposes of the easement, any line of pipes already laid within the servient tenement for the purpose of drainage or any pipe or pipes in replacement or in substitution therefor and where no such line of pipes exists, to lay, place and maintain a line of pipes of sufficient internal diameter beneath or upon the surface of the servient tenement, and together with the right for the grantee and every person authorised by the grantee, with any tools, implements, or machinery, necessary

for the purpose, to enter upon the servient tenement and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining, or renewing such pipe line or any part thereof and for any of the aforesaid purposes to open the soil of the servient tenement to such extent as may be necessary provided that the grantee and the persons authorised by the grantee will take all reasonable precautions to ensure as little disturbance as possible to the surface of the servient tenement and will restore that surface as nearly as practicable to its original condition.

PART 4

RIGHTS IMPLIED IN RIGHT OF WAY IN GROSS

1. The right of the body in whose favour the right of way is created (hereinafter referred to as the grantee) and that body's servants, tenants, agents, workmen, licensees, and invitees (in common with the proprietor of the servient tenement, that proprietor's tenants, and any other person lawfully entitled) at all times by day and by night to go, pass, and repass, with or without vehicles, machinery, and implements of any kind, over and along the land over which the right of way is granted.

2. The following rights of the grantee, and the occupiers of the land over which, the right of way is granted.

(a) The right to establish a driveway, and to effect necessary repairs to any existing driveway, and to carry out any necessary maintenance and upkeep, where necessary altering the state of the land over which the right of way is granted; and any necessary rights of entry on the land over which the right of way is granted with or without machinery, plant, and equipment.

(b) The right to have that land over which the right of way is granted kept clear at all times of obstructions whether caused by parked vehicles, deposit of materials, or unreasonable impediment to the use and enjoyment of the driveway.

(c) The right to a reasonable contribution from the grantee or other occupiers towards the cost of establishment, maintenance, upkeep, and repair of the driveway to an appropriate standard.

(d) The right to recover from the grantee or other occupiers the cost of repairs to the driveway occasioned by any wilful or negligent act, and all such costs occasioned by them, their agents, servants, contractors, permitted occupants, residents, or invitees arising out of the use of the driveway.

(e) Where work is carried out by the grantee or one occupier on the land of an adjoining owner pursuant to paragraph (b) of this clause or to any order of a Court, the right of the latter owner or occupier to have the land restored as far as possible to its former condition after the completion of the work, subject to the right of contribution described in paragraph (c) of this clause.

SCHEDULE 2

Consequential Amendments to various Acts

1. The Property Law Act 1952

Section 2

Insert the following

“**Conveyance**” in relation to land under the Title Registration Act 2005 includes the term “transfer”.

Section 16(4)

Instead of the words “register book” insert the word “Register”

Section 52A

Insert new section

52A. Conditions of sale of land under the provisions of the Title Registration Act 2005 - (1) Under a contract for the purchase of land under the provisions of the Title Registration Act 2005, the purchaser shall be entitled at the cost of the vendor:

- (a) to receive from the vendor sufficient particulars of title to enable the purchaser to prepare the appropriate instrument to give effect to the contract, and
- (b) to receive from the vendor an abstract of any instrument forming part of the vendor’s title, in respect of which a caveat is entered upon the folio of the Register kept under that Act, and
- (c) to have the relevant certificate of title or other document of title lodged by the vendor at the office of the Registrar to enable the instrument to be registered, and
- (d) to have any objection to the registration of the instrument removed by the vendor: Provided that, as to any such objection which the purchaser ought to have raised on the particulars or abstract, or upon the investigation of the title, or which arises from the purchaser’s own act, default, or omission, the purchaser shall not be entitled to have the same removed except at the purchaser’s own cost.

(2) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract, and to the provisions therein contained.

