



SAMOA

PROPERTY LAW ACT 1952

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PROPERTY LAW ACT 1952

1952

No. 52

AN ACT to consolidate and amend certain enactments relating to property.

*[Assent date: 24 October 1952]
[Commencement date: 1 January 1953]*

**PART I
PRELIMINARY**

1. Short title and commencement – This Act may be cited as the Property Law Act 1952, and comes into force on 1 January 1953.

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

“bankruptcy” includes any act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy; and “bankrupt” has a corresponding meaning

“Court” means the Supreme Court;

“encumbrance” includes a mortgage in fee or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and “encumbrancer” has a corresponding meaning, and includes every person entitled to the benefit of an encumbrance, or entitled to require payment or discharge thereof;

“executors” and “administrators” of a deceased person mean respectively the persons to whom the right to administer the estate of the deceased has been granted by the proper Court, whether for general, special, or limited purposes; and “executors” includes executors by right of representation;

“income”, when used with reference to land, includes rents and profits;

“instrument” includes conveyance deed, will, appointment, lease, settlement or other assurance of property, proclamation taking land, and Act of Parliament;

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

“mortgage” includes a charge on any property for securing money or money’s worth; and “mortgage money” means money or money’s worth secured by a mortgage;

“mortgagee” includes any person receiving title under the original mortgagee; and “mortgage” in possession” means a mortgagee who in right of the mortgage has entered into and is in possession of the mortgaged property;

- “mortgagor” includes any person deriving title under the original mortgagor, or entitled to redeem a mortgage, according to his or her estate, interest, or right in the mortgaged property;
- “possession”, when used with reference to land, includes the receipt of income therefrom;
- “property” includes real and personal property, and any estate or interest in any property real or personal, and any debt, and a thing in action, and any other right or interest;
- “purchaser” includes a lessee or mortgagee, or other person who for valuable consideration takes or deals for any property; and “purchase” has a corresponding meaning; but “sale” means only a sale properly so called;
- “registered” or “duly registered” means registered in the manner provided by the Land Registration Act where the land affected is under that Act, and “registration” has a corresponding meaning;
- “Registrar” means the Registrar of the Supreme Court, and includes a Deputy Registrar or in any case where the Deputy may lawfully act for and on behalf of the Registrar;
- “rent” includes yearly or other rent, toll, duty, royalty, or other reservation by the acre, the ton, or otherwise; and “fine” includes premium or foregift, and any payment, consideration, or benefit in the nature of a fine, premium, or foregift;
- “will” includes codicil.

3. Application to Land Registration Act – (1) This Act is to be read and construed so as not to conflict with the provisions of the Land Registration Act 1992/1993 as regards land under that Act.

(2) Except as otherwise expressly provided, all the provisions of this Act shall, as far as they are applicable, apply to land and instruments under the Land Registration Act 1992/1993 as well as to other land and instruments.

(3) The provisions of this Act which are specified in the First Schedule do not apply to land or instruments under the Land Registration Act 1992/1993.

PART IA
DEEDS AND OTHER INSTRUMENTS

4. Formalities of deed – (1) A deed, whether or not affecting property, shall be signed by the party to be bound thereby it, and shall also be attested by at least one witness, and, if the deed is executed in Samoa, the witness shall add to his or her signature his or her place of abode and calling or description, but no particular form of words shall be requisite for the attestation.

(2) Except where the party to be bound by a deed is a corporation, sealing is not necessary.

(3) Formal delivery and indenting are not necessary in any case.

(4) A deed executed as required by this section shall be binding on the party purported to be bound thereby.

(5) A deed, including a deed of appointment, executed before the commencement of this Act which is attested in the manner required or authorised by any enactment providing for the execution and attestation of deeds in force at the time of execution, or at any time subsequent thereto, shall be deemed to be and to have been as valid and effectual as if it had been attested as required by this section.

5. Deed by corporation – A deed that may be lawfully made by a corporation (whether executed before or after the commencement of this Act):

- (a) to which the common or official seal of the corporation is affixed; or
- (b) which is executed in the name of the corporation by any person who has been appointed its attorney, and has at the time of execution made a statutory declaration that he or she is the attorney of the corporation acting under a power of attorney specified by the appointed attorney, and that he or she has executed the deed under the powers thereby conferred, and that he or she has not at the time of making the declaration received any notice of the revocation of the power of attorney by the dissolution of the corporation or otherwise,-

is taken to have been duly executed by the corporation, and binds the corporation; and all persons dealing in good faith without notice of any irregularity are entitled to presume the regular and proper execution of the deed, and to act accordingly.

6. Receipt for consideration money – An acknowledgement of the receipt of the consideration contained in the body of a deed is valid and effectual in all respects as if the same had also been endorsed thereon.

7. Person not named may take benefit – A person may take an immediate benefit under a deed, although not named as a party thereto.

8. Construction of supplemental or annexed deed – A deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of endorsement on the previous deed, or contained a full recital thereof.

9. Exercise of powers – Where a power of appointment by deed or writing, otherwise than by will, is exercised by deed executed in the manner required by this Act, the deed is deemed to be a valid exercise of the power, despite that by the instrument creating the power some additional or other form of execution is required.

10. Partitions, exchanges, etc. – No partition, exchange, lease, assignment, or surrender (otherwise than by operation of law) of any land is valid at law unless the same is made by deed, except a lease for a term not exceeding a tenancy of one year, which lease may be made either by writing or by parol.

11. Appointments – No appointment to be made by deed or writing (otherwise than by will) in exercise of a power is valid unless the same is executed as a deed is required to be executed.

12. Disclaimers – No disclaimer of any land is valid unless the same is made by deed or by matter of record.

13. Construction of word “month” and Act binds Government – (1) In all deeds, contracts, wills, orders, and other instruments executed or made on or after 5 December 1944 (being the date of the passing of the Law Reform Act 1944), unless the context otherwise requires, “month” means a calendar month.

(2) This Act binds the Government.

PART II GENERAL RULES AFFECTING PROPERTY

14. Uses not necessary – A limitation which at any time heretofore might have been made by way of shifting, springing, or executory use may be made by direct conveyance without the intervention of uses.

15. Certain forms of assurance abolished – The legal estate in any land shall not pass by a covenant to stand seised, or by any contract for the sale and purchase of land, or by livery of seism.

16. Estates tail abolished – (1) In any instrument coming into operation after the commencement of this Act, a limitation which, if this section had not been passed, would have created an estate tail (legal or equitable) in any land in favour of any person is deemed to create an estate in fee simple (legal or equitable, as the case may be) in that land in favour of that person to the exclusion of all estates or interest limited to take effect after the determination or in defeasance of any such estate tail.

(2) If, at the commencement of this Act, a person is entitled to an estate tail (legal or equitable), whether in possession, reversion, or remainder, in any land, that person, except as mentioned in subsection (3), is taken to be entitled to an estate in fee simple (legal or equitable, as the case may be) in that land, to the exclusion of all estates or interests limited to take effect after the determination or in defeasance of any such estate tail.

(3) In subsection (2), “estate tail” includes that estate in fee into which an estate tail is converted where the issue in tail is barred, but the person claiming estates by way of remainder are

not barred; also an estate in fee voidable or determinable by the entry of the issue in tail; but does not include the estate of a tenant in tail after possibility of issue extinct.

(4) The Registrar of Land is authorised to make all such entries in the register book as may be necessary to give effect to this section.

17. Estates by wrong abolished – No conveyance shall create any estate by wrong, or work a forfeiture.

18. Freehold in future may be created – An estate of freehold to take effect at a future time may be created by any deed by which a present estate of freehold may be created.

19. Estate in chattel real may be created by deed – An estate or interest that can be created by will in any chattel real may also be created by deed.

20. When contingent remainders capable of taking effect – (1) A contingent remainder shall be capable of taking effect despite the destruction or determination by any means of the particular estate immediately preceding, and despite that it may have been created expectant on the termination of a term of years.

(2) A contingent remainder or a contingent interest lying between 2 estates vested in the same person prevents the merger of those 2 estates.

21. Rights of entry, etc. – A right of entry, contingent remainder, and a contingent or executory or future estate, right, or interest in property, may be conveyed by deed:

PROVIDED THAT no person is empowered by this Act to dispose of any expectancy the person may have as next-of-kin, or under the Administration Act 1975.

22. Certain expressions to be words of purchase; rule in Shelley's case abolished – (1) If, by any instrument, an interest in any property is expressed to be given to the heir or heirs or to any particular heir or any class of the heirs or issue of any person in words which but for this section or section 16 would under the rule of law known as the rule in Shelley's case have

operated to give to that person an interest in fee simple or an entailed interest, those words shall operate as words of purchase and not of limitation and shall be construed and have effect accordingly.

(2) Whereas section 7 of the Property Law Act 1908 made provision in the words following - namely, "Where a deed or will contains a limitation to any person for life, followed mediately or immediately by a limitation to the heirs or the heirs of the body of such person, the latter limitation shall not be deemed to coalesce with the former, but shall take effect as a contingent remainder". However, to avoid doubt, that section, in its true meaning and effect, extends at all times until the repeal thereof to establish the law as expressed in subsection (1) and to abolish every rule or exception which that expression of the law extends to abrogate or abolish.

23. Restriction on executory limitations – (1) Where there is a person entitled to land for an estate in fee, or for a term of years absolute, or determinable on life, or for term of life, or for term of life, with an executory limitation over on default or failure of all or any of his or her issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect if and as soon as there is living any issue that has attained the age of 21 years, of the class on default or failure whereof the limitation over was to take effect.

(2) This section applies only where the executory limitation is contained in an instrument coming into operation on or after 1 January, 1906 (being the date of the commencement of the Property Law (Act 1905)

24. Rule against perpetuities not to apply to superannuation funds – The rule of law relating to perpetuities does not apply and is deemed never to have applied to the trusts of any fund of which the main purpose or one of the main purposes is the provision of retiring allowances or pensions on retirement to persons employed in the undertaking or combination of undertakings in connection with which the fund is established, if the fund is a superannuation fund within the meaning of the Income Tax Act 1974, or if the fund is such that the Commissioner of Inland Revenue allows deductions to be

made under section 26 of that Act of the whole or any part of the amounts set aside or paid by the employer as or to the fund.

25. Validation of certain gifts void for remoteness – (1) If

:

- (a) in a will, settlement, or other instrument the absolute vesting either of capital or income of property, or the ascertainment of a beneficiary or class of beneficiaries, is made to depend on the attainment by the beneficiary or members of the class of an age exceeding 21 years; and
- (b) thereby the gift to that beneficiary or class or any member thereof, or any gift over, remainder, executory limitation, or trust arising on the total or partial failure of the original gift, is, or but for this section would be, rendered void for remoteness, -

the will, settlement, or other instrument shall take effect for the purposes of that gift, gift over, remainder, executory limitation, or trust as if the absolute vesting or ascertainment aforesaid had been made to depend on the beneficiary or member of the class attaining the age of 21 years, and that age shall be substituted for the age stated in the will, settlement, or other instrument.

(2) This section applies to any instrument executed on or after the 5th day of December, 1944 (being the date of the passing of the Law Reform Act 1944), and to any testamentary appointment (whether made in exercise of a general or special power), devise, or bequest contained in the will of a person dying on or after that date, whether the will is made before or on or after that date.

(3) This section applies without prejudice to any provision whereby the absolute vesting or ascertainment is also made to depend on the marriage of any person, or any other event which may occur before the age stated in the will, settlement, or other instrument is attained.

26. Possibility upon a possibility – (1) The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person is abolished, but without prejudice to any other rule relating to perpetuities.

(2) Whereas section 8 of the Property Law Act 1908 made provision in the words following - namely, "No estate shall be void on account of its being made to depend on a possibility upon a possibility,". However, to avoid doubt that section, in its true meaning and effect, extends at all times until the repeal thereof to establish the law as expressed in subsection (1) and to abolish the rule thereby expressed to be abolished.

27. Repealed by Simultaneous Deaths Act 1958

28. Vendor's lien taken away – No vendor of any land shall have any equitable lien thereon by reason of the non-payment of the purchase money or any part of the purchase money for the same.

29. Equitable waste – An estate for life without impeachment of waste does not confer or is taken to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer that right expressly appears by the instrument creating that estate.

30. No merger by operation of law – There shall not be any merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

31. Release of part of land charged not to be extinguishment of rent – The release from a rent of any part of the land out of which it is payable shall not be a discharge of the residue of the land from the rent:

PROVIDED THAT, where the owner of the part released is not the owner of the residue of the land charged with the rent, the owner of the residue is entitled to the same contribution from the owner of the part released as he or she would have been entitled to if no release had been made.

32. Corporations may hold as joint tenants – (1) A body corporate shall be capable of acquiring and holding any property in joint tenancy in the same manner as if it were an individual, and where a body corporate and an individual or two

or more bodies corporate become entitled to any property under circumstances or by virtue of any instrument which would, if the body corporate had been an individual, have created a joint tenancy they are entitled to the property as joint tenants:

PROVIDED THAT the acquisition and holding of property by a body corporate in joint tenancy shall be subject to the like conditions and restrictions as attach to the acquisition and holding of property by a body corporate in severalty.

(2) Where a body corporate is a joint tenant of any property, then on its dissolution the property shall devolve on the other joint tenant.

33. Alienation of property may be restricted – (1) It shall be lawful by will, or by a settlement made on marriage, to provide that any estate or interest in any property comprised in the will or settlement devised, bequeathed, settled, or given to any beneficiary, whether male or female, shall not during the life of that beneficiary be alienated, or pass by bankruptcy, or be liable to be seized, sold, attached, or taken in execution by process of law.

(2) For the purposes of this section, “beneficiary” is limited to children or grandchildren of the testator, or, in the case of a settlement, of the husband and wife:

PROVIDED THAT for the purposes of this subsection a person is deemed to be the child or the grandchild, as the case may be, of a testator despite that he or she is related to him or her only illegitimately.

(3) Nothing in this section prevents any lawful restraint on alienation of property from being imposed by will or settlement.

(4) The Court may remove the restraint in any case where it appears to be for the benefit of the person subject to any restraint on alienation either wholly or partly.

34. Intermediate income of contingent or executory gifts – (1) A contingent or future specific or residuary devise or bequest of property, and a specific or residuary devise or bequest of property upon trust for a person whose interest is contingent or executory, shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property from the death of the testator except so

far as the income or any part thereof may be otherwise expressly disposed of.

(2) If, under an instrument other than a will, property stands limited to a person for a contingent or future interest, or stands limited to trustees upon trust for a person whose interest is contingent or executory, that interest shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property from the time when the instrument comes into operation, except so far as the income or any part thereof may be otherwise expressly disposed of.

(3) This section applies only to wills and instruments coming into operation after the commencement of this Act.

36. Receipts for income by married infants – (1) A married infant has the power to give valid receipts for all income (including statutory accumulations of income made during the minority) to which the infant may be entitled in like manner as if the infant were of full age.

(2) This section applies only to receipts given after the commencement of this Act.

37. “Heirs” and other words interpreted – (1) If, under the terms of any instrument coming into operation after the commencement of this Act, any property vests in:

- (a) the heir or heirs of any person; or
- (b) the next-of-kin of any person; or
- (c) the next-of-kin of any person to be determined under the Administration Act 1975, –

the property shall vest in the person who, on the death of the person intestate, would be beneficially entitled to his or her real and personal estate under that Act, and in the same shares.

