



SAMOA

ALIENATION OF FREEHOLD LAND ACT 1972

Arrangement of Provisions

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|--|--------------------------------------|
| 1. Short title | 7. Granting or refusal of consent |
| 2. Interpretation | 8. Death of a party to a transaction |
| 3. Administration | 9. Registration of dealings |
| 4. Alienation to which this Act applies | 10. Regulations |
| 5. Alienation exempt from this Act | |
| 6. Prohibiting alienation without consent of Head of State | |

ALIENATION OF FREEHOLD LAND ACT 1972 1972 No.10

AN ACT to control the alienation of freehold land to persons who are not resident citizens and to overseas corporations.
[Assent and commencement date: 9 August 1972]

1. Short title – This Act may be cited as the Alienation of Freehold Land Act 1972.

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

“Chief Executive Officer” means the Chief Executive Officer of the Ministry;

“Constitution” means the Constitution of the Independent State of Samoa 1960;

“freehold land” has the same meaning as in Article 101 of the Constitution;

“Government” means the Government of Samoa;

Alienation of Freehold Land Act 1972

“Minister” means the Minister responsible for Lands;

“Ministry” means the Ministry responsible for Lands;

“overseas corporation” means a body corporate which:

- (a) is incorporated outside Samoa; or
- (b) is a company which is a subsidiary of any other company or a body corporate incorporated outside Samoa; or
- (c) is a company in which more than 25% of the shares or of the voting power are in the hands of persons who are not resident citizens;

“resident citizen” means a citizen of Samoa in terms of any citizenship legislation currently in force who is ordinarily resident in Samoa.

(2) For the purposes of this Act, a person is taken to be an ordinarily resident in Samoa on any date if:

- (a) the person has reside in Samoa for not less than 2½ years during the period of 3 years immediately preceding that date; and
- (b) the person intends to continue to reside permanently in Samoa.

(3) For the purposes of this Act, where in any transaction there are 2 or more purchasers, then if 1 of the purchasers, being an individual, is not a resident citizen, or being a body corporate, is an overseas corporation, the provisions of this Act apply to the transaction.

(4) For the purposes of this Act, where the purchaser in any transaction is a trustee, the provisions of this Act apply as if each beneficiary were a purchaser, and where the purchaser is an agent the provisions hereof apply as if each principal or nominee were a purchaser.

3. Administration – This Act is administered by the Chief Executive Officer under the control of the Minister.

4. Alienation to which this Act applies – (1) This Act applies to a contract or agreement:

- (a) for the sale or transfer of any freehold estate or interest in freehold land, whether legal or equitable;
- (b) for the leasing of any freehold land for a term of more than 20 years;

- (c) for the sale or transfer of any leasehold estate or interest in freehold land, whether legal or equitable, of which more than 20 years is unexpired;
- (d) for the granting of an option to purchase or otherwise acquire any estate or interest in freehold land as aforesaid, in any case where the purchaser or lessee—
 - (i) being an individual and not being a trustee, is not a resident citizen; or
 - (ii) being a body corporate and not being a trustee, is an overseas corporation; or
 - (iii) is a trustee under a trust any beneficiary of which is not a resident citizen or is an overseas corporation.

(2) Where any lease or any contract or agreement for a lease contains a provision enabling the lease or the contract or agreement for a lease to be renewed for any period or successive periods upon the expiration of the original term thereof, the period or periods for which the lease or contract or agreement may be so renewed is, for the purposes of this Act, taken to be part of the original term thereof.

5. Alienation exempt from this Act – (1) Nothing in this Act applies with respect to:

- (a) alienation entered into before the commencement of this Act, or the exercise of any option granted before the commencement of this Act;
- (b) *bona fide* contract or agreement for alienation of freehold land without any valuable consideration in money or money's worth;
- (c) contract or agreement for the transfer of any freehold land or interest therein by way of security only or for the retransfer of property so transferred on the discharge of the security;
- (d) contract or agreement for the sale or transfer of any freehold land or interest therein to a trustee for the benefit of the wife or husband or a child or children or a grandchild or grandchildren of the vendor;

4

Alienation of Freehold Land Act 1972

- (e) contract or agreement for the transfer of any freehold land or interest therein from a trustee to a trustee on the appointment of a new trustee or the retirement of a trustee;
- (f) contract or agreement for the transfer by a trustee, executor, or administrator to a beneficiary of any freehold land or interest therein to which the beneficiary is entitled under any trust, will, or intestacy;
- (g) contract or agreement for the sale or transfer of any estate or interest by a trustee, executor, or administrator to a purchaser under an option given in any trust or will;
- (h) contract or agreement for the sale or transfer of any freehold land or interest therein to or by the Government;
- (i) contract or agreement for the sale or transfer of any freehold land or interest therein to or by the Government of any other State, or to or by any foreign organisation to which the Land for Foreign Purposes Act 1993 applies;
- (j) transaction of a class for the time being exempted from this Act by regulations made under this Act.

