Tonga

LAND ACT

Chapter 46.02

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LAND ACT

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LAND ACT

AN ACT RELATING TO LAND[1]

Commencement [23rd August, 1927]

1 Short title

This Act may be cited as the Land Act.

2 Interpretation

In this Act unless the context otherwise requires —

"**Court**" means the Land Court;

"**Minister**" means the Minister of Lands, the Governors of Vava'u and Ha'apai when acting as Deputy Minister, and any other person duly appointed to act for the Minister;

"**foreshore**" means the land adjacent to the sea alternately covered and left dry by the ordinary flow and ebb of the tides and all land adjoining thereunto lying within 15.24 metres of the high water mark of the ordinary tides;[2]

"**prescribed**" means prescribed by this Act or regulations made hereunder;

"**registered**" in reference to any document means registered under this Act or regulations made hereunder;

"**landholder**" or "**holder**" means —

(a) as regards Crown Land the Minister of Lands;

(b) any Tongan subject holding an hereditary estate (tofia), a tax allotment (api tukuhau) or town allotment (api kolo);

(c) any Tongan subject claiming to be interested in land which he is legally capable to hold;

(d) any trustee duly appointed by the King, the Minister, or the Court on behalf of any person entitled to succeed to any land on reaching the lawful age of succession in respect of such land;

(e) any person appointed as or acting as trustee or representative for any person beneficially entitled to any land or interest in land;

(f) any person who claims to be entitled to any land or interest in land whether in actual possession or occupation or otherwise.

PART I—GENERAL

DIVISION I
DECLARATORY

3 Land the property of the Crown

All the land of the Kingdom is the property of the Crown.

4 Holder's interest

The interest of a holder in any hereditary estate, tax allotment or town allotment is a life interest subject to the prescribed conditions.

5 Holdings hereditary

Every estate (tofia) and allotment (api) is hereditary according to the prescribed rules of succession.

6 Dispositions of land prohibited

Every verbal or documentary disposition by a holder of any estate (tofia) or allotment (api) which purports to effect a voluntary conveyance, an out-and-out sale, or a devise by will of such estate or allotment is null and void.

7 Right to allotment

Every male Tongan subject by birth upon making application in the prescribed form to the Minister of Lands shall be entitled to receive subject to the provisions of this Act a grant of land not exceeding 3.3387 hectares as a tax allotment and where any such grant is less than 3.3387 hectares the Minister may from time to time as land

becomes available and as he deems expedient make further grants to such holder until the area granted to him as a tax allotment has a total area of 3.3387 hectares. He shall also be entitled to receive on making application as aforesaid and subject to the provisions of this Act a grant of an area not exceeding 1618.7 square metres in a town as a town allotment.[3]

8 Tofias to provide allotments

Subject to the provisions of this Act relating to surrender, the grant, if the applicant be lawfully residing on an hereditary estate, shall be made from the lands in such hereditary estate; and if the applicant is lawfully residing upon Crown Land shall be made from Crown Land:

Provided always that land comprised in an hereditary estate shall not be granted as a tax or town allotment without prior consultation with the holder of the hereditary estate.

9 The tofias

The lands specifically described in column one of Schedule I are the hereditary estates held by the nobles and matapules whose names are set out in column two of the said Schedule.

10 The Royal Estates

(1) All lands other than those described in Schedule I are Crown lands and there shall be set aside therefrom the lands specifically described in Schedule II as the Royal Estates for the use of the Sovereign for the time being and there shall also be set aside therefrom the lands described in Schedule III as the Royal Family Estate. A life interest in any of the lands described in Schedule III or any portion thereof may be granted to such person as the Sovereign for the time being may appoint.

(2) Notwithstanding subsection (1), His Majesty may lease for projects of general public interest and benefit any of the lands or part thereof described in Schedule II and Schedule III.[4]

11 King may grant estates

The King with the consent of the Privy Council and subject to the provisions of this Act, may grant from the Crown Lands hereditary estates to Tongan subjects who are holders of hereditary estates or who may at any time be granted by royal letters patent a title of honour.

