

SAMOA

Arrangement of Provisions

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2012, No. 14**AN ACT to amend the Land and Titles Act 1981.***[16th March 2012]*

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

1. Short title and commencement-(1) This Act may be cited as the Land and Titles Amendment Act 2012 and shall be read together with and form part of the Land and Titles Act 1981.

(2) This Act commences on the date of assent by the Head of State.

2. Principal Act - In this Act, “Principal Act” means the Land and Titles Act 1981.

3. Interpretation - Section 2 of the Principal Act is amended:

- (a) by omitting the definition of “Pulefaamau”;
- (b) by inserting in its appropriate alphabetical position the following definition:

““Samoan conciliation” means the process by which the parties to a dispute, with the assistance of the Registrar and in accordance with Samoan custom and usage, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement and in which the Registrar may make suggestions for terms of settlement and may actively encourage the participants to reach an agreement which accords with Samoan custom and usage and the requirements of this Act.”.

4. Repeal and substitution - Section 6 of the Principal Act is repealed and the following section is substituted:

“6. Deputy Registrars and Assistant Registrars-(1)
The Public Service Commission shall appoint persons qualified to be Deputy Registrars and Assistant Registrars.

(2) In respect of the Court and subject to the control of the Registrar, each Deputy Registrar and Assistant Registrar shall possess, exercise and perform the same powers, functions and duties as the Registrar, and every reference in this Act to the Registrar, unless the context otherwise requires, includes a reference to each Deputy Registrar and Assistant Registrar.”.

5. Repeal and substitution-(1) Subject to subsection (2), Part IV of the Principal Act is repealed and the following Part is substituted:

**“PART IV
INTENTION TO APPOINT**

14. Intention to appoint - Any Samoan who intends to appoint any person to be the holder of a matai name or title may give notice of such intention to the Registrar at the office of the Court in Savaii or Upolu.

15. Publication of intention in Savali - The Registrar, on being satisfied that the intention is bona fide, and upon receiving the fee prescribed in the First Schedule shall publish particulars of the intention to make an appointment in two (2) consecutive issues of the Savali.

16. Form of publication-(1) Publication of the particulars of the intention to make an appointment shall be in such form as the Registrar shall prescribe.

(2) Each publication shall contain a notice fixing the time or period (not being less than three (3) months from the date of the first publication), and the place at which objections to the appointment may be lodged by any Samoan who may be affected by the appointment.

17. Procedure if objection lodged-(1) The Registrar, on receiving any objection shall, as soon as practicable, prepare, sign and file a petition to the Court for determination.

(2) The person objecting shall pay to the Registrar, on the day he or she files his objection, the fee prescribed in the First Schedule.

18. Procedure if no objection lodged - If there is no objection to the proposed appointment, the Registrar shall, as soon as practicable after the time fixed for lodging objections, prepare, sign and file a petition to the Court for confirmation.

19. Jurisdiction where there is no objection-(1) The Court, sitting without Samoan Judges or Assessors, shall have jurisdiction, ex parte, to confirm wholly or in part, and with or without modification, any claim for the making of any appointment against which an objection has not been lodged, and for all purposes every confirmation shall be regarded as a final decision of the Court.

(2) Any proposed appointment confirmed under this section may be set aside, in proceedings under this Act, for reason of error, misconduct or bad faith.”.

(2) Notwithstanding the repeal and substitution of Part IV of the Principal Act by subsection (1), Part IV of the Act as it exists prior to the commencement day continues to apply in relation to notice of a claim for pulefaamau received by the Registrar at the office of the Court in Savaii or Upolu prior to the commencement day.

(3) In this section commencement day means the date this amending Act comes into force.

6. Insertion of new sections – After section 20 of the Principal Act the following sections are inserted:

“20A. Qualifications of a matai-(1) A person is not qualified to hold a matai title or be registered as a matai unless:

- (a) the person is at least 25 years of age; and
- (b) the person is prepared to carry out the obligations of his or her matai title including properly serving his or her family, village and community according to Samoan custom and usage.

(2) Despite subsection (1)(a) the Court may in special circumstances and in accordance with Samoan customs and usage upon petition by a Sa’o or a Suli, permit a person who is not yet 25 but is at least 21 years old to have the age qualification to be a matai title holder.

20B. Removal of matai title- The Court on petition by a Sa'o or a Suli may remove a matai title where the holder of that title:

- (a) has acted in a manner that brings disrepute to the family, village or community of the matai; or
- (b) otherwise has failed to properly perform the duties of a matai; or
- (c) has been convicted of a serious crime that is punishable by imprisonment for life.”.

7. Register of Matais-(1) Section 22 of the Land and Titles Act 1981 is amended by inserting the following after subsection (3)(b):

“(c) the deletion is requested in writing by the holder of the matai name or title.”.

(2) By deleting the word “Subsection” in section 22(7) and substitute the following before “(3)”:

“Paragraph (a) and (b) of subsection”.

(3) By inserting the following after the word “under” in subsection (8):

“paragraph (a) or (b) of”.

(4) By inserting after subsection (10) a new subsection (11) as follows:

“(11) Where the matai name or title is deleted from the Register pursuant to paragraph (c) of subsection (3), that matai name or title must not be registered again in respect of the person who has requested the deletion unless:

- (a) a period of five (5) years has passed from the date of deletion; and
- (b) the person has again been appointed the holder of such matai name or title in accordance with the customs and usage of the Samoan people and pursuant to Part V of the Act.”.