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

38. “Heirs of the body” and other words interpreted – (1) If, under the terms of any instrument coming into operation after the commencement of this Act, any property vests in:

- (a) the heir or heirs of the body of any person; or

(b) the heir or heirs male of any person, or the heir or heirs male of the body of any person; or

(c) the heir or heirs female of any person, or the heir or heirs female of the body of any person, –

the property shall vest as follows:

(aa) for paragraph (a) in the issue of that person as tenants in common *per stirpes*; and

(bb) for paragraph (b) in the sons and issue of sons of that person as tenants in common *per stirpes*; and

(cc) for paragraph (c) in the daughters and the issue of daughters of that person as tenants in common *per stirpes*.

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

39. *Repealed by section 13(3) of the Wills Amendment Act 1955.*

40. Appointments valid despite objects excluded – (1) An appointment in exercise of any power to appoint any property amongst several objects shall be valid and effectual despite that any one or more of the objects do not by the appointment or in default of appointment take a share or shares of the property.

(2) Nothing in this section prejudices or affects any provision in any instrument creating any power which declares the amount of the share or shares from which no object of the power shall be excluded, or some one or more object or objects shall not be excluded.

41. Restrictions on accumulation – (1) No person (in this section called a settlor) shall settle or dispose of any property so that the income thereof shall be wholly or partially accumulated:

(a) for any longer period than—

(i) the life of the settlor; or

(ii) twenty-one years from the death of the settlor; or

(iii) the minority of any person who shall be living at the death of the settlor; or

(iv) the minority of any person who, under the trusts of the instrument directing the accumulation, would for the time being, if of full age, be entitled to receive the income so directed to be accumulated; or

(b) for the purchase of land only, for any longer period than that mentioned in of paragraph (a)(iv).

(2) In any case where any accumulation is directed otherwise than as aforesaid, the direction is void, and the income so directed to be accumulated shall, so long as the same is directed to be accumulated contrary to this section, go to such person as would have been entitled thereto if the accumulation had not been directed.

(3) Nothing in this section extends to:

(a) any provision for payment of debts of the settlor or any other person; or

(b) any provision for raising portions for any child of the settlor, or any child of any person taking any interest under the instrument directing the accumulation; or

(c) any direction touching the production of timber or wood upon any lands, –

but all such provisions and directions may be made and given as if this section had not been passed.

(4) In this section, “purchase” means only a purchase properly so called.

42. Qualification of restrictions on accumulation – If accumulations of surplus income are made during a minority under any statutory power or under the general law, the period for which those accumulations are made is not (whether the trust was created or the accumulations were made before or after the commencement of this Act) to be taken into account in determining the periods for which accumulations are permitted to be made by section 41, and accordingly an express trust for accumulation for any other permitted period is not taken to have been invalidated or become invalid, by reason of accumulations also having been made as aforesaid during that minority.

**PART III
ASSURANCES OF REAL AND
PERSONAL PROPERTY**

43. Fee to pass without words of limitation – If land is conveyed to any person without words of limitation, the conveyance shall be construed to pass the fee simple or other whole estate or interest that the party conveying had power to dispose of.

44. Form of conveyance – A deed according to the form in the Second Schedule, or to the effect thereof, shall be effectual to pass any land and the possession thereof.

45. Conveyance to vest ownership – If a land is conveyed directly and immediately to any person, the whole legal and equitable ownership of the land shall vest in that person.

46. Conveyance subject to trust – If a land is so conveyed to a person in trust for any other person, the whole legal ownership of that land shall vest in the person to whom the same is so directly and immediately conveyed, subject, however, to a trust for the benefit of the other person.

47. What a conveyance of land is deemed to include – (1) A conveyance of land is taken to include, and shall operate to convey with the land, all rights, easements, and appurtenances belonging to the land or therewith usually held or enjoyed.

(2) This section applies only in so far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms and provisions of the conveyance.

(3) This section does not give to any person a better title to any property, right, or thing mentioned in this section than the title which the conveyance gives him or her to the land expressed to be conveyed or as conveying to him or her any such property, right, or thing, further or otherwise than as the same could have been conveyed to him or her by the conveying parties.

48. Declaration by tenants in common to become joint tenants – Any 2 or more persons in whom any property is

beneficially vested as tenants in common may by deed declare that they will be joint tenants thereof, and thereupon the property shall vest in them as joint tenants.

49. Person may convey property to himself or herself – A person may convey property for any estate or interest to himself or herself or jointly with another or others.

PART IV
POWERS AND CONDITIONS OF SALE AND
PROTECTION OF PURCHASERS AND CREDITORS

50. Restrictions on and relief against rescission – Section 118 applies to any right or option to purchase any land where the purchaser is in possession of that land, as if any right of rescission or determination exercisable by a vendor were a right of re-entry or forfeiture exercisable by a lessor.

51. Auction sales – Section 57 of the Sale of Goods Act 1975 applies, with all necessary modifications, to sales by auction of every kind of property.

52. Application of stated conditions of sale – In the completion of any contract made at any time before or after the commencement of this Act for the sale of any property, and subject to any stipulation to the contrary in the contract:

- (a) thirty years shall be substituted for 60 years as the period of commencement of title which a purchaser may require; nevertheless, earlier title than thirty years may be required in cases similar to those in which earlier title than 60 years might immediately before the commencement of this Act have been required; and
- (b) the obligations and rights of vendor and purchaser shall be regulated by the following rules—
 - (i) recitals, statements, and descriptions of facts, matters, and parties contained in instruments or statutory declarations 20 years old at the date of the contract shall, unless so far as they are proved to be inaccurate, be taken to be

sufficient evidence of the truth of those facts, matters, and descriptions;

(ii) the inability of the vendor to provide the purchaser with a legal covenant to produce and provide copies of documents of title shall not be an objection to title where the purchaser on the completion of the contract has an equitable right to the production of the documents;

(iii) such covenants for production as the purchaser can and does require shall be provided at his or her expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself or herself and any necessary parties other than the purchaser;

(iv) where the vendor retains any part of an estate to which any documents of title relate the vendor is entitled to retain those documents;

(v) where the land sold is held by lease (including underlease), the purchaser shall, on production of the receipt for the last payment due for rent under the lease before the actual completion of the purchase, assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion, and also, if the land is held by underlease, that all rent due under and all the covenants and provisions of every superior lease have been duly paid, performed, and observed up to that date:

PROVIDED THAT this rule applies only to titles and purchasers on sales properly so called.

54. Contracts where certificate of title is limited – (1) In the completion of any contract for the sale of any property, and subject to any stipulation to the contrary in the contract, where the land sold is comprised in a limited certificate of title issued before the making of the contract, the vendor shall at his or her own expense do such acts, prove such matters, and comply with such requisitions by the Registrar of Land as shall be necessary to cause the certificate to cease to be limited as to title, and the

vendor shall pay the statutory fee payable on the issue of the first such limited certificate.

(2) Nothing in this section alters the law between vendor and purchaser relating to survey and plan of survey of the land.

55. Rights of purchaser as to execution – On a sale, the purchaser is not entitled to require that the conveyance to him or her be executed in his or her presence or in that of his or her solicitor, as such, but is entitled to have at his or her own cost the execution of the conveyance attested by some person appointed by him or her who may, if the purchaser thinks fit, be his or her solicitor.

56. Payment of consideration money to solicitor – (1) If a solicitor produces an instrument having in the body thereof or endorsed thereupon a receipt for consideration money or other consideration, the instrument being executed or the endorsed receipt being signed by the person entitled to give a receipt for that consideration, the instrument shall be sufficient authority to the person liable to pay or give the consideration for his or her paying or giving the same to the solicitor, and it shall not be necessary for the solicitor to produce any separate or other direction or authority in that behalf from the person who executed or signed the instrument or receipt.

(2) This section applies where the instrument is executed or the receipt signed by trustees.

57. Validity of conveyance by executors, etc. – (1) If a person claims any property *bona fide* and for valuable consideration under any conveyance made by an executor or administrator, whether made to him or her or to any person through whom he or she derives title, that conveyance shall, so far as concerns the person so claiming, or any person claiming under him or her, be and be deemed to have always been valid and effectual.

(2) On any sale by an executor or administrator the vendor's receipt in writing shall be a sufficient discharge to the purchaser for the purchase money thereby expressed to have been received, and neither the purchaser nor any person claiming under him or her shall be concerned to see to the application of

the purchase money, or to inquire whether the sale was irregular or improper.

58. Restriction on constructive notice – (1) A purchaser of land shall not be prejudicially affected by notice of any instrument, fact, or thing, unless:

- (a) it is within his or her own knowledge, or would have come to his or her knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him or her; or
- (b) it has in the transaction as to which a question of notice arises come to the knowledge of his or her counsel as such, or of his or her solicitor or other agent as such, or would have come to the knowledge of his or her solicitor or other agent as such if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

(2) This section does not exempt a purchaser from any liability under, or from any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his or her title is derived, mediately or immediately; and that liability or obligation may be enforced in the same manner and to the same extent as if this section had not been passed.

(3) A purchaser shall not by reason of anything in this section be affected by notice in any case where he or she would not have been so affected if this section had not been passed.

59. Orders of Court conclusive – (1) An order of the Court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or want of any concurrence, consent, notice, or service, whether the purchaser has notice of any such want or not.

(2) This section has effect with respect to any lease, sale, or other act under the authority of the Court and purporting to be in pursuance of the Administration Act 1975 despite any exceptions in either of those Acts.

60. Alienation with intent to defraud creditors – (1)

Except as provided by this section, an alienation of property with intent to defraud creditors is voidable at the instance of the person prejudiced by it.

(2) This section does not affect the law of bankruptcy.

(3) This section does not extend to any estate or interest in property alienated to a purchaser in good faith not having, at the time of the alienation, notice of the intention to defraud creditors.

61. Voluntary alienation of land with intent to defraud purchaser – (1) An instrument (other than a will) which operates, or on registration would operate, as a voluntary alienation of land is, if made with intent to defraud a subsequent purchaser, voidable at the instance of that subsequent purchaser.

(2) For the purposes of this section, no such instrument is, if registered before a subsequent purchase, deemed to have been made with intent to defraud by reason only of that purchase, or that the instrument was not made for valuable consideration.

62. Purchase in good faith of reversion not to be set aside for undervalue only – No purchase of any reversionary interest in real or personal estate made in good faith and without fraud or unfair dealing shall hereafter be opened or set aside merely on the ground of undervalue.

PART V**COVENANTS AND POWERS**

63. Benefit of covenants relating to land – (1) A covenant, whether express or implied under this Act or any other Act, relating to any land of the covenantee is, unless a contrary intention is expressed, deemed to be made with the covenantee and his or her successors in title and the persons deriving title under them, and, subject as aforesaid, shall have effect as if those successors and other persons were expressed.

(2) For the purposes of this section in connection with covenants restrictive of the user of land, “successors in title” includes the owners and occupiers for the time being of the land of the covenantee intended to be benefited.

64. Burden of covenants relating to land – (1) A covenant, whether express or implied under this or any other Act, relating to any land of a covenantor or capable of being bound by him or her by covenant is, unless a contrary intention is expressed, deemed to be made by the covenantor on behalf of himself or herself and the covenantors' successors in title and the persons deriving title under the covenantor or them, and, subject as aforesaid, shall have effect as if those successors and other persons were expressed.

(2) This section extends to a covenant to do some act relating to the land, despite that the subject-matter may not be in existence when the covenant is made.

(3) For the purposes of this section in connection with covenants restrictive of the user of land, "successors in title" includes the owners and occupiers of the land.

65. Effect of covenants relating to land – (1) A covenant, whether express or implied under this or any other Act, and a contract by deed, and a bond or obligation by deed, made with 2 or more jointly, to pay money, or to make a conveyance, or to do any other act to them or for their benefit, is deemed to include, and shall by virtue of this Act imply, an obligation to do the act to or for the benefit of the survivor or survivors of them, and to or for the benefit of any other person on whom devolves the right to sue on the covenant, contract, bond, or obligation.

(2) This section applies only to a covenant, contract, bond, or obligation made expressly or by implication on or after 1 January 1906, and then only in so far as a contrary intention is not expressed in the deed containing the covenant or contract, or in the bond or obligation, and shall have effect subject to the provisions thereof.

66. Covenants and agreements made by a person with himself or herself and others – (1) A covenant, whether express or implied under this Act or any other Act, or an agreement made by a person with himself or herself and another or others, shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been made with the other or others.

(2) This section applies to covenants or agreements made or implied before or after the commencement of this Act.

67. Covenants to be joint and several – If, under a covenant, whether express or implied under this Act or any other Act, more than one persons are covenantors, the covenant is, unless a contrary intention is expressed, taken to bind the covenantor and any 2 or greater number of them jointly and each of them severally.

68. Implied covenants may be negatived – A covenant or power implied under this Act or any other Act has the same force and effect, and may be enforced in the same manner, as if it had been set out at length in the deed wherein it is implied: **PROVIDED THAT** the covenant or power may be negatived, varied, or extended in the deed, or by a memorandum in writing endorsed thereon and executed as a deed is required to be executed by the parties to the deed intended to be bound thereby.

69. Benefit of covenant for title – The benefit of a covenant for title implied under this Act or any other Act shall be annexed and incident to and shall go with the estate and interest of the implied covenantee, and may be enforced by any person in whom that estate or interest is, for the whole or any part thereof, vested.

70. Construction of covenants – In the construction of a covenant or proviso, or other provision, in a deed, whether express or implied under this Act or any other Act, unless a contrary intention is expressed, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

71. Power to re-enter not implied – Neither the word “grant” nor the word “exchange” has the effect of creating any warranty or right of re-entry.

PART VI
COVENANTS IMPLIED IN CONVEYANCES
GENERALLY

72. Covenants implied in conveyance by way of sale, etc.

– (1) In a conveyance by way of sale, mortgage, marriage settlement, or lease, and in any other conveyance for valuable consideration, there shall be implied (except as provided by section 75) the following covenants by the person or each of the persons who conveys, so far as regards the estate or interest expressed to be conveyed by him or her, with the person to whom the conveyance is made, or with the persons jointly to whom the conveyance is made as joint tenants, or with each of the persons to whom the conveyance is made as tenants in common, that is to say:

- (a) a covenant for right to convey, meaning thereby a covenant that the conveying party has good right and full power to convey and assure the estate or interest purported to be conveyed, and that free and clear from all encumbrances other than such as are mentioned in the conveyance;
- (b) a covenant for quiet enjoyment, meaning thereby a covenant that the party to whom the estate or interest is purported to be conveyed, and all persons claiming under him or her, shall quietly enjoy the same without any disturbance by any person;
- (c) a covenant for further assurance, meaning thereby a covenant that the conveying party, his or her executors or administrators, and all other persons having or claiming any interest in the subject-matter of the conveyance, will, at the cost of the person requiring the same, do and execute all such acts and conveyances for the better assuring of the estate or interest purported to be thereby conveyed as may be reasonably required by the party to whom the same is conveyed or any person claiming under him or her;
- (d) a covenant for production of title deeds, meaning thereby a covenant that the conveying party, his or her executors, administrators, or assigns, at the request and cost of the grantee, his or her executors, administrators, or assigns, will, unless prevented by fire or other inevitable accident, produce to him or her or them, or as he or she or

they may direct, within Samoa all registered deeds and instruments or evidences of title in the possession of the conveying party, and relating to the land conveyed as well as to other land; and also that the conveying party, his or her executors, administrators, and assigns, will, unless prevented as aforesaid, keep the deeds and instruments or evidences of title in the meantime safe, whole, and uncanceled. This covenant shall run with the land, so as to bind only the person for the time being entitled to the possession of the deeds, instruments, or evidences of title.