Section 54

Omit the section

Section 79

Add new subsection-

(6) Subject to the memoranda referred to in subsection (1) being in or to the effect of the approved forms of discharge of mortgage or variation of mortgage as appropriate, within the meaning of the Title Registration Act 2005, paragraphs (a),(b), (c), (d), (e) and (f) of that subsection apply to mortgages under that Act and, upon lodgment of such discharge or variation of mortgage for registration, the Registrar shall make such recordings in the Register kept under that Act as may be necessary to give effect to the discharge or variation of mortgage.

Section 87

Subsection (4) paragraph a)

Delete the paragraph and insert the following:

- a) He shall on payment of the prescribed fee make a recording in the folio of the Register discharging the mortgage.

Paragraph c)

Delete the paragraph.

Section 98A

Insert new section

98A. Transfer by mortgagee – Upon the registration of any transfer executed by a mortgagee for the purpose of any such sale as aforesaid, the estate or interest of the mortgagee therein expressed to be transferred shall pass to and vest in the purchaser, freed and discharged from all liability in account of the mortgage, or of any estate or interest except an estate or interest created by an instrument which has priority over the mortgage or which by reason of the consent of the mortgagee is binding on him.

(Note: See Westpac Bank v. Wulf)

Section 101

Subsection (2)

After the word “purchased” add the words

“or, where the land is under the Land Titles Act , a transfer in the approved form”

Subsections (3) and (4)

After the word “instrument” add the words

“or transfer”

Subsection (5)

After the word “conveyance” add the words

“or transfer”

Subsection (6)

After the word “conveyance” add the words

“or transfer”

Instead of the words “register book” insert the word

“Register”

Section 102

After the words “conveyance” wherever appearing, add the words “or transfer”

Section 126

Paragraphs (a) and (c)

Instead of “folium of the register book” insert the words “folio of the Register”

Paragraph (b)

Instead of “register book” insert the word “Register”

Paragraph (c)

After the word “land” insert the words “within the meaning of section 36 of the Title Registration Act 2005”

Section 127

Subsection (7)

Instead of the words “register book” insert the words “Register”

FIRST SCHEDULE

Section 3(3)

PROVISIONS WHICH DO NOT APPLY TO TITLE REGISTRATION ACT LAND

Section

10	Partitions, exchanges, etc.
44	Form of conveyance
47(3)	What conveyance of land is deemed to include
52 except Rule (v) in Paragraph (b)	Application of stated conditions of sale
55	Rights of purchaser as to execution
58	Restriction on constructive notice
76	Form of mortgage
79	Endorsements on mortgages

FOURTH SCHEDULE

Clause 10

Add the following paragraph

“This clause does not apply to a mortgage of land under the provisions of the Title Registration Act 2005.”

Insert Clause 10A

10A. That the mortgagee will, on payment by the mortgagor of all moneys due under the mortgage at the time and in the manner mentioned in the mortgage for payment of the principal sum, or at any time thereafter on payment of all moneys then due (three clear months notice of the intention to pay the same having been given) return to the mortgagor a discharge of mortgage in the form approved under the Title Registration Act 2005, together with all deeds, documents and certificates of title deposited with the mortgagee on account of the mortgage.

2. Alienation of Freehold Land Act 1972

Section 9(2)

Instead of the word "conveyance" insert the word "transfer"

TITLE REGISTRATION REGULATION 2005

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the Title Registration Regulation 2005

2 Commencement

This Regulation commences on

3 Definitions

In this Regulation:

approved means approved for the time being by the Registrar.

Practising certificate-A current practising certificate issued pursuant to the Law Practitioners Act 1976.

Samoa representative- The meaning given to it by the Oaths Affidavits and Declarations Act 1963.

Solicitor- A Solicitor or a Barrister and Solicitor of the Supreme Court of Samoa.

the Act means the Title Registration Act 2005

Part 2 Instruments

4 Lodgment of instruments

- (1) An instrument that is intended to be lodged at the office of the Registrar must be lodged in the approved manner.
- (2) The instrument must be accompanied by the relevant fee .