8. Insertion of new sections - After section 34 of the Principal Act the following sections are inserted:

“34A. Genuine effort to resolve the dispute - Each party to a matter in the Court is required to make a genuine effort to resolve the dispute before starting a case by:

- (a) participating in dispute resolution, such as Samoan conciliation; and
- (b) exchanging a notice of intention to claim and exploring options for settlement by correspondence.

34B. Registrar’s powers in connection with resolution of dispute-(1) The Registrar may conduct Samoan conciliation in relation to any proceedings at any stage in those proceedings or in relation to any dispute prior to a petition being filed under this Act in relation to that dispute with a view to resolving that dispute.

(2) The Registrar may make suggestions and provide advice and assistance to parties to a dispute concerning customary land or titles with a view to resolving that dispute notwithstanding that no petition has been filed in respect of that dispute.

(3) The rules can specify a fee for the performance by the Registrar of the power under this section.

34C. Samoan conciliation and mediation-(1) The Court shall refuse to hear a matter if the parties to that matter have not undertaken Samoan conciliation.

(2) The Court may, by order, refer proceedings or any part of them or any matter arising out of them, to a mediator for mediation.

(3) Referrals under subsection (2) to a mediator may be made with or without the consent of the parties to the proceedings.

(4) Where the Court refers any proceedings to mediation under subsection (2), that mediation must be completed within a period of 45 days.

34D. Dispute resolution processes-(1) If the Court considers that a dispute resolution process may help the parties to a dispute before it to resolve that dispute, the Court may advise the parties to use that dispute resolution process.

(2) If the Court does so advise the parties, it may, if it considers it desirable to do so, adjourn any proceedings before it to enable attendance in connection with the dispute resolution process.”.

9. Institution of proceedings - Section 42 of the Principal Act is amended:

- (a) by omitting from subsection (1) “by oral or”; and
- (b) by omitting from subsection (5) “Upon” and substituting “Subject to subsection (6), upon”; and
- (c) by adding at the end the following subsection:

“(6) The Registrar can stay setting down a matter for hearing until the parties to that matter have undertaken Samoan conciliation or otherwise attempted reconciliation according to Samoan custom and usage.”.

10. Insertion of new section - After section 43 of the Principal Act the following section is inserted:

“**43A. Discontinuance of proceedings** - The President or a Deputy President upon the recommendation of the Registrar and with the consent of all parties, may order that proceedings be discontinued.”.

11. Repeal and substitution - Sections 47 and 48 of the Principal Act are repealed and the following sections are substituted:

“**47. Practice and procedure of the Court-**(1) The Head of State, acting on the advice of Cabinet and with the concurrence of the Judicial Service Commission, may from time to time by Order make rules of the Court as are

consistent with this Act for the purpose of regulating the practice and procedure of the Court in all matters within its jurisdiction and prescribing the fees payable in respect of the proceedings of the Court.

(2) The rules of Court made under subsection (1) shall be referred to as the ‘Land and Title Court Procedure Rules’.

(3) Subject to subsection (4), where no rules of Court have been made under subsection (1) in relation to an issue of practice and procedure, the rules of the Supreme Court shall determine the practice and procedure of the Court unless inconsistent with or inapplicable to the provisions of this Act.

(4) Where there is any inconsistency between the rules of Court made under subsection (1) and the rules of the Supreme Court in their application to the Court, the rules of Court made under subsection (1) shall prevail.

(5) In any matter of practice or procedure not provided for, or where the strict compliance with any rule of practice or procedure may be inequitable or inconvenient, the Court may act in each case in such manner as it considers most consistent with Samoan custom and usage and natural justice and convenience.

(6) Rules made under subsection (1) in relation to fees may prescribe conditions on which such fees may in any case be refused or remitted by the Court.

(7) In this section ‘Judicial Services Commission’ means the Commission established under Article 72 of the Constitution.

47A. Rules of the Court - The Rules of Court may make provision for or in relation to:

- (a) trial management; and
- (b) the adjournment of proceedings; and
- (c) mediation and preliminary conferences prior to a hearing; and
- (d) the prevention or termination of frivolous or vexatious proceedings; and
- (e) the summary disposal of proceedings; and

- (f) how a person makes a submission to the Court; and
- (g) dispute resolution processes and the procedure to be followed when any dispute resolution process ends; and
- (h) consent orders where parties have reached agreement about a matter in dispute in the proceedings; and
- (i) such other matters as the Court thinks appropriate.

48. Registrar's functions-(1) The following functions of the Court may, if the President or a Deputy President so directs, be exercised by a Registrar:

- (a) in proceedings in the Court – the function of making an order adjourning the hearing of the proceedings; and
- (b) the function of making an order the terms of which have been agreed upon by all the parties to the proceedings; and
- (c) the function of Samoan conciliation; and
- (d) the function of making an order in relation to applications that need to be dealt with as a matter of urgency.

(2) An order made by the Registrar in relation to a function under this Act given to the Registrar, is deemed to be an order of the Court.”.

12. Delivery of decisions - Section 65 of the Principal Act is amended by adding at the end the following subsection:

“(2) The final decision shall be deemed complete upon delivery under subsection (1).”.

13. Repeal - Section 69 of the Principal Act is repealed.

**The Land and Titles Amendment Act 2012 is administered
by the Ministry of Justice and Courts Administration.**

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