



# LAND TITLES REGISTRATION BILL 2005

## SAMOA

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2005 No \_\_\_\_\_

*A BILL INTITULED*

**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;**
- (d) **Access to information recorded in the Register; and**
- (e) **Matters incidental to the above.**

**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 Land Titles Registration Act 2005.

(2) Sections 1 and 2 of this Act commence on the date of assent by the Head of State.

(3) The other provisions of this Act commence on a day or days nominated by the Head of State.

(4) Notice of commencement of the provisions of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

**2. Interpretation** – (1) In this Act, unless the context otherwise requires;

“**approved form**” means a form approved by the Registrar;

“**caveator**” means the person by whom or on whose behalf a caveat has been lodged under the provisions of this Act, or any enactment repealed by the Act;

“**Chief Executive Officer**” means the Chief Executive Officer responsible for land titles registration;

“**commencement day**” means in relation to a provision of this Act the day that

provision commences;

**“computer folio”** means a folio of the Register that is not a manual folio;

**“computer folio certificate”** means a computer folio certificate issued under section 13;

**“Constitution”** means the Constitution of the Independent State of Samoa;

**“Court”** means the Supreme Court of Samoa;

**“customary land”** has the same meaning provided for in Article 101(2) of the Constitution;

**“customary land lease”** means a customary land lease interest held in accordance with Article 102 of the Constitution and the Alienation of Customary Land Act 1965;

**“customary land licence”** means a customary land license held in accordance with Article 102 of the Constitution;

**“fraud”** includes fraud involving a fictitious person;

**“freehold land”** has the same meaning provided for in Article 101(3) of the Constitution;

**“Government”** means the Government of Samoa;

**“instrument”** means 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”** means any estate or right in, over or under land recognised by law;

**“land”** includes all estates and interests, whether freehold or chattel, in real property;

**“lease”** means the grant with or without consideration, by the owner of land of the right to the exclusive possession of the owner’s 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 every lawful successor of the original holder of a customary land lease;

**“manual folio”** means a folio of the Register maintained by the Registrar wholly in the form of a document in writing;

**“Minister”** means the Minister responsible for the administration of this Act;

**“Ministry”** means the Ministry responsible for administering this Act;

**“mortgage”** means any charge on land created merely for securing the payment of a debt;

**“mortgagor”** means the proprietor of land or of any estate or interest in land pledged as security for the payment of a debt;

**“mortgagee”** means the proprietor of a mortgage;

**“officer”** means an employee of the Ministry or any other person authorised by the Chief Executive Officer to carry out any of the provisions of this Act;

**“ordinary folio”** means a folio of the Register that is not a qualified folio;

**“proprietor”** in relation to an interest in land means 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;

**“public land”** has the same meaning provided for in Article 101(4) of the Constitution;

**“qualified folio”** means a folio of the Register in which the land is held subject to existing interests, whether recorded in the folio or not;

**“Register”** means the Land Register required to be maintained under section 8;

**“Registrar”** means the Registrar of Land appointed under section 3(1) of this Act, and includes any person designated under section 3 of this Act as an Assistant Registrar of Land when acting within the scope of their delegated authority;

**“registration”** means the administrative process which, under this Act, affects, confers, confirms or terminates interests by means of entries in the Register;

**“regulations”** means the regulations made under this Act;

**“solicitor”** means 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;

**“transfer”** means the passing of any estate or interest in land under this Act whether for valuable consideration or otherwise;

**“transmission”** means the process of creating or passing an interest in land by operation of law, and includes the passing of an interest;

**“writ”** means 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;.

(2) A description 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 the person.

## **PART 2 ADMINISTRATION**

**3. Registrar and Assistant Registrar** - (1) There shall continue to be a Registrar of Land who shall be the Chief Executive Officer responsible for the administration of this Act.

(2) There shall be an Assistant Registrar of Land who, 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 has and may exercise and perform all the powers, functions, and duties of the Registrar.

(3) The Registrar may delegate the Registrar’s powers and functions to the Assistant Registrar of Land.