(2) The covenants for right to convey, for quiet enjoyment, and for further assurance shall, except in the case of a mortgage, be restricted to the acts, deeds, and defaults of the conveying party, and of all persons through whom he or she derives title otherwise than by purchase for value, and of all persons claiming or to claim through, under, or in trust for him or her, or through or under any persons through whom he or she derives title as aforesaid.

(3) The costs of any further assurance or production of title deeds required by a mortgage under the implied covenants in that behalf shall during the continuance of the mortgage be borne by the mortgagor.

(4) The covenant for quiet enjoyment shall not be implied against any mortgagor until default in payment of the principal moneys secured by the mortgagee at the time fixed for the repayment thereof, or in payment of interest thereon, or until breach of any covenant by the mortgagor contained or implied in the mortgage; and until such default or breach as aforesaid it shall not be lawful for a mortgagee to enter into possession of the mortgaged land.

73. Covenants implied in conveyance subject to encumbrance – (1) In a conveyance by way of sale subject to an encumbrance there shall be implied a covenant by the person to whom the property is conveyed with the person making the conveyance to pay the moneys or perform the obligations secured by the encumbrance, and to perform and observe the covenants and provisions of the encumbrance, and to keep

harmless and indemnified the person making the conveyance in respect of all such moneys, obligations, covenants, and provisions.

(2) This section applies only in so far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the provisions thereof.

74. Covenants implied in conveyance of term of years –

In a conveyance of a term of years in land by way of sale or marriage settlement, and in any other conveyance of a term of years in land for valuable consideration, not being by way of mortgage, there shall be implied (except as provided by section 75) the following covenants by each conveying party severally, for himself or herself, his or her executors and administrators, to the extent of the interest parted with by the conveying party, but restricted to the acts, deeds, and defaults of that conveying party, and of all persons through whom he or she derives title otherwise than by purchase for value, and of all persons claiming through, under, or in trust for him or her, them, or any of them, namely:

THAT the rent reserved by the lease under which the land is held, and the covenants and conditions expressed or implied in the lease and to be performed and observed by the lessee, have been respectively paid, performed, and observed up to the date of the conveyance.

75. Covenants implied in conveyance by trustees, etc. –

(1) If a person conveys as trustee or mortgagee, or as executor or administrator of a deceased person, or as committee of a mentally defective person, or as Public Trustee, when appointed or acting as committee of a mentally defective person's estate, or as manager of any property under Parts IV and VI of the Public Trust Office Act 1975, or where any person conveys under an order of the Court, or in a fiduciary capacity, the covenants set out in section 72(1)(a), (b) and (c) and in section 74 shall not be implied, but there shall be implied the following covenant on the part of the person conveying, which covenant shall be deemed to extend to his or her own acts only, namely:

THAT he or she has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing whereby or by means whereof the subject-matter of the conveyance or any

part thereof is or may be impeached, charged, affected, or encumbered in title, estate, or otherwise, or whereby or by means whereof he or she is in any wise hindered from conveying the subject-matter of the conveyance or any part thereof in the manner in which it is expressed to be conveyed.

(2) The covenant implied by this section is taken to be implied in every memorandum in the same manner as if the memorandum were a deed of conveyance by the mortgagee.

(3) A conveyance of property by the Public Trustee, except when acting as agent or attorney, is, in the absence of evidence to the contrary, taken to have been made by him or her in a fiduciary capacity within the meaning of this section.

PART VII MORTGAGES

Division 1 – General Provisions

76. Form of mortgage – (1) Mortgages of land may be made in the form in the Third Schedule, or by an ordinary conveyance by way of mortgage.

(2) A mortgage in that form is taken to be a conveyance of land by way of mortgage, and may be registered accordingly.

77. No equitable mortgage by deposit of deeds – No land shall be charged or affected, by way of equitable mortgage or otherwise, by reason only of any deposit of title deeds relating thereto, whether or not the deposit is accompanied by a written memorandum of the intent with which the deposit has been made.

78. Covenants, etc., implied in all mortgages – In a mortgage of land made after the commencement of this Act there shall be implied the covenants by the mortgagor and the powers and conditions set forth in the Fourth Schedule, except in so far as the same are varied or negatived in the mortgage or by deed, and except also that clauses 11, 12, and 13 of the Fourth Schedule shall be implied only in mortgages subject to a prior mortgage or mortgages, and that clauses 14, 15, and 16 of the Fourth Schedule shall be implied only in mortgages of a term of years in land.

79. Endorsements on mortgages – (1) For a mortgage (whether made before or after the commencement of this Act):

- (a) the mortgage debt may be discharged; and
- (b) the interest of the mortgagee may be assigned; and
- (c) the amount secured by the mortgage may be increased or reduced; and
- (d) the rate of interest may be increased or reduced; and
- (e) the term or currency of the mortgage may be shortened, extended, or renewed; and
- (f) the covenants, conditions, and powers contained or implied in the mortgage may be varied, negated, or added to, –

by a memorandum endorsed on or annexed to the mortgage, and executed as a deed is required to be executed.

(2) A memorandum for the purposes of subsection (1)(a) and (b) may be in anyone of the forms in the Fifth Schedule as is applicable, or to the effect thereof, and shall operate as an instrument, and may be registered.

(3) A memorandum for the purposes of paragraphs subsection (1)(c), (d), (e), and (f) shall be in the appropriate form (3), (4), (5), or (6) or any appropriate combination of such forms set out in the Fifth Schedule and shall operate as an instrument and may be registered:

PROVIDED THAT:

- (a) it is not necessary for a mortgagor to execute a memorandum of reduction, or for a mortgagee to execute a memorandum of increase, of the mortgage debt or of the rate of interest payable under a mortgage;
- (b) the memorandum may include all or any of the matters in subsection (1)(c), (d), (e) and (f) and in that case the forms shall be modified accordingly;
- (c) the memorandum may be registered in like manner as the original mortgage;
- (d) a memorandum or instrument varying the terms or conditions of any mortgage of land subject to a subsequent mortgage shall not be binding on any mortgagee unless that mortgagee has consented thereto in writing on that memorandum or

instrument, but that consent shall render the memorandum or instrument binding on the mortgagee so consenting, and is deemed to be notice to and is binding on all persons who may subsequently derive from any such mortgagee any interest in the mortgaged property.

(4) A memorandum of discharge shall vacate the mortgage debt, and shall operate as an instrument of reconveyance of the estate and interest of the mortgagee of and in the mortgaged property to the person for the time being entitled to the equity of redemption:

PROVIDED THAT nothing herein prevents a mortgagee from executing a deed of reconveyance of the mortgaged property if he or she thinks fit and mortgagor requires it.

(5) A memorandum of assignment shall operate as a deed of assignment of the mortgage debt, and as a deed of conveyance of the estate and interest of the mortgagee of and in the mortgaged property, and shall vest the debt and estate and interest in the assignee together with all the rights, powers, and remedies of the mortgagee expressed or implied in the mortgage.

80. Effect of advance on joint account, etc. – (1) If:

- (a) in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one, out of money or as money belonging to them on a joint account; or
 - (b) a mortgage, or such an obligation, or such a transfer, is made to more persons than one jointly and not in shares, the mortgage money or other money or money's worth belonging to them on a joint account; or
 - (c) a mortgage, or such an obligation, or such a transfer, is made to more persons than one jointly and not in shares, the mortgage money or other money or money's worth belonging to them on a joint account, –
- the receipt in writing of the survivors or last survivor of them, or

of the executors or administrators of the last survivor, or their or his or her assigns, shall be a complete discharge for all money or money's worth for the time being due, despite any notice to the payer of a severance of the joint account.

(2) The survivors or survivor, or the executors or administrators of the last survivor, or their or his or her assigns, may exercise all powers conferred by the mortgage or obligation as fully and effectually as the mortgagees, if living, could have done.

(3) This section applies only in so far as a contrary intention is not expressed in the mortgage, obligation, or transfer, and shall have effect subject to the terms and provisions thereof.

80A. Security for Further Advances – If a mortgage purports to secure a principal sum the amount of which is specified therein (whether or not the mortgage also purports to secure further advances), the mortgagee shall have the right to advance to the mortgagor the whole or any part of the principal sum the amount of which is so specified so as to rank in priority to any subsequent mortgage, despite that the advance is made after the execution or registration of the subsequent mortgage, and whether or not the mortgagee has actual or constructive notice of the subsequent mortgage at the time of making the advance:

PROVIDED THAT any part of the principal sum which has been repaid to the mortgagee and re-advanced to the mortgagor is taken for the purposes of this section, not to form part of the principal sum specified in the mortgage:

PROVIDED ALSO THAT nothing in this section derogates from section 79(3)(d).

Division 2 – Redemption

81. Equity of redemption – (1) A mortgagor is entitled to redeem the mortgaged land at any time before the same has been actually sold by the mortgagee under his or her power of sale, on payment of all moneys due and owing under the mortgage at the time of payment.

(2) A mortgagor is entitled to redeem the mortgaged land although the time for redemption appointed in the mortgage deed has not arrived; but in that case he or she shall pay to the

mortgagee, in addition to any other moneys then due and owing under the mortgage, interest on the principal sum secured thereby for the unexpired portion of the term of the mortgage.

(3) A mortgagor seeking to redeem after the expiry of the term of the mortgage, or of any further term for which it has been renewed or extended, shall give to the mortgagee 3clear months' notice in writing of his or her intention to redeem, or shall pay to the mortgagee 3months' interest in lieu thereof:

PROVIDED THAT this subsection does not apply in any case where the mortgagee has entered into possession of the mortgaged land or any part thereof, or has taken any steps to realise his or her security.

(4) For the purposes of this section, "moneys due and owing under a mortgage" includes all expenses reasonably incurred by the mortgagee:

(a) for the protection and preservation of the mortgaged land, or otherwise in accordance with the provisions of the mortgagee; and

(b) with a view to the realisation of his or her security, – and in either case includes interest on the sums so expended at the rate expressed in the mortgage deed.

(5) This section extends to mortgages comprising both land and chattels.

(6) Nothing in this section affects the operation of section 16 of the Limitation Act 1975.

82. Mortgagor may require mortgagee to assign instead of reconveying – (1) If a mortgagor is entitled to redeem, the mortgagor has, by virtue of this Act, the power to require the mortgagee, instead of discharging, and on the terms on which the mortgagor would be bound to discharge, to transfer the mortgage to any third person as the mortgagor directs; and mortgagee is, by virtue of this Act, bound to transfer accordingly.

(2) This section applies to mortgages made either before or after the commencement of this Act, and has effect despite any stipulation to the contrary; but does not apply where the mortgagee is or has been in possession.

83. Encumbrancer to have the like right – The like right to require a mortgagee to assign the mortgage debt to a third

person belongs to and may be enforced by each encumbrancer or by the mortgagor, despite any intermediate encumbrance; but a requisition of an encumbrancer prevails over a requisition of the mortgagor, and, as between encumbrances, a requisition of a prior encumbrancer prevails over a requisition of a subsequent encumbrancer.

84. Power for mortgagor to inspect title deeds – A mortgagor, so long as his or her right to redeem subsists, is, despite any stipulation to the contrary, entitled at reasonable times, on his or her request and at his or her own costs, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged land in the custody or power of the mortgagee.

85. Restriction on consolidation – A mortgagor seeking to redeem any one mortgage is, by virtue of this Act, entitled to do so without paying any money due under any separate mortgage made by him or her, or by any person through whom he or she claims, on property other than that comprised in the mortgage that he or she seeks to redeem.

86. Sale of mortgaged property in action for redemption – (1) A person entitled to redeem any mortgaged property may have a judgment or order for sale, instead of redemption, in an action brought by him or her either for redemption alone or for sale alone, or for sale or redemption in the alternative.

(2) In any action, whether for redemption or for sale, or for the raising and payment in any manner of mortgage money, the Court, on the request of the mortgagee or of any person interested either in the mortgage money or in the right of redemption, and despite the dissent of any other person, and despite that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may direct a sale of the mortgaged property on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of sale and to secure performance of the terms.

(3) When an action for sale is brought by a person interested in the right of redemption, the Court may, on the application of any defendant, direct the plaintiff to give security for costs, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of encumbrancers.

87. Repayment when mortgagee cannot be found, etc. –

(1) If a person entitled to receive or having received payment of any money secured by mortgagee is out of the jurisdiction, cannot be found, or is unknown or is dead, or it is uncertain who is entitled, the Court, upon the application of the person entitled to redeem the mortgaged premises, may order the amount of the debt to be ascertained in such manner as the Court thinks fit, and direct the amount so ascertained to be paid into Court or, as the case may be, may by order declare that all moneys secured by the mortgage have been paid in full.

(2) A certificate by the Registrar that such payment as aforesaid was directed and has been made or a sealed copy of the order of the Court declaring that all moneys secured by the mortgage have been paid in full shall, in favour of a purchaser of the land, upon registration, operate as a discharge of the land from the mortgage debt and as a deed of reconveyance in the same manner as a memorandum of discharge operates under section 79(4):

PROVIDED THAT as between the mortgagor and the person so entitled to receive payment as aforesaid any amount which is eventually shown by the person entitled to the mortgage debt to have been in fact due or payable over and above the amount so paid shall continue to be a debt due under the mortgage of the nature of a liability under a deed.

(3) The Court shall order the amount so paid into Court to be paid to the person entitled, upon the application of that person, and on proof that the deed or instrument of mortgage, and all the title deeds which were delivered by the mortgagor to the mortgagee on executing the same, or in connection therewith, have been delivered up to the person by whom the amount was so paid into Court, or the persons' executors,

administrators, or assigns, or have been otherwise satisfactorily accounted for.

(4) Upon production of the Registrar of Land of the certificate of the Registrar of the Supreme Court as hereinbefore mentioned as a sealed copy of the order of the Court declaring that all moneys secured by the mortgage have been paid in full:

(a) he or she shall on payment of the prescribed fee make an entry in the register book discharging the mortgage, stating the day and hour on which the entry is made;

(b) the entry shall be a discharge of the land from the mortgage:

PROVIDED THAT as between the mortgagor and the person so entitled to receive payment as aforesaid, any amount which is eventually shown by the person entitled to the mortgage debt to have been in fact due and payable over and above the amount so paid shall continue to be a debt due under the mortgage of the nature of a liability under a deed;

(c) the Registrar of Land shall endorse on the relevant certificate of title or other document of title, and also on the memorandum of mortgage, whenever those instruments are brought to him or her for the purpose, particulars of the entry.

(5) In any case in which subsection (1) applies, the person entitled to redeem the mortgaged premises, instead of applying to the Court, may tender to the Public Trustee the amount of the mortgage debt, or, as the case may be, proof that all moneys secured by the mortgage have been paid in full, and the Public Trustee, on proof to his or her satisfaction that the amount tendered is the whole amount due under the mortgage, may receive the amount in trust for the mortgagee or other person entitled thereto, and in any such case or on proof to his or her satisfaction that all moneys secured by the mortgage have been paid in full, the Public Trustee shall sign a memorandum of discharge of the mortgage debt in the form numbered I in the Fifth Schedule, and every such memorandum of discharge shall operate as if it had been signed by the mortgagee :

PROVIDED THAT as between the mortgagor and the person entitled to receive payment any amount which is eventually

shown by the person entitled to the mortgage debt to have been in fact due or payable over and above the amount (if any) so paid shall continue to be a debt due under the mortgage of the nature of a liability under a deed.