DIVISION II

PENALTIES FOR UNLAWFULLY DEALING WITH LAND

12 Sales of land

Any landholder who sells or attempts to sell any land out-and-out to any other person shall be liable on conviction therefore to a term of imprisonment not exceeding 10 years.

13 Unlawful agreements

Any landholder who enters or attempts to enter into any agreement for profit or benefit relating to the use or occupation of his holding or a part thereof other than in the manner prescribed by this Act or as approved in writing by the Minister shall be liable on conviction to a fine not exceeding $200 or to imprisonment for any period not exceeding 12 months or both.[5]

14 Alien not to occupy land

It is unlawful for any alien to hold or to reside upon or to occupy any land without having first obtained from the Minister of Lands a permit so to do issued by him in exercise of the powers conferred under section 19(4) of this Act. Any alien who contravenes the provisions of this section shall on conviction be liable to a fine not exceeding $20 or in default of payment to imprisonment for any period not exceeding 3 months.[6]

15 Holder not to permit alien to occupy

Any landholder who allows an alien to reside upon or occupy any part of his holding shall, unless such alien has been granted a lease or permit in accordance with this Act, be guilty of an offence and on conviction therefore shall be liable to a fine not exceeding $20 or in default of payment to imprisonment for any period not exceeding 3 months.

16 *Repealed by Act 19 of 1999*

DIVISION III

LAND HELD BY CHARITABLE BODIES

17 Right to lease land

Religious bodies, charitable and social organizations, may subject to the provisions of this Act hold land upon lease:

Provided that no land shall be granted upon lease in any town to any religious body unless there are at least 30 adherents of that body resident in such town and that each such adherent has attained the age of 16 years.[7]

18 Conditions of holding

(1) Religious bodies and charitable and social organizations holding land on lease shall not have the right to use such land for any other than the original purposes of the body or organization declared at the time of the making of the lease, or to transfer or sub-let such land, without the prior consent of Cabinet.[8]

(2) If any such body or organization contravenes the provisions of this section the Minister may with the consent of the Cabinet institute proceedings in the Land Court against such body or organization claiming therein the cancellation of its lease and on proof of the contravention of this section by such body or organization the Court shall order such lease to be delivered up to be cancelled and upon cancellation of the lease the lands therein specified if situate in an hereditary estate (tofia) or town allotment (api kolo) shall revert to the holder and if situate elsewhere shall revert to the Crown.

(3) It shall be unlawful for any person holding a town allotment or any land upon lease other than a charitable lease to erect thereon a place of worship and any holder of a town allotment or lessee acting in violation of this section shall be liable to forfeiture of his town allotment or to the cancellation of his lease or sub-lease (as the case may be) upon the institution in either case by the Minister with the consent of the Cabinet of such legal proceedings as are specified in the immediately preceding subsection, and shall also be liable upon conviction to a fine not exceeding $20.

PART II – ADMINISTRATION

DIVISION I

POWER OF MINISTER OF LANDS

19 General powers

(1) The Minister of Lands is the representative of the Crown in all matters concerning the land of the Kingdom.

(2) He shall grant allotments to Tongan subjects duly entitled thereto by law.

(3) He shall grant leases (including sub-leases) and permits with the consent of Cabinet; provided that the consent of His Majesty in Council is required where the period of lease exceeds 99 years or where the period of renewal of any lease added to any previous renewals and to the original period of the lease exceeds 99 years.[9]

(4) He shall issue permits for foreigners to reside upon the premises of a Tongan subject.

(5) He shall act as Registrar-General of all land titles.

(6) He shall authorize all surveys and order the opening of all new roads, but shall not close any road except with the consent of the Cabinet.