5 Certain instruments to comply with Schedule 1 requirements

- (1) This clause applies to the following instruments:
 - (a) an instrument evidencing a transaction with land that is required by the Act or any other Act to be in an approved form,
 - (b) a caveat referred to in section 50 of the Act,
- (2) An instrument to which this clause applies (being an instrument that is intended to be lodged at the office of the Registrar) must comply with the requirements set out in Schedule 1.

6 Further requirements for instruments

An instrument presented for lodgement must:

- (a) be in the approved form,
- (b) recite the distinctive reference allotted under the Act to the folio of the Register or to the registered instrument intended to be affected by the instrument.

7 Execution of instruments

- (1) If any instrument requiring attestation is executed in Samoa, the execution thereof must be attested by:
 - (a) a Registrar or Deputy Registrar of the Supreme Court; or
 - (b) the Registrar or Assistant Registrar of Land; or
 - (c) the Public Trustee; or
 - (d) a Notary Public; or
 - (e) a Solicitor; or
 - (f) a Minister of religion; or
 - (g) a Pulenuú; or
 - (h) a registered medical practitioner.
- (2) If any instrument requiring attestation is executed elsewhere than in Samoa; then the execution thereof must be attested by –
 - (a) a Samoa Representative or Notary Public exercising his office in the country in which the instrument is signed; or
 - (b) a Solicitor who holds a practising certificate.
- (3) For the purposes of section 21 of the Act, but without prejudice to any other method of signing, an instrument is sufficiently signed by a person if:
 - (a) that person affixes his or her mark to the instrument,
 - (b) the person attesting the affixing of the mark certifies in his or her attestation:
 - (i) that, before the mark was affixed, he or she explained the nature and effect of the instrument to the person making the mark, and
 - (ii) that he or she believed, at the time the mark was affixed, that the person making the mark understood the explanation.

8 Execution by attorney or other agent

- (1) Where any instrument produced for registration is executed by an agent on behalf of any person there shall be produced with the instrument, the power under which the instrument purports to be executed, unless the same has already been deposited pursuant to section 6(1)(k) of the Act, in which case the reference number allocated to the deposited power should be stated.
- (2) The instrument should bear a statement that the instrument was signed by the executing person “as attorney (or other agent) for AB (the party to the instrument) pursuant to power of attorney (or other authority) number

9 Form of attestation

A person attesting the execution of an instrument must certify that he or she has taken reasonable steps to confirm the identity of the executing party.

10 Certificate of correctness

Any instrument affecting any estate or interest in land which is required by section 25 of this Act to have a certificate of correctness endorsed thereon must contain a certificate in the following form:-

"Certified correct for the purposes of the Title Registration Act 2005."

11 Joint tenancy or tenancy in common to be stated

- (1) The following instruments must state whether the persons concerned take as joint tenants or as tenants in common:
 - (a) an application by 2 or more persons to be registered as proprietors of land,
 - (b) a transfer, mortgage, or lease in favour of 2 or more persons, and, if they take as tenants in common, the shares in which they take.
- (2) If the persons take as tenants in common, and if the shares in which they take are expressed as fractions, the shares must be stated by means of fractions having a common denominator and each numerator or denominator of the fraction must be an integer (for example: "A takes as to five-tenths, B takes as to three-tenths and C takes as to two-tenths").

12 Caveats: particulars of estate or interest claimed

A caveat to must specify the particulars set out in Schedule 2 in relation to the estate or interest to which a caveator claims to be entitled.

13 Caveats applying to part of land only: description of part

A caveat to which this clause applies that relates to part only of the land described in a folio of the Register or a current lease must describe the part in accordance with the requirements of Schedule 3.

14 Relodgment of instruments

For the purposes of section 25 (6) (a) of the Act, a dealing must be relodged in the approved manner.