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

(5) 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.

(6) 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.

- 4. 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 a cost effective manner.

**5. 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. The notice shall specify the

action proposed to be taken by the Registrar and a time limit for any person affected to respond.

- (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 (1)(a) fails to produce the instrument or to allow it to be inspected or, being summoned pursuant to paragraph (1)(b), 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 2 penalty units, if the instrument or information withheld appears to the Registrar material, the Registrar 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 paragraph (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 of the correction thereof;
- (b) if the correction prejudices or affects 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 existing, maintain available for search a record of the date, nature and effect of the correction.

(5) Upon the recording, pursuant to paragraph (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 paragraph (1)(l) is separate from and in addition to, the customary land registration required by section 10 of this Act.

**6. Power to serve notice of proposed action - (1)** The Registrar may, before making an alteration under paragraph 5(1)(e) 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 paragraph (1)(h), 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 paragraph (1)(h) does not within the time limited by the notice 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 paragraph (1)(h).

**7. Indemnity of officers -** The Registrar and any officer of the Ministry shall not 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**

**8. 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 all acts 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 commencement day 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 recorded by this Act or by other applicable law;

(b) may record in the Register information that is authorised to be recorded by this Act or by other applicable law;

(c) subject to this Act or other applicable law, may record in the Register information which the Registrar is satisfied should be recorded in the Register.

(5) The Registrar shall maintain indexes, documents and information in respect of the information required to be recorded in the Register under this Act in such a way that the indexes, documents and information are reasonably accessible to the Registrar and to any person authorized by this Act or other applicable 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.

**9. Inclusion of land** – (1) Where after the commencement day any land becomes public land, freehold land, or customary land leased or licenced under the provisions of the Alienation of the Customary Land Act 1965, it shall be the duty of the Registrar to include such public land, freehold land or 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 under the provisions of the Land and Titles Act 1981.

(3) 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.

**10. Folios of the Register** - (1) The Registrar shall create 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 thinks fit, of:
  - (i) other estates or interests, if any, affecting the land registered under this subsection; and
  - (ii) other information, if any, that relates to the land registered under this subsection or any estate or interest therein and is included in that record pursuant to this or any other applicable law or an instrument made under any such applicable law,

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, 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 fit, create a new folio or 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 computer folio as the Registrar thinks fit.

**11. Change of name of proprietor** - The Registrar may of his own motion, and shall on lodgement of an application in the approved form, 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.

**12. 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.

**13. 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**

**14. Land deemed to be qualified title land** - Upon the commencement day of this provision 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 existing interests which may exist, whether recorded in the folio or not.

**15. 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 existing interest, whether recorded therein or not.

**16. Recording of existing interests** – (1) The Registrar may, at any time after the creation of a qualified folio of the Register, record in that folio any additional existing 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 request the Registrar in writing to have that estate or interest recorded in the relevant qualified folio of the Register.

**17. Caveat against lapsing of caution** – Any person claiming an interest in land which was existing 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.

**18. Lapsing of cautions** – (1) Immediately upon the expiration of 12 years after the commencement of this provision;

- (a) land comprised 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 under section 51.

(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.

**19. Application of provisions of this Act to qualified folio and land therein**  
- 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 Act and in any other law 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 existing interest in the land comprised therein, whether recorded in the Register or not.

## **PART 5 INSTRUMENTS GENERALLY**

**20. 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 that 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.

**21. 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) In lieu of signing the proper instrument for the purpose of dealing with land under the provisions of this Act, a corporation may affix the common seal of the 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 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 sign a certificate of correctness 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 10 penalty units.

(6) Such penalty shall not prevent the person who may have sustained any damage or loss as a consequence of a false or negligent signature under subsection (5) 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 to that instrument a distinctive reference.

(2) An instrument is lodged, within the meaning of this Act, only when the Registrar has, under subsection (1), allotted 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 specifies 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 subsection(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 withdrawn shall be deemed not to be in registrable form until relogged 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 subsection 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 withdrawn, 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 withdrawn 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 relogged 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 in that land, 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 2005, 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 (1)(a), the Registrar is empowered to destroy.