(6) A memorandum of discharge when registered shall, for the protection of any person dealing with the mortgagor in good faith and for value, be conclusive proof of the happening of all conditions necessary to entitle the Public Trustee to receive the mortgage debt (if any) and to sign the memorandum.

(7) The production of the Public Trustee's receipt for the mortgage debt, or, as the case may be, the production of his or her certificate that all moneys secured by the mortgage have been paid in full, shall be sufficient authority to the person in possession of the instruments of title to the mortgaged property to deliver them to the mortgagor.

(8) The Court may order any person in possession of the instruments of title to the mortgaged property to deliver them to the mortgagor on production of the Public Trustee's receipt for the mortgage debt, or, as the case may be, on production of his or her certificate that all moneys secured by the mortgage have been paid in full, and on payment of all proper charges (if any).

(9) In any case where the Public Trustee discharges a mortgage under the powers conferred on him or her by this section, the Public Trustee shall incur no liability in respect of any loss incurred in respect of his or her so doing so long as he or she acts reasonably and in good faith. The onus of proving that the Public Trustee has not acted reasonably and in good faith shall be upon any person alleging it.

Division 3 – Rights of Mortgagor in Possession

88. Suit for possession of land by mortgagor – A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice has been given by the mortgagee of his or her intention to take possession or to enter into the receipt of the rents and profits thereof, may sue for possession, or for the recovery of the rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his or her own name only, unless the cause of action arises upon a lease or other contract made by the mortgagee jointly with any other person.

Division 4 – Powers and Rights of Mortgagee and Restrictions Thereon

89. Foreclosure prohibited – A mortgagee is not, in any case, entitled to foreclose the equity of redemption in any land.

90. Mortgagee accepting not to call up without notice - Where the mortgagor has made default in payment of the principal sum at the expiry of the term of the mortgage, or of any period for which it has been renewed or extended, and the mortgagee has accepted interest on the sum for any period (not being less than three months) after default has been so made, then, so long as the mortgagor performs and observes all covenants expressed or implied in the mortgage, other than the covenant for payment of the principal sum, the mortgagee shall not call up and compel payment of the sum without giving to the mortgagor 3 clear months' notice of his or her intention so to do.

91. Powers of mortgagee in possession – (1) A mortgagee in possession of any land shall as against a subsequent encumbrancer and as against the mortgagor have power to grant a lease of the whole or any part of the mortgaged land for any term not exceeding 7 years.

(2) No lease under this section is binding upon a prior encumbrancer except so far as he or she has consented thereto in writing.

(3) A person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(4) The lease shall be made to take effect in possession not later than 6 months after its date.

(5) The lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any find being taken.

(6) The lease shall contain a covenant by the lessee for the payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified, not exceeding one month.

(7) A contract to make or accept a lease under this section may be enforced by or against any person on whom the lease if granted would be binding.

(8) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage, and has effect subject to the terms of the mortgage and the provisions therein contained.

(9) The mortgagor and the mortgagee may, by agreement in writing, whether or not contained in the mortgage, reserve to or confer on the mortgagee any further or other powers of leasing or having reference to leasing, and any further or other powers so reserved or conferred shall be exercisable as far as may be as if they were conferred by this section, and with all the like incidents, effects, and consequences:

PROVIDED THAT the powers so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement unless the mortgagee joins in or adopts the agreement.

(10) Nothing in this section enables a mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the encumbrancers, if this section had not been passed:

PROVIDED THAT in the case of a mortgage of leasehold land a lease granted under this section shall reserve a reversion of not less than one day.

(11) While a mortgagee is in possession of any land he or she is entitled to sue upon the covenants of every lease affecting the land or any part thereof, and to exercise all other rights, powers, and remedies of the lessor under the lease in all respects as though the reversion of the land were for the time being vested at law in the mortgagee, whether the lease shall have been granted by the mortgagee or by the mortgagor or any other person.

(12) The provisions of this section referring to a lease extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

(13) Neither the Registrar of Land nor any other person shall be concerned to inquire whether or not the occasion has arisen authorising a mortgagee to grant a lease of any land in

accordance with this section; and no action shall lie against either the Registrar of Land or any such other person in respect of any loss, damage, or deprivation occasioned by the improper exercise by the mortgagee of any powers conferred by this section.

(14) A mortgagee in possession of any land is entitled to accept a surrender of any lease thereof granted by him or her under this section.

(15) For the purposes of this section, a first mortgagee of any land is taken to be in possession of the land if he or she is entitled to enter into possession thereof or to bring an action for possession thereof.

92. Restriction on exercise by mortgagee of his or her rights – (1) Subject to the provisions of this section, no power to sell land or to enter into possession of land conferred by any mortgage becomes or is taken to have become exercisable, and no moneys secured by any mortgage of land become or are taken to have become payable, by reason of any default (whether made before or after the commencement of this Act) in the payment of any moneys so secured or in the performance or observance of any other covenant expressed or implied in the mortgage unless the mortgagee serves on the owner for the time being of the land subject to the mortgage a notice specifying the default complained of and a date on which the power will become exercisable or the moneys will become payable, as the case may be, and requiring the owner to remedy the default, and the owner fails to remedy the default before the date so specified.

(2) The date to be specified in the notice as aforesaid shall not be earlier than one month from the service of the notice nor earlier than the date on which the power would have become exercisable or the moneys would have become payable if this section had not been passed. A notice under this section may be served before the last-mentioned date.

(3) In any case to which this section and section 90 apply, the 3clear months' notice of intention to call up and compel payment of the principal sum required by section 90 and the notice required by this section may be combined in one document. Where those notices are so combined, the notice required by section 90 shall be deemed to have been given to

the mortgagor at the time when the document containing the combined notices has been served on him or her under section 152.

(4) If a land that is subject to the mortgage is also subject to any subsequent mortgage, and the mortgagee has actual notice of the name and address of the subsequent mortgagee, he or she shall forthwith after serving the notice on the owner serve a copy of the notice on the subsequent mortgagee.

(4A) Failure to comply with subsection (4) does not of itself prevent any of the powers referred to in subsection (1) from becoming or being deemed to have become exercisable, or prevent any moneys secured by a mortgage from becoming or being deemed to have become payable.

(5) If the notice relates to a power to enter into possession of any land, the Court may in its discretion, upon the application of the mortgagee made *ex parte* or otherwise as the Court thinks fit, grant leave to the mortgagee to exercise the power at any time before the date specified in the notice, but not earlier than the date on which the power would have become exercisable if this section had not been passed. Leave may be granted under this subsection either unconditionally or upon or subject to such conditions as the Court thinks fit.

(6) If at any time the mortgagee exercises the power of sale conferred by any mortgage of land and the amount realised is less than the amount owing under the covenant to repay expressed or implied in the mortgage, no action to recover the amount of the deficiency or any part thereof shall be commenced by the mortgagee against any person (not being the owner of the land subject to the mortgage at the time of the exercise of the power of sale) unless the mortgagee, at least one month before the exercise of the power of sale, serves on that person notice of his or her intention to exercise the power of sale and to commence action against that person to recover the amount of the deficiency in the event of the amount realised being less than the amount owing under the covenant to repay.

(7) This section has effect despite any stipulation to the contrary.

(8) Nothing in this section is to be construed to affect any sale or entry into possession made before 8 September 1939 (being the date of the passing of the Property Law Amendment

Act 1939), or any proceedings commenced before that date for the recovery of any moneys secured by a mortgage.

(9) Despite subsections (1) to (8), if before the date mentioned subsection (8) any mortgagee for the time being entitled by reason of any default of the mortgagor to exercise the power of sale conferred by his or her mortgage has made an application to a Registrar of the Supreme Court to conduct the sale of the whole or any part of the land that is subject to the mortgage, the sale may be proceeded with and completed as if neither the Property Law Amendment Act 1939 nor this Act had been passed:

PROVIDED THAT in any case the sale shall not be proceeded with if, before the time fixed for the sale, the mortgagor remedies the default complained of by the mortgagee in his or her application to the Registrar and pays to the mortgagee the expenses already incurred by him or her in connection with the intended sale and any moneys expended by him or her on or about the land subsequently to the time when he or she made his or her application to the Registrar; and for the purposes of this provision the Registrar, on the application of the mortgagor, may, if the Registrar thinks fit, postpone the sale for any period not exceeding one month.

(10) In this section, “owner”, of land subject to a mortgage, means:

- (a) the original mortgagor; or
- (b) if it appears from any register kept under the Land Registration Act 1992/1993, that his or her estate or interest has been transferred or conveyed, whether by operation of law or otherwise, the person appearing from the register or instrument or instruments to be entitled to that estate or interest.

93. Power to authorise land and minerals to be dealt with separately by mortgagee – Where a mortgagee’s power of sale in regard to land has become exercisable but does not extend to the purposes mentioned in this section, the Court may, on his or her application, authorise the mortgagee and the persons deriving title under him or her to dispose:

- (a) of the land, with an exception or reservation of all or any mines and minerals, and with or without

rights and powers of or incidental to the working, getting, or carrying away of minerals;
or

- (b) of all or any mines and minerals, with or without the said rights or powers, separately from the land, –

and thenceforth the powers so conferred shall have effect as if they were contained in the mortgage.

94. Power of sale in mortgage includes certain powers incident thereto – Subject to section 96, a power of sale expressed or implied in a mortgage of land includes the following powers as incident thereto, namely:

- (a) a power to impose or reserve or make binding, as far as the law permits, by covenant, condition, or otherwise, on the unsold part of the mortgaged land or any part thereof, or on the purchaser and any land sold, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing;

- (b) a power to sell the mortgaged land, or any part thereof, or all or any mines and minerals apart from the surface—

(i) with or without a grant or reservation of rights of way, rights of water, easements, rights, and privileges for or connected with building or other purposes in relation to the land remaining subject to the mortgage or any part thereof, or to any land sold; and

(ii) with or without exception or reservation of all or any of the mines and minerals in or under the mortgaged land, and with or without a grant or are reservation of powers of working, way leaves, or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or connected with mining purposes in relation to the land remaining unsold, or any part thereof, or to any land sold; and

(iii) with or without covenants by the purchaser to expend money on the land sold.

95. Mortgagee in possession may cut and sell certain trees – Subject to section 96, a mortgagee in possession of any land as mortgagee has the power to cut and sell timber and other trees on the land ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale to be completed within any time not exceeding 12 months from the making of the contract.

96. Application of last two sections – Subject to this section, sections 94 and 95 apply only to mortgages of land only if and as far as a contrary intention is not expressed in the mortgage, and have effect subject to the terms of the mortgage and to the provisions therein contained.

97. Mortgaged property may be sold or leased together at one price or rent – (1) In the exercise by the mortgagee of a power of sale or lease contained or implied in any mortgage:

- (a) the mortgaged premises, or any part thereof, may be sold or leased, together with any other land or property of whatsoever nature or tenure which is the subject of the mortgage or of any collateral security from the mortgagor to the mortgagee, by one sale or lease at one price or rent; and in such case;
- (b) the mortgagee shall fairly and equitably apportion all costs, expenses, purchase moneys, and rents between the properties sold or leased.

(2) A failure by the mortgagee to make any such apportionment does not affect the purchaser or lessee, nor the title to the property in his or her hands.

(3) This section applies to all mortgages, whether made before or after the commencement of this Act.

98. Mortgagee's receipts, discharges, etc. – (1) The receipt in writing of a mortgagee is a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his or her mortgage or arising thereunder, and a person paying or

transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage or to see to the application of the money or securities so paid or transferred.

(2) Money received by a mortgagee under his or her mortgage, or from the proceeds of securities comprised in his or her mortgage, shall be applied in like manner as in this act directed respecting money received by the mortgagee arising from a sale under the power of sale conferred by this Act, but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money instead of those incident to sale.

Division 5 – Sale by Mortgagee Through Registrar of Supreme Court

99. Sale of mortgaged land by Registrar – (1) Any present or future mortgagee of land may, at any time after he or she has become entitled to exercise the power of sale contained or implied in his or her mortgage, apply in writing to the Registrar to conduct the sale of the whole or any part of the land comprised in the mortgage, and in his or her application shall state the value at which he or she estimates the land to be sold.

(2) The Registrar shall fix a convenient time (being not more than 3 months and not less than one month from the date of the application) and a convenient place for the sale, give such notice of the sale by advertisement in some newspaper circulating in the neighbourhood as he or she deems sufficient, approve of proper conditions of sale, employ and auctioneer, and do all other necessary acts for carrying out the sale.

100. Mortgagor may redeem at mortgagee's valuation – At any time before the sale the mortgagor may pay to the mortgagee either the value of the land, as estimated by the mortgagee, or the amount due and owing under the mortgage, together with the expenses already incurred by the mortgagee in connection with the intended sale, and any moneys expended by the mortgagee on or about the land subsequently to the time when he or she estimated the value thereof as aforesaid; and on

such payment the mortgagee shall do the acts required by clause 10 of the Fourth Schedule:

PROVIDED THAT where the sum so paid is less than the amount owing under the mortgage, the balance may be recovered from the mortgagor under the covenant to repay expressed or implied in the mortgage.

101. Mortgagee may become purchaser – (1) The mortgagee may be a bidder at any such sale conducted as aforesaid, and become the purchaser of the land or any part thereof.

(2) If the mortgagee is declared the purchaser, the Registrar shall, on demand by the mortgagee, execute an instrument of conveyance of the land purchased, expressed to be made between the Registrar (describing the mortgagee by his or her official description only) and the mortgagee, with or without the addition of any other parties, and containing a recital that the sale has been made under this section.

(3) In the instrument of conveyance, the consideration to be stated shall be not less than the value of the land as estimated by the mortgagee as aforesaid.

(4) Upon the execution of the instrument of conveyance by the Registrar, and subject to compliance with the provisions of Land Registration Act 1992/1993 as to registration, the land shall vest in the mortgagee in the same manner as if it had been conveyed by the mortgagee to a purchaser at a sale made in exercise of the power of sale expressed or implied in the mortgage, and the mortgagee shall have the same estate and interest in the land as if he or she had purchased at such a sale, and no rule of law or equity had existed preventing him or her from purchasing and taking a conveyance.

(5) An instrument of conveyance in pursuance of any such sale may be made by the Registrar to any person whom the mortgagee in writing may appoint, instead of to the mortgagee, and shall have the same force and effect in favour of the person to whom it is made as it would have had if made to the mortgagee.

(6) The instrument of conveyance may be registered under the Land Registration Act 1992/1993 and thereupon the estate or interest of the mortgagor therein expressed to be transferred shall vest in the transferee freed and discharged from the

liability on account of the mortgage under which the power of sale has been exercised, or any estate or interest except an estate or interest which has priority over the mortgage or which by reason of the consent of the mortgagee is binding on him or her; and the Registrar of Land may make in the register book any entry necessary to show that every such liability, estate, or interest has been so determined.

102. Protection of *bona fide* purchaser – Any instrument of conveyance executed by the Registrar upon a sale shall, in favour of any person (other than a mortgagee purchasing under section 101 or any person appointed by him or her) claiming by, through, or under that instrument (including a person claiming under an instrument of conveyance to the mortgagee) in good faith and for valuable consideration, be conclusive proof that all the provisions of this Act relating to the sale have been complied with, and that all things have happened and all times have elapsed to authorise the instrument of conveyance to be made.