(2) In subsection (1), “transfer” includes a lease.

6. Prohibiting alienation without consent of Head of State – (1) Where any alienation to which this Act applies is entered into, the transaction is taken to be entered into in contravention of this Act, unless an application for the written consent of the Head of State to the transaction is made in writing to the Minister within 3 months after the date of the transaction or within such further time as may be allowed by the Minister.

(2) No person shall enter into any transaction in contravention of this Act, whether as vendor, purchaser, lessor, lessee, or otherwise, and whether as principal or agent, or procure or induce any other person to enter into any transaction in contravention of this Act.

(3) No person is entitled to any commission, reward, or other valuable consideration in respect of any transaction entered into in contravention of this Act.

(4) Where a transaction is entered into in contravention of this Act or where a condition upon or subject to which the Head of State grants his or her consent to a transaction is not complied with, the transaction is deemed to be unlawful and has no effect.

(5) Where a transaction is entered into subject to the consent of the Head of State, the transaction shall not have any effect unless the Head of State consents to it and the conditions upon or subject to which the consent is granted are complied with.

(6) The Minister shall not grant an extension of time within which to make application for the consent of the Head of State, unless the Minister is satisfied that the delay in making the application was due to mistake (whether of fact or of law) of the parties or any of them or of any other person or to circumstances beyond the control of the parties or of any of them, and that the delay has not been used for the purpose of contravening the provisions of this Act.

(7) Applications for the consent of the Head of State to a transaction to which this Act applies may be made by or on behalf of any party to the transaction.

7. Granting or refusal of consent – (1) In granting or refusing his or her consent to a transaction to which this Act applies, the Head of State shall act on the advice of the Minister, but without prejudice to Article 37(4) of the Constitution.

(2) In considering whether to advise the Head of State to grant or refuse his or her consent to any such transaction, the Minister shall have regard to the following matters:

- (a) the nature of the use to which the purchaser or lessee proposes to devote the land and his or her ability to achieve that purpose;
- (b) whether the acquisition would be in or against the public interest, and whether the intended use of the land will be in the interests of the community generally;
- (c) whether a refusal of consent would result in substantial hardship to the owner of the land;

- (d) all such other relevant circumstances as is brought to his or her attention by or on behalf of any party to the transaction.

8. Death of a party to a transaction – In the event of the death of a party to a transaction in respect of which an application for consent is pending under this Act, the application and all proceedings in respect thereof shall enure and be continued as if it had been granted to or in respect of the personal representatives of the deceased person.

9. Registration of dealings – (1) Despite this Act the Registrar of Lands shall not register a dealing to give effect to a contract or agreement specified in section 4 unless the Head of State has consented in writing to the transaction.

(2) The Registrar may accept as sufficient proof that this Act does not apply to the transaction, a certificate endorsed on the contract or lessee or instrument of transfer and signed by the purchaser or lessee or the solicitor for the purchaser or lessee.

(3) The Registrar may also require such further proof as he or she considers necessary to satisfy him or her that this Act does not apply to the transaction.

10. Regulations – The Head of State, acting on the advice of Cabinet, may make regulations as may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof and including the prescribing of procedure for applications for consent under this Act.

REVISION NOTES 2008 – 2017

This is the official version of this Act as at 31 December 2017.

This Act has been revised by the Legislative Drafting Division from 2008 to 2017 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date and correct references to offices, officers and statutes (Constitution of the Independent State of Samoa 1960).

- (c) Insertion of the commencement date (date of assent)
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “shall be deemed” changed to “is taken” and “shall” or “shall be” with “is” or “are”
 - (ii) “from time to time” deleted
 - (iii) “member” or “member of board” changed to “director”
 - (iv) “shall have” changed to “has”
 - (v) Numbers in words changed to figures
 - (vi) “notwithstanding” changed to “despite”
 - (vii) References to the following terms and phrases changed:
 - “any” or “every” – substituted “a” or “an”
 - “every person” or “any person” or “anyone” – substituted “a person”

The following amendments were made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the Land Titles Registration Act 2008, No.21 commenced on 2 March 2009:

- Section 9(2)** - deleted and substituted the word “conveyance” with the word “transfer”.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered
by the Ministry of Natural Resources and Environment.*