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

- (a) it evidences an existing 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) for as long as the interest evidenced by the document subsists or for as long as the Registrar would, but for paragraph (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 existing 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 an existing 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:

- (a) 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
- (b) be required to see to the application of the purchase money or any part thereof; or
- (c) 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 an existing 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 an existing 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 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 and transferee's right to sue** - (1) By virtue of a transfer executed under section 36 and registered under section 37, 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 form is lodged for registration before the expiry of a lease term.

(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 of the lease 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.

**42. 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 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 any intervening circumstances 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 and caused to be registered 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) A legal mortgage which existed and was recorded on a folio of the Register at the commencement of this Act 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 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 form 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 subsection 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; and
- (d) any instrument which is shown to the satisfaction of the Registrar not to prejudice the person whose protection the caveat was lodged.

(3) Where a caveat lodged under section 51 purports to protect an existing 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 receipt of a 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, apply to the Court for an order that the caveat be removed.
- (c) The Court 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 deems just.

**55. Notice by Registrar to remove caveat -** (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 before the expiry of the twenty-one days, the Registrar is served with an order of the Court extending the time as provided in the notice.

(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 under this section, 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**

- (1) Subject to subsection (2), except in the case of a caveat :
  - (a) lodged by or on behalf of a beneficiary claiming under any will or settlement; or
  - (b) for the protection of any trust; or
  - (c) by the Registrar in the exercise of the Registrar's powers under this Act,

every caveat shall, after 14 days notice has been given to the caveator that application has been made for the registration of any instrument affecting the land, estate or interest, be deemed to have lapsed in relation to the land estate or interest or so much of it as is referred to in the notice.

(2) Subsection (1) does not apply if notice is given to the Registrar within 14 days of receiving the notice referred to in subsection (1) that application for an order to the contrary has been made to the Court and the order of the Court is made and served on the Registrar within a further period of 28 days.

**58. Caveat may be withdrawn** – (1) Any caveat may be withdrawn by the caveator or by a solicitor acting on instructions of the caveator, either as to the whole or part of the land affected.

(2) 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 and registered 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 pursuant that operation, 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:

- a) may, of the Registrar's own motion; and
- b) shall, on application in the approved form by a person in whom there has been such a vesting,

register the person in whom any such land is vested as the proprietor of that estate.

(2) The Registrar may register a person as proprietor under subsection (1):

- a) upon evidence as appears to the Registrar sufficient; and
- b) after such notice (if any) to such person as the Registrar deems proper,

and make 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 the proprietor, or reserve an easement for the benefit of land retained by the proprietor.

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

- (a) the nature of the easement, the period for which the easement is granted and any conditions, limitations or restrictions intended to affect its enjoyment; and
- (b) the land burdened by the easement; and
- (c) the site of the easement; and
- (d) 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 upon 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 upon recording such, 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 the easement or restriction was intended to subsist has expired; or
- (b) the event upon which the easement or restriction was intended to determine has occurred; or
- (c) the easement or restriction 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; and
- (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) Subject to subsection (5) with effect from the time of service of the writ of sale upon the Registrar such writ of sale, has 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; or
- (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 subsection 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) Upon payment of the prescribed fee, the Registrar shall furnish to any person 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) Subject to subsection (3), 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 paragraphs (1) (a)–(e).

(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 an existing 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, unless the contrary otherwise requires:

**“administrative proceedings”** means proceedings on a claim referred to in section 80;

**“compensable loss”** means loss or damage of the kind referred to in subsection 79(1), other than loss or damage of the kind referred to in subsection 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 the Registrar’s 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 such 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 referred to in subsection (1) 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 paragraph (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 taken under subsection (2) if of the opinion that the claimant has a cause of action against that person in respect of the compensable loss to which such proceedings relate.

**83. Payment by Government** – (1) Subject to subsection (2) 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 Treasury Fund, including the payment of compensation in settlement of any such claim,

(2) The regulations may prescribe a maximum amount payable as compensation under this Part.