103. Fees payable on applications – (1) For an application under section 99, there shall be paid to the Registrar by the mortgagee, in addition to the reasonable expenses of and incidental to the sale:

- (a) a fee of \$2 which shall accompany the application; and
- (b) if the land is sold, a further fee of one-quarter percent of the amount of the purchase money, but in no case shall the last-mentioned fee be less than \$2 or more than \$40.

(2) In any case where the land sold is subject to a mortgage, the moneys secured by the mortgage are taken to be “purchase money” within the meaning of this section.

Division 6 – Liability to Mortgagee of Purchaser of Land Subject to Mortgage

104. Purchaser personally liable to mortgagee – (1) If a person acquires any land by an instrument of conveyance subject to any mortgage, the person acquiring the land shall, unless a contrary intention appears in the mortgage, and

irrespective of whether he or she has signed the instrument become personally liable to the mortgagee for the payment of all principal money and interest secured by the mortgagee for the fulfilment and observance of any other covenant or agreement contained or implied in the mortgage as if he or she were an original mortgagor of the land and had covenanted with the mortgagee for such payment as aforesaid and for the fulfilment and observance of such covenants and agreements as aforesaid, and the mortgagee shall have remedy directly against that person accordingly, but nothing herein extinguishes the liability of any original mortgagor under the mortgage or the liability of any intermediate transferee of the land acquired by him or her subject to the mortgage aforesaid.

(2) Nothing in this section renders an executor or administrator or trustee personally liable in respect of the estate of a deceased person or in respect of the property subject to a trust, as the case may be, except to the extent of the property under his or her control as such executor or administrator or trustee.

(3) Despite anything to the contrary in any mortgage, it shall not be obligatory on any mortgagor or any person acquiring land as aforesaid to procure or execute any covenant or contract by that person for the payment of principal, interest, or other moneys secured by or the observance or performance of the covenants, conditions, or agreements contained or implied in the mortgage, and no covenant, contract, or condition by a mortgagor or by any such person acquiring the land as aforesaid (whether expressed in a mortgage or in any instrument collateral to the mortgage) to procure the execution of or to execute any such covenant, condition, or agreement shall have any effect whatever.

(4) This section applies to all mortgages where land subject to the mortgage is acquired as aforesaid after the commencement of this Act.

(5) In this section, “instrument” or “instrument of conveyance” does not include a lease, or a conveyance by way of security only.

PART VIII
LEASES AND TENANCIES

Division 1 – General Provisions

105. Tenancy from year to year not to be implied – No tenancy from year to year shall be created or implied by payment of rent; and if there is a tenancy it is taken, in the absence of proof to the contrary, to be a tenancy determinable at the will of either of the parties by one month's notice in writing.

106. Covenants implied in leases – In a lease of land there shall be implied the following covenants by the lessee, for himself or herself, the lessee's executors, administrators, and assigns:

- (a) that he or she or they will pay the rent thereby reserved at the time therein mentioned:

PROVIDED THAT in case the demised premises or any part thereof shall at any time during the continuance of the lease, without neglect or default of the lessee, be destroyed or damaged by fire, flood, lightning, storm, tempest, or earthquake, so as to render the same unfit for the occupation and use of the lessee, then and so often as the same shall happen, the rent thereby reserved, or a proportionate part thereof, according to the nature and extent of the damage, shall abate, and all or any remedies for the recovery of the rent or the proportionate part thereof shall be suspended until the demised premises shall have been rebuilt or made fit for the occupation and use of the lessee, and in case of any dispute arising under this proviso the same shall be referred to arbitration under the provisions of the Arbitration Act 1976.

- (b) that he or she or they will, at all times during the continuance of the said lease, keep, and at the termination thereof yield up, the demised premises in good and tenantable repair, having regard to their condition at the commencement of the lease, accidents and damage from fire, flood, lightning, storm, tempest, earthquake, and fair wear and tear (all without neglect or default of the lessee excepted).

107. Powers in lessor – In a lease of land there shall be implied the following powers in the lessor, his or her executors, administrators, or assigns:

- (a) that the lessor or they may, by himself or herself or themselves, or by their agents, at all reasonable times, enter upon the demised premises and view the state of repair thereof, and may serve upon the lessee, his or her executors, administrators, or assigns, a notice in writing of any defect, requiring him or her or them, within a reasonable time, to be therein prescribed, to repair the same in accordance with the covenant in that behalf contained or implied in the lease;
- (b) that whenever the rent reserved is in arrear he or she or they may levy the same by distress;
- (c) that whenever the rent or any part thereof, whether legally demanded or not, is in arrear for the space of one month, or whenever the lessee has failed to perform or observe any of the covenants, conditions, or stipulations contained or implied in the lease, and on the part of the lessee to be performed or observed, he or she or they may re-enter upon the demised premises (or any part thereof in the name of the whole) and thereby determine the estate of the lessee, his or her executors, administrators, or assigns, therein, but without releasing him or her or them from liability in respect of the breach or non-observance of any such covenant, condition, or stipulation.

108. Effect of licence to assign – A condition or covenant not to assign or underlet or to do any other act without licence shall not be released or determined by any such licence.

109. No fine for licence to assign – (1) In all leases containing a covenant, condition, or agreement that the lessee shall not, without the licence or consent of the lessor, assign, underlet, part with the possession, or dispose of the demised premises or any part thereof, that covenant, condition, or agreement is, unless the lease contains an express provision to

the contrary, deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of any such licence or consent; but this proviso shall not preclude the right to require the payment of a reasonable sum in respect of any legal or other expenses incurred in relation to the licence or consent.

(2) Neither the assignment or underletting of any leasehold by the assignee of a bankrupt, or by the liquidator of a company, or by the Sheriff under an execution, nor the bequest of a leasehold, shall be deemed to be a breach of any such covenant, condition, or agreement, unless the contrary is expressly declared in the lease.

(3) For the purposes of this section, terms defined in section 117 have the meanings assigned to them by that section.

110. Licence or consent not be unreasonably withheld –

In all leases, whether made before or after the commencement of this Act, containing a covenant, condition, or agreement against assigning, underletting, charging, or parting with the possession of demised premises or any part thereof without licence or consent, that covenant, condition, or agreement is, despite any express provision to the contrary, taken to be subject to a proviso to the effect that the licence or consent is not to be unreasonably withheld, but this proviso does not preclude the right of the landlord to require payment of a reasonable sum in respect of any legal or other expenses incurred in connection with any such licence or consent.

111. Merger of reversion not to affect remedies –

If the reversion of land subject to a lease is merged in any remainder or other reversion, or future estate, the person entitled to the estate into which the reversion has merged, and his or her executors or administrators, shall have the same remedy for non-performance or non-observance of the conditions or covenants expressed or implied in the lease as the person who would for the time being have been entitled to the mesne reversion so merged would have had.

112. Rent and benefit of lessees covenants to run with reversion –

(1) Rent reserved by a lease, and the benefit of every covenant or provision therein having reference to the

subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein, shall be annexed and incident to and shall go with the reversionary estate in the land or in any part thereof immediately expectant on the term granted by the lease, despite severance of that reversionary estate, and may be recovered, received, enforced, and taken advantage of by the person entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased. This subsection extends to a covenant to do some act relating to the land, despite that the subject-matter may not be in existence when the covenant is made.

(2) The benefit of every condition of re-entry or forfeiture for a breach of any covenant or condition contained in a lease shall be capable of being enforced and taken advantage of by the person entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased, although that person became, by conveyance or otherwise, so entitled after the condition of re-entry or forfeiture had become enforceable.

(3) This section does not render enforceable any condition of re-entry or other condition waived or released before that person became entitled as aforesaid.

(4) This section applies to leases whether made before or after the commencement of this Act, but with respect only to rent accruing due after the commencement of this Act, and to the benefit of a condition of re-entry or forfeiture for a breach committed after the commencement of this Act of any covenant, condition, or provision contained in the lease.

(5) In the case of leases made before the commencement of this Act, with respect to rent accrued due before the commencement of this Act, and to the benefit of a condition of re-entry or forfeiture for a breach committed before the commencement of this Act of any covenant, condition, or provision contained in the lease, section 88 of the Property Law Amendment Act 1951 shall continue to apply despite the repeals hereinafter contained.

(6) This section applies only to leases made on or after 1 January 1906.

113. Obligation of lessor's covenants to run with reversion – (1) The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, in so far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate or the several parts thereof, despite severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is vested by conveyance devolution in law or otherwise; and, in so far as the lessor has power to bind the person entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2) This section applies only to leases made on or after 1 January 1906.

114. Apportionment of conditions on severance, etc. - (1) Despite the severance by conveyance, surrender, or otherwise of the reversionary estate in any land comprised in a lease, and despite the avoidance or cesser in any other manner of the term granted by a lease as to part only for the land comprised therein, every condition or right of re-entry, and every other condition in the lease, shall:

- (a) be apportioned; and
- (b) remain annexed to the several parts of the reversionary estate so severed; and
- (c) be in force with respect to the term whereon each severed part is reversionary, or the term in any land that has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had been the only land comprised in the lease.

(2) This section applies only to leases made on or after 1 January 1906.

115. Restriction on effect of waiver – Where any actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor or his or her executors, administrators,

or assigns is proved to have taken place on or after 1 January 1906, in any one particular instance, that actual waiver is deemed not to extend to any instance or any breach of covenant or condition other than that to which the waiver specially relates, or to be a general waiver of any such covenant or condition, unless an intention to that effect appears.

116. Executor not personally liable for covenants – An executor or administrator is not personally liable on any covenant entered into by a testator or intestate as a lessee of land, despite any rule of law.

Division 2 – Relief Against Forfeiture

117. Interpretation – In sections 118 and 119:

“bankruptcy” does not include the voluntary winding up of any solvent company;

“lease” includes an original or derivative underlease, a grant securing a rent by condition, and an agreement for a lease where the lessee has become entitled to have his or her lease granted;

“lessor” includes an original or derivative underlessor, a grantor as aforesaid, a person bound to grant a lease under an agreement as aforesaid, and the executors, administrators, and assigns of a lessor;

“underlease” includes an agreement for an underlease where the underlessee has become entitled to have his or her underlease granted;

“underlessee” includes any person deriving title through or from an underlessee.

118. Restrictions on and relief against forfeiture – (1) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant, condition, or agreement in the lease, shall not be enforceable by action or otherwise unless the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and in any case requiring the lessee to make compensation in money for the breach, and the lessee fails within a reasonable time thereafter to remedy the breach, if it is capable of remedy, and to make

reasonable compensation thereof in money to the satisfaction of the lessor.

(1A) Where the lease in respect of which such a notice has been served on the lessee has been mortgaged and the lessor has actual notice of the name and address of the mortgagee, he or she shall forthwith after serving the notice on the lessee serve a copy of the notice on the mortgagee.

(1B) Failure to comply with subsection (1A) does not of itself prevent the exercise by the lessor of any right of re-entry or forfeiture under any proviso or stipulation in the lease.

(2) Where a lessor is proceeding by action or otherwise to enforce such a right of re-entry or forfeiture, or has re-entered without action, the lessee may, in the lessor's action (if any), or in any action brought by himself or herself, or by proceeding otherwise instituted, apply to the Court for relief; and the Court, having regard to the proceedings and conduct of the parties under subsections (1), (1A) and (1B), and to all the circumstances of the case, may grant or refuse relief, as it thinks fit; and in case of relief may grant the same on such terms (if any) as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court in the circumstances of each case thinks fit.

(3) If relief is granted under subsection (2), the Court shall direct a minute or record thereof to be made on the lease or otherwise.

(4) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(5) For the purposes of this section, a lease limited to continue so long as the lessee abstains from committing a breach of any covenant, condition, or agreement shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso on such a breach.

(6) This section does not extend:

- (a) to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or
- (b) in the case of a lease of any premises licensed under the Liquor Act 2011, to a covenant or agreement

not to do or omit any act or thing whereby the licence may be lost or forfeited.

(7) This section does not affect the law relating to re-entry or forfeiture in case of non-payment of rent.

(8) This section has effect despite any stipulation to the contrary.

119. Protection of underlessees on forfeiture of superior leases – If a lessor is proceeding, by action or otherwise, to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the Court may, on application by any person claiming as under lessee any estate or interest in the property comprised in the lease, or any part thereof, either in the lessor’s action (if any) or in any action brought by that person for that purpose, make an order vesting, for the whole term of the lease or any less term, the property comprised in the lease, or any part thereof, in any person entitled as under lessee to any estate or interest in that property, upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, the giving of security, or otherwise as the Court in the circumstances of each case thinks fit; but in no case is any such under lessee entitled to require a lease to be granted to him or her for any longer term than he or she had under his or her original under lease.

Division 3 – Relief Against Refusal to Grant Renewal, etc.

120. Relief of lessee against refusal of lessor to grant a renewal or to assure the reversion – (1) In this section, unless the context otherwise requires, “lease”, and “lessor” have the same meanings respectively as in section 117.

(2) This section applies to leases made either before or after the commencement of this Act, and has effect with respect to any lease despite any stipulation to the contrary and despite the expiry of the term of the lease.

(3) If :

- (a) by any lease to which this section applies the lessor has covenanted or agreed with the lessee that, subject to the performance or fulfilment of certain covenants, conditions, or agreements by the lessee, the lessor will—

- (i) on the expiry of the lease grant to the lessee a renewal of the lease or a new lease of the demised premises; or
- (ii) whether upon the expiry of the lease or at any time previous thereto assure to the lessee the lessor's reversion expectant on the lease; and
- (b) the lessor has refused to grant that renewal or that new lease or to assure that reversion, as the case may be, on the ground that the lessee has failed to perform or fulfil the covenants, conditions, and agreements, or any of them, –

the lessee may in any action (whether brought by the lessor or the lessee and whether brought before or after the commencement of this Act), or by proceeding otherwise instituted, apply to the Court for relief.

(4) The Court, having regard to all the circumstances of the case, may grant or refuse relief as it thinks fit, and in particular may decree, order, or adjudge:

- (a) that the lessor shall grant to the lessee a renewal of his or her lease or a new lease, as the case may require; or
- (b) that the lessor's covenant or agreement to assure the reversion ought to be specifically performed and carried into execution, and that the lessor shall execute such assurances as the Court thinks proper for that purpose, –

on the same terms and conditions in all respects as if all the covenants, conditions, and agreements aforesaid had been duly performed and fulfilled.

(5) The Court may grant relief on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise as the Court in the circumstances of each case thinks fit.

(6) Failure by the lessee to give to the lessor notice of his or her intention to require or to accept a renewal of a lease or a new lease or an assurance of the lessor's reversion, as the case may be, within the time or in the manner, if any, prescribed by the original lease does not limit the rights of the lessee or the powers of the Court under this section.

(7) The fact that the lessor may have granted any estate or interest in the demised land to any person other than the lessee, which estate or interest would be defeated or prejudicially

affected by the grant of relief to the lessee, shall not affect the power of the Court under this section but in any such case the Court may:

- (a) if it thinks just, grant relief to the lessee and cancel or postpone any such estate or interest; and
- (b) if it thinks fit, assess damages or compensation to be paid to that person in respect of the defeat of or prejudicial effect upon the estate or interest.

(8) Any damages or compensation to be paid under subsection (7) shall as the Court may determine be payable either by the lessor or by the lessee, or partly by the lessor and partly by the lessee in proportions to be fixed by the Court.

121. Limitation of time for application for relief – (1) Application for relief under section 120 may be made at any time within 3 months after the refusal of the lessor to grant a renewal of the lease or to grant a new lease or to assure the reversion, as the case may be, has been first communicated to the lessee.

