

SAMOA

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2019, No. 27

AN ACT to amend the Alienation of Customary Land Act 1965 (“Principal Act”). [01st July 2019]

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 Leasing and Licensing of Customary Land Amendment Act 2019.
- (2) This Act commences on the date of assent by the Head of State.

1A. Section 2 amended:

Section 2 of the Principal Act is amended as follows:

- (a) for the definition of “beneficial owner” substitute with “beneficial customary land owner” in the entire Principal Act;
- (b) for the definition of “Chief Executive Officer” substitute with “Chief Executive Officer” means the Chief Executive Officer of the Ministry responsible for lands, who is also the Registrar of Land.

1B. Section 3 repeal:

Section 3 of the Principal Act is repealed.

2. Section 4 amended:

Section 4 of the Principal Act is amended as follows:

- (a) insert after subsection (1) the following new subsection (1A):

“1A. Despite that the lease or licence is approved by the Minister as trustee for beneficial owners under subsection (1), the beneficial owners have the following rights in relation to such lease or licence granted:

- (a) the right to approve or disallow the use of the leasehold interest as security;
- (b) the right to approve or disallow the assignment of the lease or licence whether as a result of a default by mortgagor or not;
- (c) the right to receive payments in accordance with the terms of the lease or licence;
- (d) the right to approve or disallow a sub-lease;
- (e) the right to initiate and enforce a review of rents as provided for by the terms of the lease;
- (f) the right to enforce beneficial covenants under the terms of the lease or licence, including

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obligations of the lessee or licensee to -

- (i) provide employment, to assist in business development; or
 - (ii) to provide community services or infrastructure; and
 - (iii) the right to enforce environmental protection obligations applying to the lessee or licensee under the terms of the lease or licence; and
- (g) the right to seek legal representation to undertake legal proceedings on matters arising from the lease or license granted.”;

(b) substitute subsection (3) with the following:

“(3) The process of registration and discharge of such mortgages is set out in the Regulations made pursuant to this Act.”.

3. Insertion of new section 5A:

The Principal Act is amended by inserting after section 5 the following new section:

“5A. Access by licence:

- (1) For a license granted under section 5 on the following terms:
 - (a) the term does not exceed one (1) year;
 - (b) the customary ownership of the land has been determined by the Land and Titles Court; and
 - (c) the beneficial owners have signed the license,the beneficial land owners of that license, have the authority to grant reasonable access to and use of their customary land.”.

4. Section 6 amended:

Section 6(1) of the Principal Act is amended by inserting after the number 5, the words “or section 5A”.

5. Section 8 amended:

Section 8 of the Principal Act is amended as follows:

- (a) for subsection (1) after the word “Savali” insert “or any newspaper or television and other forms of advertising determined by the Chief Executive Officer;”; and
- (b) for subsection (2) -
 - (i) after the word “Savali” insert “or any newspaper or television and other forms of advertising determined by the Chief Executive Officer”; and

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- (ii) substitute “3 months” with “6 months”;
and
- (c) after subsection (2) insert the following new subsection:

“(2A) The Chief Executive Officer may extend the period under subsection (2) if the Chief Executive Officer considers that further time is warranted for a particular application.”; and

- (d) in subsection (3)(a) insert after “the application is made”; the following proviso:

“**PROVIDED THAT** a copy of such determination by the Land and Titles Court is provided to the Chief Executive Officer”; and

- (e) in subsection (3)(b)(ii) substitute the word “Savali” with “under this section”.

5A. Insertion of new section 9A:

The Principal Act is amended by inserting after section 9, the following new section:

“9A. Register of customary land lease or license or interest therein:

- (1) The Registrar must establish and maintain a register for the registration of

customary land leases or customary land licenses and interest therein.

- (2) The registration by the Registrar of customary land leases or customary land licenses and interest therein onto the Register established in subsection (1), does not:
- (a) permit the alienation of customary land in a manner prohibited by Article 102 of the Constitution; or
 - (b) permit or deem ownership on any customary land to be vested in any person.”.

5B. Section 11(2) repealed:

Section 11(2) of the Principal Act is repealed.

6. Section 16 substituted:

For section 16 of the Principal Act, substitute with the following:

“16. Powers to recover rents:

- (1) The right to recover rents and other sums due under a lease or licence in accordance with any law or legal process is exercisable by the Minister, acting on behalf of the beneficial customary landowners.