**84. Measure of damages** — The compensation shall be:

(a) where a person is deprived of an interest in land, the value of the interest; or

(b) where 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** – Upon request, the Registrar must provide 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,  
with a copy of the Registrar's reasons for the decision.

**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 may:

(a) uphold the Registrar's decision; or

(b) 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. Fraudulent acts**

(1) A person who:

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

is guilty of an offence and liable to a fine not exceeding 100 penalty units or imprisonment for 3 years or both.

(2) A folio of the Register, recording or alteration the creation of which has been procured by fraud is void.

**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** (1) The Head of State may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, without limiting the generality of the foregoing, may make regulations concerning the following matters:

- (a) for prescribing fees or a basis for calculating fees; or
- (b) for prescribing remuneration for services rendered by any person under this Act; or
- (c) prescribing a maximum amount payable as compensation 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 commences 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 44 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 Registration 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 Registration Act 2005.

**97. Consequential amendments** – (1) An Act specified in the heading to an item in 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 21 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 in alphabetical order:

“conveyance” in relation to land under the Land Titles Registration Act 2005 includes the term “transfer”.

##### *Section 3*

In subsection 3 omit the name of the Act “Land Registration Act 1992/1993” and substitute “Land Titles Registration Act 2005”.

##### *Section 16(4)*

Omit the words “register book” insert the word “Register”.

##### *Section 52A*

Insert a new section 52A after section 52:

**“52A. Conditions of sale of land under the provisions of the Land Titles Registration Act 2005 - (1)** Under a contract for the purchase of land under the provisions of the Land Titles 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 the Land Titles Registration Act 2005; 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 section 54.

### ***Section 79***

Add new subsection (6):

"(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 Land Titles Registration Act 2005, paragraphs (a),(b), (c), (d), (e) and (f) of that subsection apply to mortgages under the Land Titles Registration Act 2005 and, upon lodgment of such discharge or variation of mortgage for registration, the Registrar shall make such recordings in the Register kept under the Land Titles Registration Act 2005 as may be necessary to give effect to the discharge or variation of mortgage."

### ***Section 87***

1. Delete subsection (4) paragraph (a) 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."

2. Delete paragraph (c).

### ***Section 98A***

Insert new section 98A:

**"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."

### ***Section 101***

1. In subsection (2) after the word "purchased" insert the words"

"or, where the land is under the Land Titles Registration Act 2005 , a transfer in the approved form".

2. In subsections (3) and (4), after the word "instrument" wherever mentioned, insert the words "or transfer".

3. In subsection (5) after the word "conveyance" insert the words "or transfer".

4. In subsection (6) :

(a) after the word "conveyance" insert the words "or transfer"; and

(b) omit the words "register book" and substitute the word "Register".

**Section 102**

After the words “conveyance” wherever mentioned, insert the words “or transfer”

**Section 126**

1. In paragraphs (a) and (c) omit the words “folium of the register book” and substitute the words “folio of the Register”.
2. In paragraph (b) omit the words “register book” and substitute the word “Register”.
3. In paragraph (c) insert after the word “land” the following “within the meaning of section 36 of the Land Titles Registration Act 2005”.

**Section 127**

In subsection (7) omit the words “register book” and substitute the word “Register”.

**First Schedule**

The First Schedule is omitted and the following is substituted:

**FIRST SCHEDULE**

**Subsection 3(3)**

**PROVISIONS WHICH DO NOT APPLY TO  
LAND TITLES REGISTRATION ACT 2005**

<b>Section</b>	
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 on mortgage
79	Endorsements on mortgages

**FOURTH SCHEDULE**

**Clause 10**

In clause 10:

- a) Omit the word “That” and substitute the words “Subject to clause 10A, that”;
- b) Insert the following clauses after clause 10:

“10A. Clause 10 does not apply to a mortgage of land under the provisions of the Land Titles Registration Act 2005.

10B. 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 Land Titles 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)**

Omit the word “conveyance” and substitute the word “transfer”.