(2) For the purposes of subsection (1), communication to the lessee of notice in writing of the lessor's intention to refuse at the appropriate time to grant a renewal of a lease or to grant a new lease or to assure the reversion is taken to be equivalent to communication of his or her refusal to grant the renewal or new lease or to assure the reversion, and in any case where notice of intention is so given the period of limitation fixed by subsection (1) shall begin to run from the date of the communication of the notice accordingly.

**PART IX
EASEMENTS, RESTRICTIVE STIPULATIONS,
AND ENCROACHMENTS**

Division 1 – Easements in Gross

122. Easement in gross permitted – An easement over land may be created without being attached or made appurtenant to other land, and such an easement shall run with and bind the land over which it is created, and all persons claiming title to that land by, through, or under the person creating the easement; and the easement so created shall be to all intents and purposes an incorporeal hereditament, and shall be assignable accordingly.

Division 2 – Light and Air

123. Access or use of light or air – (1) Except as herein provided, no tenement shall become servient to any other in respect of the access of either light or air, and no person shall have or acquire by prescription, grant, or otherwise any claim or right to the access of light or air to any land or building from or over the land of any other person.

(2) This section applies to all lands in Samoa including lands held by or on behalf of the Independent State of Samoa.

(3) Nothing in this section repeals or affects any law or statute relating to the pollution of air.

124. Conditions precedent to grant of right of light or air – A grant of the right of access of light or air made at any time may be enforced if the grant:

- (a) is made by an instrument in an appropriate form;
- (b) is duly registered within 12 months from the date of the execution thereof by the grantor;
- (c) limits and defines accurately the area or parcel of land on, to, or over which the uninterrupted access of light or air, or light and air, is intended to be provided for.

125. Effect of grants – (1) A grant shall, if duly registered within the period under section 124, confer upon the owner of the dominant tenement such rights as may be therein defined in respect of the access of light or air, or light and air; and those rights shall enure, unless otherwise provided, despite that any buildings erected upon the dominant tenement may be altered or destroyed and replaced by other buildings.

(2) The erection of buildings of any height not encroaching upon the area limited and defined as aforesaid is taken not to be an infringement of the right or a derogation from the grant.

Division 3 – Easements and Restrictive Stipulations

126. Registration of restrictions of user of land – If a restriction arising under covenant or otherwise as to the user of any land the benefit of which is intended to be annexed to other

land is contained in an instrument coming into operation after the commencement of this Act:

- (a) the Registrar of Land has the power to enter in the appropriate folium of the register book relating to the land subject to the burden of the restriction a notification of the restriction, and a notification of any instrument purporting to affect the operation of the restriction of which a notification has been so entered, and when the restriction is released, varied, or modified to cancel or alter the notification thereof;
- (b) a notification in the register book of any such restriction shall not give the restriction any greater operation than it has under the instrument creating it;
- (c) the restriction notified on the appropriate folium of the register book is taken to be an interest in land.

127. Power for Court to modify or extinguish easements and restrictive stipulations – (1) If land is subject to an easement or to a restriction arising under covenant or otherwise as to the user thereof, the Court may, on the application of any person interested in the land, by order modify or wholly or partially extinguish the easement or restriction upon being satisfied:

- (a) that by reason of any change in the user of any land to which the easement or the benefit of the restriction is annexed, or in the character of the neighbourhood or other circumstances of the case which the Court may deem material, the easement or restriction ought to be deemed obsolete, or that the continued existence thereof would impede the reasonable user of the land subject to the easement or restriction without securing practical benefit to the persons entitled to the easement or to the benefit of the restriction, or would, unless modified, so impede any such user; or
- (b) that the persons of full age and capacity for the time being or entitled to the easement or to the benefit

of the restriction, whether in respect of estates in fee simple or any lesser estates or interest in the land to which the easement or the benefit of the restriction is annexed, have agreed to the easement or restriction being modified or wholly or partially extinguished, or by their acts or omissions may reasonably be considered to have abandoned the easement wholly or in part; or

(c) that the proposed modification or extinguishment will not substantially injure the persons entitled to the benefit of the restriction.

(2) When proceedings by action or otherwise are instituted to enforce an easement or restriction, or to enforce any rights arising out of a breach of any restriction, a person against whom the proceedings are instituted may in those proceedings apply to the Court for an order under this section.

(3) The Court may on the application of any person interested make an order declaring whether or not in any particular case any land is affected by an easement or restriction and the nature and extent thereof, and whether the same is enforceable, and, if so, by whom.

(4) Notice of any application made under this section shall, if the Court so directs, be given to such administrative body, if any, having responsibility for the administration of the district in which the land is situated and to such other persons and in such manner, whether by advertisement or otherwise, as the Court, either generally or in a particular instance, may order.

(5) An order under this section shall, when registered as in this section provided, be binding on all persons, whether of full age or capacity or not, then entitled or thereafter becoming entitled to the easement, or interested in enforcing the restriction, and whether those persons are parties to the proceedings or have been served with notice or not.

(6) This section applies to easements and restrictions existing at the commencement of this Act or coming into existence after its commencement.

(7) The Registrar of Land may of his or her own motion, and on the application of any person interested in the land make all necessary amendments and entries in the register book for giving effect to the order in respect of all grants, certificates of

the title, and other instruments affected thereby and the duplicates thereof, if and when available.

Division 4 – Encroachments

128. District Court may authorise entry for erecting or repairing buildings, etc. – (1) The owner of any land may at any time apply to a District Court for an order authorising him or her, or any person authorised by him or her in writing in that behalf, to enter upon any adjoining land for the purpose of erecting, repairing, adding to, or painting the whole or any part of any building, wall, fence, or other structure on the applicant's land, and to do on the land so entered upon such things as may reasonably be considered necessary for any such purpose as aforesaid.

(2) On any such application the Court may make such order as it thinks fit. Any such order, or any provision thereof, may be made upon and subject to such terms and conditions as the Court thinks fit.

(3) An application under this section shall be made by originating application under the rules of procedure under the District Courts Act. The Court, for the purposes of hearing and determining the application, has the powers vested in it in its ordinary civil jurisdiction.

(4) In this section, "owner", of land, means a person registered as the proprietor of an estate in fee simple in the land or as lessee or mortgagee of the land, or any person who is for the time being entitled to receive the rent of the land, whether on his or her own account or as agent or trustee for or mortgagee of any other person, or who would be entitled so to receive the rent if the land were let, or any tenant of the land bound by any express or implied covenant to keep any building thereon in repair.

129. Power of Court to grant special relief in cases of encroachment – (1) If a building on any land encroaches on any part of any adjoining land (that part being referred to in this section as the piece of land encroached upon), whether the building was erected by the owner of the first-mentioned land (in this section referred to as the "encroaching owner") or by any of his or her predecessors in title, either the encroaching

owner or the owner of the piece of land encroached upon may apply to the Supreme Court, whether in any action or proceeding then pending or in progress and relating to the piece of land encroached upon or by an originating application, to make an order in accordance with this section in respect of that piece of land.

(2) If it is proved to the satisfaction of the Court that the encroachment was not intentional and did not arise from gross negligence, or, where the building was not erected by the encroaching owner, if in the opinion of the Court it is just and equitable in the circumstances that relief should be granted to the encroaching owner or any other person to give up possession of the piece of land encroached upon or to pay damages, and without granting an injunction, may in its discretion make an order:

- (a) vesting in the encroaching owner or any other person any estate or interest in the piece of land encroached upon; or
- (b) creating in favour of the encroaching owner or any other person any easement over the piece of land encroached upon; or
- (c) giving the encroaching owner or any other person the right to retain possession of the piece of land encroached upon.

(3) If the Court makes any order under this section, the Court may, in the order, declare any estate or interest so vested to be free from any mortgage or other encumbrance affecting the piece of land encroached upon, or vary, to such extent as it considers necessary in the circumstances, any mortgage, lease, or contract affecting or relating to that piece of land.

(4) An order under this section, or any provision of any such order, may be made upon and subject to such terms and conditions as the Court thinks fit, whether as to the payment by the encroaching owner or any other person of any sum or sums of money, or the execution by the encroaching owner or any other person of any mortgage, lease, easement, contract, or other instrument, or otherwise.

(5) A person having any estate or interest in the piece of land encroached upon or in the adjoining land of the encroaching owner, or claiming to be a party to or to be entitled to any benefit under any mortgage, lease, contract, or easement

affecting or relating to any such land, is entitled to apply for an order in accordance with this section, or to be heard in relation to any application for or proposal to make any order under this section. For the purposes of this subsection the Court may, if in its opinion notice of the application or proposal should be given to any such person as aforesaid, direct that such notice as it thinks fit shall be given to that person by the encroaching owner or any other person.

(6) A District Court has jurisdiction to exercise the powers conferred upon the Supreme Court by this section, and application may be made to a District Court accordingly, in any case where the value of the piece of land encroached upon (without the buildings thereon) does not exceed the amount to which the jurisdiction of the District Court is limited in civil cases, and in any case where a District Court would have jurisdiction under section 25 of the District Courts Act 1969:

PROVIDED THAT a party intending to invoke the power given to a District Court by this subsection shall, except in any case where the Court derives its jurisdiction under that section, give notice of his or her intention to all other parties before the hearing, and in all cases any party is entitled as of right to have the action or proceeding or application transferred to the Supreme Court, or to appeal to the Supreme Court against any order purporting to be made by the District Court under this section.

(7) An order vesting any estate or interest in any person under this section is, for the purposes of the Stamp Duties Ordinance 1932, taken to be a conveyance, and shall be liable to stamp duty accordingly.

(8) An order under this section may be registered as an instrument under the Land Registration Act 1992/1993.

PART X ASSIGNMENT OF THINGS IN ACTION

130. Assignment of debts and things in action – (1) An absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal or equitable thing in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim that debt or thing in action, is and is taken to have been

effectual in law (subject to all equities that would have been entitled to priority over the right of the assignee if this act had not been passed) to pass and transfer the legal or equitable right to that debt or thing in action from that date of the notice, and all legal or equitable and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor.

(2) If the debtor, trustee, or other person liable for the debt or thing in action has had notice that:

- (a) the assignment is disputed by the assignor or any one claiming under him or her; or
- (b) there are other opposing or any one claiming under him or her; or
- (c) there are other opposing or conflicting claims to that debt or thing in action, –

he or she is entitled, if he or she thinks fit, to call upon the several persons making claim thereto to interplead concerning the same; or he or she may, if he or she thinks fit, pay the same into the Court, under and in conformity with the provisions of this Act for the relief of trustees.

PART XI MARRIAGE SETTLEMENTS

131. Implied powers in tenants for life – In a conveyance of land by way of settlement on marriage there shall be implied the following powers in the trustees of the settlement, that is to say:

that they may lease, or concur in respect of the share in leasing, the land comprised in the settlement for any term not exceeding 21 years, to take effect in possession or within 6 months from the making of the lease, at a reasonable yearly rent, without taking any fine or premium for the making of the lease, and so that the lessee or lessees do execute a counterpart thereof.

132. Powers of trustees of settlement – (1) There shall also be implied in the trustees of the settlement, at the request in writing of any tenant for life in possession, or trustees guardian or committee, or if there is no such tenant for life, then at their own discretion, the following power, that is to say:

that they may dispose of the land comprised in the settlement, or any part thereof, either by way of sale or in exchange for other land of the like nature and tenure in Samoa; or, where an undivided share in any lands is in settlement, may concur in a partition of that land, and may give or take any money by way of equality of exchange or partition.

(2) The moneys to arise from any such sale or to be received for equality of exchange or partition shall, with all convenient speed, be laid out in the purchase of other land of like nature and tenure in Samoa; and any land so purchased or taken in exchange shall be settled in the same manner and subject to the same trusts, powers, and provisos as the land so sold or given in exchange.

(3) The moneys so arising or so received shall, until laid out as aforesaid, be invested in securities authorised by law for the investment of trust funds, and the interest thereof shall be paid to the persons entitled to the rents and profits of the land comprised in the settlement.

Division 1 – Marriage Settlement by Minors

133. Sanction of Court to be obtained – (1) A minor upon or in contemplation of his or her marriage may, with the sanction of the Court, given on the application of the minor or his or her guardian, make a valid and binding settlement or contract for a settlement of all or any part of his or her property, or property over which he or she has a power of appointment, whether in possession, reversion, remainder, or expectancy.

(2) A conveyance, appointment, and assignment of any such property, and a contract to make a conveyance, appointment, or assignment thereof, executed by the minor with the sanction of the Court for the purpose of giving effect to the settlement areas valid and effectual as if the minor were of the full age of 21 years.

(3) If there is no guardian, the Court may require a guardian to be appointed, and may also require that any persons interested or appearing to be interested in the property be served with notice of the application to the Court for its sanction.

(4) When an appointment under a power of appointment, or any disentailing assurance, has been executed under this section

by any minor as tenant in tail, and afterwards that minor dies under age, the appointment or disentailing assurance shall thereupon, become void.

(5) Nothing in this section applies to a minor being a man under the age of 20 years, or to any minor being a woman under the age of 17 years.

(6) The authority conferred by this section shall not extend to powers of which it is expressly declared that they shall not be exercised by a minor.

PART XII POWERS OF ATTORNEY

134. Execution by attorney in his or her own name – (1)

The donee of a power of attorney may execute or do any assurance instrument, or thing in and with his or her own name and signature and his or her own seal (where sealing is required) by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law to all intents as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

(2) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

135. Continuance until notice of death or revocation received – (1) Subject to any stipulation to the contrary contained in the instrument creating a power of attorney, the power shall, so far as concerns any act or thing done or suffered thereunder in good faith, operate and continue in force until notice of the death of the donor of the power or until notice of other revocation thereof has been received by the donee of the power.

(2) An act or thing within the scope of the power done or suffered in good faith by the donee of the power after such death or other revocation as aforesaid, and before notice thereof has been received by the donee of the power, is effectual in all respects as if that death or other revocation had not happened or been made.

(3) A statutory declaration by any such attorney to the effect that he or she has not received any notice or information of the

revocation of the power of attorney by death or otherwise is, if made immediately before or if made after any such act as aforesaid, taken to be conclusive proof of the non-revocation at the time when the act was done or suffered in favour of all persons dealing with the donee of the power in good faith and for valuable consideration without notice of the death or other revocation.

(4) If the donee of the power is a corporation aggregate, the statutory declaration shall be sufficient if:

- (a) made by any director, manager, or secretary of the corporation or by any officer thereof discharging the functions usually appertaining to any of those offices or by any officer of the corporation appointed for that purpose either generally or in the particular instance by the board of directors, council, or other governing body by resolution or otherwise; and
- (b) it is to the effect that to the best of the declarant's knowledge and belief neither the attorney nor any servant or agent of the attorney has received any such notice or information as is mentioned in subsection (3), –

and if the declaration contains a statement that the declarant is a director, manager, or secretary of the corporation or is an officer of the corporation discharging the functions usually appertaining to any of those offices or is an officer of the corporation appointed for the purpose of making the declaration, that statement shall be conclusive evidence in favour of the persons mentioned in that subsection.

(5) This section applies to powers of attorney executed in or out of Samoa. (*see Notes at the end of the reprint of this Act*)

136. Irrevocable power of attorney for value – (1) If a power of attorney given for valuable consideration (whether executed in or out of Samoa) is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser:

- (a) the power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee, or by the

death, mental deficiency, or bankruptcy of the donor; and

- (b) an act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor without the concurrence of the donee, or the death, mental deficiency, or bankruptcy of the donor, or of the death, mental deficiency, or bankruptcy of the donor.