15 Annexure of plans to instruments

- (1) A plan must not be annexed to or endorsed on an instrument lodged in the office of the Registrar unless the Registrar so approves.
- (2) A plan that is annexed to or endorsed on an instrument must comply with the requirements of Schedule 4.

Part 3 Searches

16 Public searches

For the purposes of section 71 of the Act:

- (a) the prescribed times at which information in the Register is to be made available are 9 am to 3 pm each day (other than a Saturday, Sunday or public holiday), and
- (b) the prescribed manner in which information in the Register is to be made available to an applicant is:
 - (i) by providing a copy of the information to the applicant in printed, electronic or other approved form, or
 - (ii) in the case of information contained in a computer folio of the Register, by furnishing a certificate to the applicant in accordance with section 72 or 73 of the Act, or
 - (iii) in the case of information contained in hardcopy form, by permitting the applicant to inspect the hardcopy.

Part 4 Miscellaneous

17 Service of notice

Where any notice is required to be given under the Act, such notice shall be given:

- (a) To any caveator, where an address for service is shown in the caveat by delivering a copy thereof to that address between the hours of 8.30 a.m. and 4.30 p.m. on any day other than a Saturday, Sunday or Public Holiday. and there leaving the same with some person at that address, or if no person is then present by affixing the same to the door of the premises at that address (or if the premises have no door, to a portion of the premises adjacent to an entrance);
- (b) To any other person-
 - (i) either by delivering a copy thereof to the solicitors for that other person (if known to the Registrar); or
 - (ii) at the option of the Registrar by publication of that notice in a newspaper published in Samoa or by means of a notice broadcast by radio or television.

18 Fees payable to the Registrar

A fee is payable before the service to which the fee relates is provided or at such time and in accordance with such conditions as the Registrar may agree with the person by whom the fee is payable.

Schedule 1 Requirements for certain instruments

(Clause 5)

- 1** The text must be clearly printed or written across the width of each sheet of paper used.
- 2** Unless the Registrar otherwise approves, all text must be in the English language.
- 3** The text must be printed or written on only one side of each sheet.
- 4** The sheets used must have clear margins:
 - (a) on the first sheet—of not less than 25mm at the top and 10mm on each side and at the bottom, and
 - (b) on each subsequent sheet—of not less than 10mm on each side and at the top and bottom.
- 5** The paper used must be:
 - (a) white and free from discolouration and blemishes, and
 - (b) of not less substance than 80 grams per square metre, and
 - (c) 297mm in length by 210mm in width (standard A4),or such other paper as is approved.
- 6** All text must be at least 10 point (1.8mm) in size and be clear and legible and in dense black ink or dense dark blue ink. The lines must not overlap. A carbon copy, or a copy in which the typewritten characters blur or spread or are liable to mark or damage an adjacent sheet, will not be accepted.
- 7** Handwriting and any imprint of a seal must be clear and legible and in dense black ink or dense dark blue ink.
- 8** All typewriting, printing, handwriting and any imprint of a seal must be to a standard that will enable it to be clearly reproduced by the imaging processes employed by the Registrar.
- 9** Typewriting, printing, writing or seals must not extend into the margin.
- 10** Typewriting, printing, writing or signatures must not extend into any seal.
- 11** Alterations must be made by striking through the matter intended to be altered or by the use of typewriter automatic correcting devices and not by rubbing, scraping or cutting the surface of the paper or by using correction fluid. An alteration must be initialled or verified by the parties to the instrument.
- 12** Signatures or initials verifying alterations by interlineation or the striking through of matter must be placed in the left-hand margin as near as practicable to the alteration.
- 13** The pages of an annexure to an instrument must be numbered sequentially in the centre of the foot of each page as “Page .. of .. pages” and the annexure:

- (a) must be identified (on the annexure itself) as an annexure to the instrument, and
- (b) must be signed, on the first and last pages, by the parties to the instrument (or, if a party is a corporation, by a person who has attested the affixing of the seal of the corporation or who has otherwise signed on its behalf), and
- (c) must be referred to in the body of the instrument.