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- (2) The beneficial customary landowners also have power to commence and undertake legal proceedings for the recovery of rents and other monies due under a lease or licence granted under this Act, even if the lease or licence has been made on their behalf by the Minister.
- (3) When taking action under subsection (2), the beneficial customary landowners (or their legal representative) have the right to commence and undertake the proceedings, and any proceedings to execute any order or judgment made in their favour, without the consent or involvement of the Minister.”.

7. **Insertion of new Part 3:**

The Principal Act is amended by inserting after section 18 the following new Part 3:

**“PART 3
PROVISIONS APPLICABLE TO MORTGAGES
OF LEASES OVER CUSTOMARY LAND**

19. Mortgages of leases of customary lands:

- (1) If a lease of customary land is to be mortgaged, the mortgage:
 - (a) must not be created, except with the prior written consent of the

- beneficial owners of the customary land; and
- (b) must not be created, unless the lessee has made improvements to the customary land leased and such improvements must be made in accordance with the approved purpose under the lease; and
 - (c) must be registered under this Act and such registration does not confer a right of ownership over the customary land.
- (2) A second or subsequent mortgage on a lease of customary land:
- (a) is prohibited;
 - (b) must not be registered; and
 - (c) if created or registered, is void.
- (3) A mortgagee of a lease on customary land:
- (a) must not take an action over the mortgaged lease unless the action is permitted under this Act or Regulations made pursuant to this Act;
 - (b) must first pay any outstanding lease rental payments from any money recovered when exercising the default right under the mortgage.

20. Assignment of leases of customary land subject to mortgage:

The lessee of customary land that is subject to a mortgage, must not assign the lease except with the prior written consent of the beneficial owners of the customary land.

20A. Discharge of Mortgage:

- (1) When a mortgage under this Act is to be discharged, the mortgagee shall execute a discharge in the approved form.
- (2) Upon registration of a discharge of mortgage the mortgaged interest shall, to the extent specified in the discharge, cease to be charged with any money secured by the mortgage.

21. Regulation:

- (1) The Head of State may, acting on the advice of Cabinet, make regulations to give effect to this Part.
- (2) Without limiting the generality of subsection (1), Regulations may be made to provide for the treatment of leases upon default of mortgage.

22. Acts not to apply:

None of the following Acts apply to customary land leases, customary land licenses or interest therein:

- (a) Land Titles Registration Act 2008; and
- (b) Property Law Act 1952.

23. Consequential amendment:

Section 34(1) of the Land and Titles Act 1981 is amended by inserting after subsection (2) the following:

“(2) The Land Titles Registration Act 2008 is amended as follows:

- (a) in section 2 -
 - (i) repeal the definitions of “customary land”, “customary land lease”, “customary land license”, “lessee”, “record of customary land”; and
 - (ii) omit “but does not include customary land for the purpose of registration of land under this Act other than registration of license or leases of customary land” from definition of “land”; and
 - (iii) omit “but does not include a record of customary land” from the definitions of “land”; and

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- (iv) repeal subsection (3); and
- (b) in section 5, repeal subsections (1)(l), (7) and (8);
- (c) in section 9 -
 - (i) omit “or customary land leased or licensed under the provisions of the Alienation of Customary Land Act 1965”, and “or customary land lease or license” respectively; and
 - (ii) repeal subsections (4) and (5).

(2A) Despite, subsection (2), any disputes relating to or arising from a lease agreement over customary land made under the Alienation of Customary Land Act 1965, must be determined by the Supreme Court.”.

23A. Savings and transitional:

- (1) At the commencement of this Act, any existing signed lease, license, sub-lease, sub-license or assignment made under the Principal Act continue and is considered validly made.
- (2) This Act does not apply to any lease, license, sub-lease, sub-license, assignment or securities created before the commencement of this Amendment Act.

8. Section 19 renumbered:

Section 19 of the Principal Act is renumbered as section 24.

9. Amendment to the name of the Principal Act:

- (1) The name of the Principal Act is substituted to Leasing and Licensing of Customary Land Act 1965 wherever occurring.
- (2) Any reference in any enactment to the Alienation of Customary Land Act 1965 is substituted with Leasing and Licensing of Customary Land Act 1965.

The Leasing and Licensing of Customary Land Amendment Act 2019 is administered by the Ministry of Natural Resources and Environment.

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