(2) This section applies only to powers of attorney created by instruments executed on or after 1 January 1906.

137. Power of attorney made irrevocable for fixed time –

(1) If a power of attorney (whether executed in or out of Samoa, and whether given for valuable consideration or not) is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser:

- (a) the power shall not be revoked for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee, or by the death, mental deficiency, or bankruptcy of the donor; and
- (b) an act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor without the concurrence of the donee, or the death, mental deficiency, or bankruptcy of the donor had not been done or had not happened; and
- (c) neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice, either during or after that fixed time, of anything done by the donor during that fixed time without the concurrence of the donee, or of the death, mental deficiency, or bankruptcy of the donor within that fixed time.

(2) This section applies only to powers of attorney created by instruments executed on or after 1 January 1906.

138. Conveyance under power of attorney from person not in Samoa – No person is entitled to object to the execution

or proposed execution of a conveyance solely on the ground that the execution is under a power of attorney from a person in Samoa.

139. Application to corporations – (1) This Part applies with the necessary modifications with respect to any power or attorney executed by any corporation to the same extent as if the corporation were a person and the dissolution of the corporation (however occurring) were the death of a person within the meaning of this Part.

(2) Subsection (1) is in addition to and not in derogation of sections 44 and 399 of the Companies Act 2001.

(3) Subsection (1) does not apply to a corporation which is dissolved before the commencement of this Act, but applies to powers of attorney whether executed before or after its commencement.

PART XIII PARTITION OF LAND AND DIVISION OF CHATTELS

140. In action for partition Court may direct land to be sold – (1) If, in action for partition, the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the land to which the action relates request the Court to direct a sale of the land and a distribution of the proceeds, instead of a division of the land between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale accordingly.

(2) The Court may, if it thinks fit, on the request of any party interested, and despite the dissent or disability of any other party, direct a sale in any case where it appears to the Court that, by reason of the nature of the land, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of any of those parties, or of any other circumstance, a sale of the land would be for the benefit of the parties interested.

(3) The Court may also, if it thinks fit, on the request of any party interested, direct that the land be sold, unless the other parties interested, or some of them, undertake to purchase the share of the party requesting a sale; and, on such an undertaking

being given, may direct a valuation of the share of the party requesting a sale.

(4) On directing any such sale or valuation to be made, the Court may give also all necessary or proper consequential directions.

(5) A person may maintain such action as aforesaid against any one or more of the parties interested without serving the other or others, and it shall not be competent to any defendant in the action to object for want of parties; and at the hearing of the cause the Court may direct such inquiries as to the nature of the land and the persons interested therein, and other matters, as it thinks necessary or proper, with a view to an order for partition or sale being made on further consideration:

PROVIDED THAT all persons who, if this Act had not been passed, would have been necessary parties to the action shall be served with notice of the decree or order on the hearing, and, after that notice, shall be bound by the proceedings as if they had originally been parties to the action, and shall be deemed parties to the action; and all such persons may have liberty to attend the proceedings, and any such person may, within a time limited by rules of Court, apply to the Court to add to the decree or order.

(6) On any sale under this section the Court may allow any of the parties interested in the land to bid at the sale, on such terms as the Court deems reasonable as to non-payment of deposit, or as to setting-off or accounting for the purchase money or any part thereof instead of paying the same, or as to any other matters.

141. Proceeds of sale, how applied – (1) All money received under any such sale may, if the Court thinks fit, be paid to trustees appointed by the Court, and applied, as the Court directs:

(a) in the discharge of any encumbrance affecting the land directed to be sold; and, subject thereto.

(b) in the payment of the residue to the parties interested.

(2) If the Court so directs, the trustees (if any) may in their discretion apply the money in manner aforesaid; and where no such direction is given any party interested may apply to the Court for an order that the money be so applied.

(3) Until the money can be applied as aforesaid, it shall be invested in such securities as the Court may approve, and the

interest and dividends thereof shall be paid to the parties interested.

142. Costs in partition suits – In an action for partition, the Court may make such order as it thinks just respecting costs up to the time of the hearing.

143. Division of chattels – (1) If any chattels belong to persons jointly or in undivided shares, the persons interested to the extent of a moiety or upwards may apply to the Court or a Judge thereof for an order for division of the chattels or of any of them, according to a valuation or otherwise, and the Court or Judge may make such order and give such consequential directions as the Court or Judge thinks fit.

(2) If the value of the chattels concerned does not exceed \$10,000 the foregoing application may be made to a District Court, and that Court may make such order and give such consequential directions as the Court thinks fit.

PART XIV APPORTIONMENT

144. Interpretation – In this Part, unless the context otherwise requires:

“annuities” includes salaries and pensions;

“dividends” includes (besides dividends strictly so called) all payments made by the name of dividend, bonus, or otherwise out of the revenue of trading or other companies or corporations, divisible between all or any of the members thereof, whether those payments are usually made or declared at any fixed times or otherwise; and all such divisible revenue shall for the purposes of this section be deemed to have accrued by equal daily increments during and within the period for or in respect of which the payment of the same revenue is declared or expressed to be made; but “dividends” does not include payments in the nature of a return or reimbursement of capital;

“rent” includes rents and all periodical payments or renderings in lieu of or in the nature of rent.

145. Income apportionable in respect of time – All rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly.

146. Time when apportioned part payable – The apportioned part of any such rent, annuity, dividend, or other payment shall be payable or recoverable in the case of a continuing rent, annuity, or other payment as soon as the entire portion of which the apportioned part forms part becomes due and payable, and not before; and where the payment is determined by re-entry, death, or otherwise, as soon as the next entire portion of the same would have become payable if the same had not so determined, and not before.

147. Recovery of apportioned parts – All persons and their respective executors, administrators, and assigns, and also the executors, administrators, and assigns respectively of persons whose interests determined with their own death, shall have such or the same remedies, legal and equitable, for recovering such apportioned parts as aforesaid when payable (allowing for a proportionate part) appertained part of all just allowance) as they respectively would have had for recovering such entire portions as aforesaid if entitled thereto respectively: **PROVIDED THAT** if a person is liable to pay rent reserved out of or charged on lands or other hereditaments of any tenure, that person and the lands or other hereditaments shall not be resorted to for any such apportioned part forming part of an entire or continuing rent as aforesaid; but the entire or continuing rent, including the apportioned part, shall be recovered and received by the person who, if the rent had not been apportionable under this Part or otherwise, would have been entitled to the entire or continuing rent; and the apportioned part shall be recoverable from the last mentioned person by the executors, administrators, or other parties entitled thereto under this Part.

148. Exceptions and application – (1) Nothing in this Part renders apportionable any annual sums payable under policies of assurance of any description.

(2) This Part does not extend to any case in which it is expressly stipulated that apportionment shall not take place.

**PART XV
DEBTS CHARGED ON REAL ESTATE**

149. Devisee, etc., of real estate not to claim payment of mortgage out of personal estate – (1) When a person:

- (a) dies seised of or entitled to any land that is at the time of his or her death charged with the payment of any sum or sums of money by way of mortgage; and
- (b) has not by his or her will or by deed or other document signified any contrary or other intention, –

the devisee or other person to or on whom the land is devised or devolves is not entitled to have the mortgage debt discharged or satisfied out of the personal estate or any other real estate of that person, but the land so charged is, as between the different persons claiming through or under the deceased, primarily liable to the payment of all mortgage debts with which the same is charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

(2) A general direction in a will that the debts or that all the debts of the testator be paid out of his or her personal estate, or out of the testator's residuary real and personal estate, or out of the testator's residuary real estate, shall not be deemed to signify an intention contrary to or other than the rule established, but such an intention must be further signified by words expressly or by necessary implication referring to all or some of the testator's debts charged by way of mortgage on any part of his or her land.

(3) Nothing in this section affects or diminishes any right of the mortgagee of any such lands to obtain full payment or satisfaction of his or her mortgage debt, either out of the personal estate of the deceased or otherwise.

PART XVI
RENTCHARGES AND OTHER ANNUAL SUMS

150. Recovery of annual sums charged on land – (1) If a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rent charge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to that annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in the section, so far as those remedies might have been conferred by the instrument under which the annual sum is payable, but not further.

(2) If any time the annual sum, or any part thereof, is unpaid for 21 days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.

(3) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand for that payment has been made, the person entitled to receive the annual sum may enter into possession of and hold the land charged, or any part thereof, and take the income thereof, until thereby or otherwise the annual sum, and all arrears thereof due at the time of his or her entry, or afterwards becoming due during his or her continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and the possession when taken shall be without impeachment of waste.

(4) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed convey the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the

income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the cost of the execution of the trusts of that deed; and the surplus, if any, of the money raised or of the income received under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5) This section applies only where the instrument under which the annual sum is payable comes into operation on or after 1 January 1906, and then only in so far as a contrary intention is not expressed in the instrument, and shall have effect subject to the terms and provisions thereof.

(6) The rule of law relating to perpetuities does not apply to any powers or remedies conferred by this section, nor to the same or like powers or remedies conferred by any instrument for recovering or compelling the payment of any annual sum within the meaning of this section.

Division 1 – Discharge of Encumbrances on Sale

151. Provision by Court for encumbrances on sale – (1)

If land subject to any encumbrance, whether immediately payable or not, is sold by the Court, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court;

(a) for an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge; and

(b) for any other case of capital money charged on the land, of the amount sufficient to meet the encumbrance and any interest due thereon, –

but in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet

the contingency of further costs, expenses, and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reason thinks fit to require a larger additional amount.

(2) Thereupon the Court may, if it thinks fit, and either after or without any notice to the encumbrancer, as the Court thinks fit, declare the land to be free from the encumbrance, and make any order for conveyance or vesting order proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(3) After notice served on the persons in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

PART XVII SERVICE OF NOTICES

152. Service of notices – (1) A notice required or authorised by this Act to be served on any person shall be delivered to that person, and may be delivered to him or her either personally or by posting it by registered letter addressed to that person at his or her last known place of abode or business in Samoa. A notice so posted is taken to have been served at the time when the registered letter would in the ordinary course of post be delivered.

(2) If the person is absent from Samoa, the notice may be delivered as aforesaid to his or her agent in New Zealand. If he or she is deceased, the notice may be delivered as aforesaid to his or her personal representative.

(3) If the person is not known, or is absent from Samoa and has no known agent in Samoa, or is deceased and has no personal representative, the notice shall be delivered in such manner as may be directed by an order of the Court.

(4) Despite subsections (1) to (3), the Court may in any case make an order directing the manner in which any notice is to be delivered, or dispensing with the delivery thereof.

(5) This section does not apply to notices served in proceedings in the Court.

(6) In this section, “the Court” means:

(a) in any case where any notice relates to any sum of money, being a sum not exceeding \$10,000 due or alleged to be due to any person, or required or proposed to be paid to any person, a District Court;

(b) in any other case, the Supreme Court.

(7) This section applies only if and so far as a contrary intention is not expressed in any instrument, and has effect subject to the provisions of any instrument.

PART XVIII MISCELLANEOUS

153. Restriction on validation of instruments – If any instrument executed before the 4 August 1908, being the date of the commencement of the Property Law Act 1908, was by any provision of that Act rendered valid and effectual, and would but for the operation of that Act have been or remained invalid or ineffectual, that instrument is taken to have been validated only where the person claiming thereunder was at the commencement of that Act in possession of the property affected by the instrument, and shall not be validated if the validation would have created a title adverse to the possession of any such person.

154. Protection of solicitors and trustees acting under this Act – (1) The powers given by this Act to any person, and the covenants, provisions, stipulations, and words which under this Act are deemed included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and are taken to be in law proper powers, covenants, provisions, stipulations, and words to be given by or to be contained in any such instrument, or to be adopted in connection with or applied to any such contract or transaction; and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his or her omitting in good faith in any such instrument, or in connection with any such contract or transaction, to negative the giving,

inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to insert or apply any others in place thereof, in any case where the provisions of this Act would allow of his or her doing so.

(2) But nothing in this Act is taken to imply that the insertion in any such instrument, or the adoption in connection with, or the application to, any contract or transaction of any further or other powers, covenants, provisions, stipulations, or words is improper.

(3) If the solicitor is acting for trustees, executors, or other persons in a fiduciary capacity, those persons shall also be protected in like manner.

(4) If such persons as aforesaid are acting without a solicitor they shall also be protected in like manner

155. Repeal and savings – (1) The enactments specified in the Sixth Schedule shall at the commencement of this Act cease to have effect in Samoa.

(2) The enactments specified in the Seventh Schedule are repealed.

(3) All matters and proceedings commenced under any of the said enactments and pending or in progress at the commencement of this Act may be continued, completed, and enforced under this Act.

(4) All instruments, acts of authority, and acts of parties, and all periods of time, which originated or were subsisting under any of the said enactments, or under any enactment theretofore in force, and are subsisting or in force on the commencement of this Act, shall enure for the purposes of this Act as if they had originated under this Act, and accordingly are, where necessary, taken to have so originated, but not so as to extend any period of time that began to run before the commencement of this Act.

(5) Neither the repeal of the enactments specified in the said Seventh Schedule nor the repeal effected by any of those enactments of an enactment theretofore in force shall affect:

- (a) any deed or instrument made, signed, or acknowledged, or any proceeding taken or pending, or anything done or suffered, or any estate, right, title, interest, or benefit created, conferred, or acquired under or by virtue of any such enactment; or

- (b) any obligation or duty undertaken or imposed, or any forfeiture incurred, expressly or by implication, under or by virtue of any deed or instrument as aforesaid or under any such enactment.

(6) In particular the repeal of sections 7, 8, 21, 22, 23, and 50 of the Property Law Act 1908 and of the proviso to section 35 of that Act shall not revive anything not in force or existing when the repeal takes effect.

(7) Any alteration made in the law by this Act, whether by the repeal of an enactment or otherwise, shall not, unless otherwise expressly provided by this Act, affect:

- (a) any right accrued, or obligation incurred, before the commencement of this Act under the law so altered; or
- (b) the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered before the commencement of this Act, –

and, unless as aforesaid, the law existing before such commencement shall remain in full force and effect for the purpose of governing and construing all instruments executed before its commencement and such instruments as aforesaid shall be read and construed and have only the effect and consequences given to them under that law.

(8) Any provision of any enactment relating to property that prevailed over the provisions of any enactment repealed shall in like manner prevail over the provisions of this Act.

SCHEDULES

FIRST SCHEDULE

(Section 3)

The matters contained in the First Schedule are not applicable to Samoa.

SECOND SCHEDULE

(Section 44)

Property Law Act 1952
CONVEYANCE IN FEE SIMPLE

THIS deed, made the day of, one thousand nine hundred and, between A.B., of, merchant, of the one part, and C.D., of the same place, carpenter, of the other part [Recitals, if any]: (Now this deed) witnesseth that, in consideration of the sum of two hundred tala paid by the said C.D. to the said A.B. (the receipt whereof is hereby acknowledged), the said A.B. doth hereby convey unto the said C.D. all that piece of land [*referring to the marks and numbers in the Surveyor-General's map or other official record map, and describing particularly the situation, boundaries and measurements, and specifying any variation in any of the above particulars since the date of the last conveyance*]: as the same is delineated on the plan drawn hereon, it being thereon coloured red [*referring to plan coloured as the circumstances may require*].

[Special provisions, if any.]