14 An additional or inserted sheet intended to form part of an instrument:

- (a) must be attached to the instrument in a manner acceptable to the Registrar, and
- (b) if it contains matter that would normally be inserted in an approved form, must be signed by the parties to the dealing (or, if a party is a corporation, signed by a person who has attested the affixing of the seal of the corporation or who has otherwise signed on its behalf).

15 If, apart from any matter contained in an additional or inserted sheet, it is not readily apparent from the body of an instrument that the additional or inserted matter is intended to form part of the instrument:

- (a) a note referring to the additional or inserted matter (or covenants by number where appropriate) must be added to the body of the instrument, and
- (b) a note identifying the additional or inserted matter must be added to the additional or inserted sheet containing that matter.

16 Dimensions referred to in an instrument:

- (a) in the case of dimensions of length, must be expressed in metres and not in any other unit of measurement of length (whether or not related to the metre), and
- (b) in the case of dimensions of area, must be expressed in square metres, hectares or square kilometres and not in any other unit of measurement of area (whether or not related to the square metre, hectare or square kilometre).

17 Annexures, additional sheets or inserted sheets may be prepared by means of a photographic or similar approved process and, if so prepared:

- (a) must comply with paragraphs 1–16, and
- (b) must contain only printing that is permanent and legible with a dense black image free from excessive background, and
- (c) must be so prepared that the process does not affect the quality of the paper, and
- (d) must be authenticated by original signatures.

Schedule 2 Particulars of estate or interest to be specified in caveats

(Clause 12)

1 Particulars of the nature of the estate or interest in land claimed by the caveator.

- 2 The facts on which the claim is founded, including (if appropriate) a statement as to the manner in which the estate or interest claimed is derived from the registered proprietor of the estate or interest against which the caveat is to operate.
- 3 If the caveator's claim is based (wholly or in part) on the terms of a written agreement or other instrument, particulars of the nature and date of that agreement or instrument and the parties to it.
- 4 If the caveator claims as mortgagee, a statement of the amount (if readily ascertainable) of the debt or other sum of money charged on the land (or, if the amount is not readily ascertainable, the nature of the debt, or other charge secured on the land).
- 5 If the caveator claims as lessee for a term or for a renewal or extension of a term, particulars of the duration of the term or renewed or extended term and its commencing date (and, if the agreement for the term, renewal or extension includes an option for the renewal or extension of the term or to purchase the reversion, a statement to the appropriate effect).
- 6 If the caveator claims an easement, particulars of the land or authority that has or is intended to have the benefit of the easement.
- 7 If the caveator claims a right to the benefit of a restriction on the use of land, particulars of the land or authority intended to have the benefit of the restriction.
- 8 It is not necessary to specify:
 - (a) whether the estate or interest claimed is legal or equitable, or
 - (b) the quantum of the estate or interest claimed (except as provided in paragraphs 4 and 5), or
 - (c) how the estate or interest claimed ranks in priority with other estates and interests in the land.

Schedule 3 Description in caveats of part of land

(Clause 13)

- 1 Except where paragraph 2, or 3 applies, the description of the part must refer to the part:
 - (a) as a lot or portion in a plan deposited and registered within the meaning of the Surveying Act 2005, or
 - (b) as a proposed lot in a plan lodged for registration under the Surveying Act 2005, but only if the plan has not been so registered at the time of lodgment of the caveat, or
 - (c) if the Registrar so approves, as the land shown in a plan annexed to or endorsed on the caveat, which plan must contain sufficient information to establish, to the satisfaction of the Registrar, the relationship of the plan to the boundaries of the land comprised in the folio of the Register or the current lease to which the caveat relates.