In witness whereof the said A.B. hath hereunto subscribed his or her name .A.B.

Signed by the abovenamed A.B. in the presence of: E.F.,
 [Place of abode and description]

THIRD SCHEDULE
(Section 76(1))

**STATUTORY MORTGAGE UNDER THE
 PROPERTY LAW ACT 1952**

- (a) Mortgagor.
- (b) Estate.
- (c) Land [*Area and particulars*]
- (d) Mortgagee.
- (e) Principal sum.
- (f) Date of advance.
- (g) Rate of interest.
- (h) How payable.
- (i) How and when principal sum to be repaid.

And for the better securing to the mortgagee the payment of the said principal sum, interest, and other moneys, **I** [*or we*] hereby mortgage to the mortgagee all my [*or our*] estate and interest in the said land above described.

As witness my hand [*or our hands*], this day of 19....

j) Mortgagor.

Signed by the said (k), as mortgagor, in the presence of ...

(l) A.B.,

[Place of abode and description]

Directions for Filling Up Above Form

- (a) Here insert full name, residence, and calling or description of mortgagor [or mortgagors], as thus: "A.B., of Wellington, farmer."
- (b) Here insert "freehold in fee simple", or "leasehold", as the case may be.
- (c) Here give a full description, with plan, of the land mortgaged.
- (d) Here insert full name, residence, and calling or description of mortgagee [or mortgagees].
- (e) Insert amount.
- (f) Fill in date.
- (g) State rate agreed upon. [*In mortgages to cooperative building societies and other societies where no interest is charged this line may be struck out*].
- (h) Here inset "yearly", "half-yearly", "quarterly", and date or dates for payment, or otherwise, as the case may be.
- (i) Here insert date and mode of payment agreed upon.
- (j) Signature of mortgagor [or mortgagors].
- (k) Name of mortgagor [or mortgagors].
- (l) Signature of witness, stating place of abode and calling or description of witness.

**FOURTH SCHEDULE
(Section 78)**

**COVENANTS, CONDITIONS, AND POWERS IMPLIED
IN MORTGAGES**

- 1. That the mortgagor will pay to the mortgagee the principal, sum mentioned in the mortgage, with interest thereon, in accordance with the provisions of the mortgage.
- 2. That the mortgagor will forthwith insure and, so long as any money remains owing on the security, will keep insured

- against loss or damage by fire, all buildings and erections for the time being situate on the land described in the mortgage; the insurance to be effected in the name of the mortgagee, and in some insurance office in Samoa to be approved by the mortgagee and to be for the full insurable value of such buildings and erections as aforesaid; and will deliver the policy of policies of insurance, or cause the same to be delivered, to the mortgagee, who shall be entitled to the exclusive custody thereof; and will duly and punctually pay all premiums and sums of money necessary for the purpose of keeping every such insurance on foot; and will, not later than the forenoon of the day on which any premium falls due, deliver or cause to be delivered the receipt therefor to the mortgagee.
3. That the mortgagor will during the continuance of the mortgage punctually pay all rates, taxes, and charges as and when the same become due in respect of the said land.
 4. That the mortgagor will, so long as any money remains owing on the security, well and substantially repair, and keep in good and substantial repair and condition, all buildings or other improvements erected and made upon the said land: And that the mortgagee shall at all reasonable times be at liberty, by himself or herself, the mortgagee's agents or servants, to enter upon the said land to view and inspect the said buildings and improvements.
 5. That if the mortgagor fails to insure or keep insured the said buildings and erections as aforesaid, or to deliver or cause to be delivered any premium receipt as aforesaid, or to pay the said rates, taxes, and charges, or to repair the said buildings and improvements, or to keep them in good and substantial repair and condition as aforesaid, then and in any such case, and as often as the same shall happen, it shall be lawful for but not obligatory on the mortgagee, at the cost and expense in all things of the mortgagor, to insure the said buildings and erections or any of them in such sum as aforesaid or in any less sum, or to pay any such premium, or to pay the said rates, taxes, and charges, or to repair the said buildings and improvements and keep them in good and substantial repair and condition.
 6. That in the event of the said buildings and erections or any of them being destroyed or damaged by fire, all moneys received by the mortgagee under any insurance in respect of any such

destruction or damage shall be applied, at his or her sole option, either in or towards rebuilding or repairing the buildings and erections so destroyed or damaged, or in or towards payment of the principal, interest, and other moneys for the time being covered by the security, despite that the same or any of them may not have accrued due under the terms of the mortgage:

PROVIDED THAT if the mortgagee applies the said moneys in or towards payment of the principal and other moneys as aforesaid the mortgagor shall have the right to pay off the whole amount remaining due under the mortgage at any time within two months after the application of the said moneys has been so made.

7. That all moneys expended by the mortgagee in and about effecting or keeping on foot any insurance as aforesaid, or in paying any of the said rates, taxes, and charges, or in repairing or keeping in repair any of the said buildings and improvements as aforesaid, or in lawfully exercising or enforcing any power, right, or remedy in the mortgage contained or implied in favour of the mortgage, shall be payable to him by the mortgagor on demand, and until paid shall be charged on the said land, together with interest at the rate agreed upon in the mortgage, computed from the date of the said moneys being expended.
8. That where the mortgagor makes default for the space of two months in payment of the principal sum and interest, or any part thereof, or in the performance or observance of any other covenant expressed or implied in the mortgage, and thereafter at least one month's notice in writing of his or her intention so to do has been served by the mortgagee on the mortgagor in accordance with section one hundred and fifty-two of the Property Law Act 1952, the mortgagee may sell the mortgaged property, or any part thereof, either altogether or in lots, by public auction or by private contract, or partly by the one and partly by the other of those modes of sale, and subject to such conditions as to title or evidence of title, time or mode of payment of purchase money, or buy in the mortgaged property or any part thereof at any sale by auction, or to rescind any contract for the sale thereof, and to resell the same power to execute assurances, give effectual receipts for the purchase money, and do all such acts and things for completing the sale as he may think proper: And also that the mortgagee may

exercise such other incidental powers in that behalf as are conferred upon mortgagees by law: And that the mortgagee will apply the moneys arising from any such sale as aforesaid, in the first place in payment of the costs and expenses incidental to the sale or otherwise incurred in respect of the mortgage, and in the second place in satisfaction of the principal, interest, and other moneys for the time being owing under the mortgage, and in the third place in payment of moneys owing under the subsequent registered mortgages (if any) in the order of their priority; and will pay the surplus (if any) to the mortgagor:

PROVIDED THAT a purchaser at any sale as aforesaid shall not be answerable for the loss, misapplication, or non-application of the purchase money by him paid; nor shall he be obliged to see to the application thereof; nor shall he be concerned to inquire whether any default has been made as aforesaid, or whether any notice has been given as aforesaid, or otherwise as to the necessity, regularity, or propriety of the sale; nor shall he be affected by notice that no such default has been made or notice given as aforesaid, or that the sale is otherwise unnecessary, irregular, or improper.

9. That if and whenever the mortgagor makes default as mentioned in the last preceding covenant the mortgagee may call up and compel payment of all principal interest, and other moneys for the time being owing under the mortgage, despite that the time or times herein appointed for the payment thereof respectively may not have arrived.
10. 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 the mortgage deed, having endorsed thereon or annexed thereto a memorandum of discharge in the form numbered (1) in the Fifth Schedule to the Property Law Act 1952, together with all deeds and documents deposited with the mortgagee on account of the mortgage.

**COVENANTS, CONDITIONS AND POWERS IMPLIED
IN MORTGAGES SUBJECT TO PRIOR MORTGAGES**

11. That the mortgagor will duly and punctually pay all principal,

interest, and other moneys secured by, and will perform and observe all the covenants and conditions contained or implied in, any mortgage having priority to this present mortgage.

12. That if the mortgagor will duly and punctually pay all principal, interest, and other moneys secured by, and will perform and observe all the covenants and conditions or implied in, any mortgage having priority to this present mortgage.
13. That if the mortgagor makes default in the payment of any moneys secured by or in the performance or observance of any of the covenants and conditions contained or implied in any mortgage having priority to this present mortgage it shall be lawful for but not obligatory upon this present mortgagee to pay those moneys and perform and observe those covenants or conditions, and the provisions of the foregoing clause (7) shall, with the necessary modifications, apply with respect to all moneys so paid and all expenses incurred in performing or observing the covenants or conditions of the prior mortgage.
14. That compliance with the provisions of any mortgage having priority to this present mortgage which relate to insurance against loss or damage by fire shall be deemed, so far as it extends, to be compliance with any provisions as to the like insurance contained or implied in this present mortgage.

**COVENANTS IMPLIED IN MORTGAGES
OF A TERM OF YEARS IN LAND**

15. That the rent reserved by the lease under which the mortgagor holds the land has been paid, and the covenants and conditions expressed or implied in the lease, and to be performed and observed by the lessee, have been performed and observed up to the date of the mortgage.
16. That the mortgagor will, so long as any money remains owing on the security, pay the rent reserved by the lease under which the mortgagor holds the land, and perform and observe the covenants and conditions expressed or implied in the lease and to be performed and observed by the lessee, and will at all times keep the mortgagee indemnified against all actions, expenses, and claims on account of the non-payment of the said rent, or the breach or non-observance of the said covenants or conditions, or any of them.

- 17. That if the mortgagor makes default in the payment of the rent reserved by the lease under which the mortgagor holds the land or in the performance or observance of any of the covenants and conditions expressed or implied in the lease and to be performed and observed by the lessee, it shall be lawful for but not obligatory upon the mortgagee to pay that rent and to perform and observe those covenants and conditions, and the provisions of the foregoing clause (7) shall, with the necessary modifications, apply with respect to all moneys so paid and all expenses incurred in performing or observing the covenants and conditions of the lease.

INTERPRETATION

- 18. The expressions “mortgagor” and “mortgagee” in the foregoing provisions shall, where such meaning is not inconsistent with the context, extend to and include the executors, administrators, and assigns of the mortgagor and mortgagee respectively.

**FIFTH SCHEDULE
(Section 79 and 87)**

(1) DISCHARGE OF MORTGAGE DEBT

I [*or We*] hereby acknowledge that I [*or we*] have received all moneys intended to be secured by the within- [*or above*] written [*or annexed*] mortgage.

Dated this day of 20

Witness to the signature of C.D.: C.D., Mortgagee.

E.F.,

[Place of abode and description]

(2) ASSIGNMENT OF MORTGAGE

IN consideration of the sum of \$..... paid to me by C.D., of, the receipt whereof is hereby acknowledged [Where mortgagor joins, add and with the concurrence of X.Y., the mortgagor named and described in the within- [*or above*-] written [*or annexed*] mortgage, who hereby admits that the principal sum of \$....., with the interest thereon from the

day of, is now owing upon the security of the said mortgage], I hereby assign unto the said C.D. all moneys secured by the within- [*or above-*] written [*or annexed*] [*or by the said*] mortgage, and all my rights, powers, and remedies thereunder, and all my estate and interest in the land [*or property*] therein described.

Dated this day of 20

Witness to the signature of A.B.: A.B.,
Assignor

E.F.,
[Place of abode and description]

Witness to the signature of X.Y.: X.Y.,
Mortgagor

G.H.,
[Place of abode and description]

Assignee Accepted C.D.,
Witness to the signature of C.D.:

K.L.,
[Place of abode and description]

**SIXTH SCHEDULE
(Section 155)**

**ENACTMENTS OF THE PARLIAMENTS OF ENGLAND
AND GREAT BRITAIN CEASING TO HAVE EFFECT IN
NEW ZEALAND**

13 ELIZ. I, ch. 5	An Act against fraudulent deeds, gifts, alienations, etc.
27 ELIZ. I, ch. 4	An Act against covetous and fraudulent conveyances
39 and 40 Geo. III ch 98	The Accumulations Act 1800

**SEVENTH SCHEDULE
(Section 155)**

NEW ZEALAND ENACTMENTS REPEALED

- 1908, No. 40 The Deeds Registration Act 1908: Subsection (2) of section 40. (1931 Reprint, Vol. VII, p. 1155).
- 1908, No. 152 The Property Law Act 1908. (1931 Reprint Vol. VII, p. 1077).
- 1926, No. 46 The Finance Act 1956: Section 14
- 1927, No. 49 The Property Law Amendment Act 1928 (1931 Reprint, Vol. VII, p. 1140).
- 1928, No. 13 The Property Law Amendment Act 1928. (1931 Reprint, Vol. VII, p. 1141).
- 1932, No. 27 The Property Law Amendment Act 1932.
- 1936, No. 31 The Law Reform Act 1936: Section 63.
- 1939, No. 6 The Property Law Amendment Act 1939.
- 1944, No. 51 The Statutes Amendment Act 1949: Subsection (1) of section 48.
- 1950, No. 27 The Property Law Amendment Act 1950.
- 1950, No. 54 The Crown Proceedings Act 1950: So much of the First Schedule as relates to the Property Law Act 1908.
- 1951, No. 84 The Property Law Amendment Act 1951.

REVISION NOTES 2008 – 2012

This Act has been revised under section 5 of 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 references to offices, officers and statutes. (e.g. Reference to Liquor Act 2011)
- (c) Insertion of the commencement date
- (d) References to the male gender made gender neutral

- (e) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” and “any” changed to “a/an”
 - (ii) Present tense drafting style:
 - “shall be” changed to “is/are” or “is/are to be”
 - “shall be deemed” changed to “is/are taken”
 - “shall have” changed to “has”
 - “hereby”, “from time to time” and “for the time being” removed
 - (iii) Use of plain language
 - “notwithstanding” changed to “despite”
 - “in accordance with” changed to “under”
 - “save” changed to “except”
 - “furnish” changed to “provide” or “submit”
 - “that is to say” changed to “namely”
 - “where” changed to “if”
 - “for the purposes of” changed to “in”
 - “in case of” changed to “for”
 - (iv) Numbers in words changed to figures
 - (v) Removal of superfluous terms
 - “and until” after “unless”
 - “the provisions of”
 - “the expression/term”
 - (vi) “the foregoing provisions of this section”, “the preceding subsection” and similar wording changed to the actual section/subsections
 - (vii) Division numbers inserted for subheadings under Parts.
 - (viii) Part I renumbered as Part IA and a “Part I-Preliminary” inserted.
 - (ix) Sections divided and re-paragraphed:
 - Re-paragraphed with new paragraphs (a) and (b) – sections 25(1), 134(4), 149(1), 151(1)
 - Re-paragraphed with paragraphs (a) to (c) - section 80(1) and 114(1)
 - Section 92(10) paragraphed
 - section 92(4) divided into subsection (4) and (4A);
 - section 118(1A) divided into further subsection 118(1B);
 - section 120(7) divided into subsection (7) with paragraphs (a) and (b) and subsection (8)
 - Section 130(2) paragraphed.

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

This Act has been revised in 2008, 2009, 2010, 2011 and 2012 by the Attorney General under the authority of the *Revision and Publication of Laws Act 2008* and is the official version of this Act as at 31 December 2012. It is an offence to publish this Act without approval or to make any

unauthorised change to an electronic version of this Act.



Aumua Ming Leung Wai
Attorney General of Samoa

Revised in 2008 by the Legislative Drafting Division under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel)

Revised in 2009, 2010 and 2011 by the Legislative Drafting Division under the supervision of Papalii Malietau Malietoa (Parliamentary Counsel).

Revised in 2012 by the Legislative Drafting Division.

The Property Law Act 1952 is administered by the Ministry of Justice and Courts Administration.