- 2 If the claim of the caveator is in respect of an unregistered easement over part of the land comprised in a folio of the Register or a current lease, the description must identify the site of the easement:
 - (a) if the Registrar approves, as the land shown in a plan annexed to the caveat, or
 - (b) as the land shown in a plan which defines the site of the easement and which is registered or recorded in the office of the Registrar.
- 3 It is not necessary for a plan referred to in paragraph 2 to define precisely the site of an easement intended to be created in respect of an existing tunnel, pipe, conduit, wire or other similar object which is underground, or is within or beneath an existing building, so long as the plan shows the approximate position of the easement.

Schedule 4 Requirements for plans annexed to instruments

(Clause 10)

- 1 A plan or sketch must identify the land to which it relates.
- 2 A plan or sketch must be drawn in a manner and to a scale that allows all details and notations to be clearly reproduced by the imaging processes used by the Registrar.
- 3 A plan or sketch must contain the following particulars:
 - (a) a statement of the reduction ratio at which the plan is drawn,
 - (b) the north point (which must be directed upwards) and the meridian to which it relates,
 - (c) complete dimensions (including area) of every parcel comprised in the plan,
 - (d) sufficient information to define any proposed easement, or any proposed variation of an existing easement, and its relationship to the boundaries of any affected parcel,
 - (e) the date of preparation of the plan,
 - (f) the signature of each person who has signed the dealing or caveat to which the plan is annexed.
- 4 The description of the part of the land shown in the plan must agree with the description of that part shown in the dealing or caveat.
- 5 The lengths shown on a plan must be expressed in metres and not in any other unit of measurement of length (whether or not related to the metre), without the use of any symbol or abbreviation to represent the metre as the unit of measurement employed.
- 6 Area measurements shown on a plan must be expressed in the following units of measurement:
 - (a) areas of less than one hectare must be expressed in square metres accompanied by the symbol "m²",

- (b) areas of one hectare or more but less than 10,000 hectares must be expressed in hectares (using not more than 4 significant figures) accompanied by the symbol “ha”,
 - (c) areas of 10,000 hectares or more must be expressed in square kilometres accompanied by the symbol “km²”.
- 7** There must be a statement on each sheet of the reduction ratio at which the plan is drawn.
- 8** Unless the Registrar otherwise approves, all words, letters, figures and symbols appearing on a plan:
- (a) must be shown in capital letters (except as provided by paragraph 6), and
 - (b) must be open in formation and construction, and
 - (c) must be drawn in an upright style, and
 - (d) must be in the English language.
- 9** A plan may be altered only by striking through the matter to be altered. In particular, a plan may not be altered by the use of correction fluid or by rubbing, scraping or cutting the surface of the sheet on which the plan is drawn. The Registrar may require a sheet on which a plan is drawn to be replaced if, in the opinion of the Registrar any alteration on the sheet will render it unsuitable for imaging.
- 10** If lodged as an annexure, a plan must be neatly and clearly drawn without colour or edging.
- 11** Each plan sheet must consist of paper, or some other approved medium.
- 12** A plan must be drawn on only one side of a plan sheet and must be drawn on a matt surface.
- 13** Each plan sheet must be free from blemishes and creases.
- 14** Each plan sheet must be 297mm in length by 210mm in width (standard A4) and have clear margins of at least 10mm on each side and at the top and bottom.
- 15** If a plan is endorsed on a dealing or caveat, it must be drawn in such a manner that the lines and notation of the plan do not obscure or interfere with any writing or printing on the dealing or caveat.
- 16** Where the original plan is not available, an annexed plan may be a reproduction prepared by means of a photographic or similar approved process and, if so prepared:
- (a) must comply with paragraphs 1–15, and
 - (b) must contain only printing that is permanent and legible with a dense black image free from excessive background, and
 - (c) must be so prepared that the process does not affect the quality of the paper, and
 - (d) must be authenticated by original signatures.

17 Plans or sketches annexed to or endorsed on dealings or caveats must be compiled plans and not plans of survey except with the consent of the Registrar.