(7) He shall collect the rents for all allotments on Crown Land, and all leases (including sub-leases) and permits; and where the land leased is part of any hereditary estate or an allotment shall pay the lease rent into the Treasury and shall issue a voucher in favour of the holder of the estate or allotment for that amount of rent less 10 per cent thereof.[10]

(8) He shall in every case where no application is made to the Court for the appointment of a Trustee or Trustees appoint one or more fit and proper persons to act with or without remuneration as trustee or trustees for any Tongan other than a noble or matapule who being entitled to land is under the age appointed by law for succeeding thereto.[11]

(9) He shall require any trustee or trustees appointed in accordance with the preceding subsection to submit accounts of his or their trust estates and he may dismiss any trustee guilty of mismanagement, breach of trust or fraud in connection with the trust estate and he may appoint another trustee in his stead.[12]

(10) He shall approve mortgages and assignments thereof.[13]

(11) He shall have the power to compel any holder of land to grant an easement to the Crown and he shall approve all easements whether they involve the Crown as a party or not.[14]

20 Provision of land offices

There shall be provided from the Public Funds of the Kingdom —

(a) a suitable office in Nuku'alofa for the use of the Minister and for the safe keeping of all documents and registers relating to titles;

(b) suitable fire proof storage in the offices of the Governors or other persons duly appointed to act for the Minister in places other than Nuku'alofa, Neiafu (Vava'u) and Lifuka (Ha'apai).

21 Powers exercisable by deputy

Where in this Act any authority is given to or any duty is imposed upon the Minister, the authority may be exercised and, subject to any express exemption hereinafter provided, the duty shall be performed by the Governors of Ha'apai and Vava'u in their respective districts or, in any other districts, by any person appointed by the Cabinet to act for the Minister.

22 Power to make regulations

(1) The King with the consent of the Privy Council may, from time to time, make regulations providing for all purposes whether general or to meet particular cases that may be convenient for the administration of this Act or that may be necessary or expedient to carry out the objects and purposes of this Act and where there may be in this Act no provision or no sufficient provision in respect of any matter or thing necessary or expedient to give effect to this Act, providing for or supplying such omission or insufficiency and without prejudice to the foregoing powers, providing for all or any of the matters following, that is to say —

(a) prescribing and defining the manner of doing or performing any act or thing under or for the purposes of this Act, and the time when or within which it shall be done or performed;

(b) prescribing forms of registers, books, documents, instruments and writings, and the conditions, stipulations, reservations and exceptions that shall be inserted or that shall be implied in grants, leases, permits, and other instruments;

(c) defining the duties of officers;

(d) regulating the procedure in applications to the Minister of Lands;

(e) regulating the cutting, getting, and removal of timber, sand, stone, metals, and material on and from Crown Land or any holding;

(f) regulating commons and public reserves in cases not otherwise provided by law.

(2) The regulations may impose fees in respect of any inspection, survey, lease, licence, registration, certificate, permit or other matter granted or made by any

officer or other person under this Act; and in respect of any application made to any officer or other person under this Act:

Provided that the fees set out in Schedule IV shall be the fees imposed until the same have been varied or revoked in pursuance of the authority given by this section.

(3) The regulations may impose royalties to be paid to the Crown in respect of timber, stone, sand, and metals or other material cut, got and removed pursuant to any permits, issued under this Act.

(4) Any person who offends against any regulation shall be liable to a penalty not exceeding $100.[15]

DIVISION II

DEFINITION OF AREAS AND BOUNDARIES

23 Minister to define boundaries

(1) The Minister shall endeavour to define the holdings and boundaries of every landholder and for such purpose he is empowered to serve any landholder with a notice in writing requiring such landholder to attend at the office of the Minister for the district in which such landholder's land is situated and to define the area and boundaries of his land.

(2) Where any landholder having been served with such notice as is mentioned in subsection (1) of this section neglects or refuses to attend at the office of the Minister it shall be lawful for the Minister after the expiration of 30 days from the service of such notice to institute proceedings against such landholder in the Court for the purpose of determining the area and boundaries of such landholder's land and all disputes in connection therewith.

(3) Where the landholder having been served with the notice mentioned in subsection (1) of this section attends in obedience thereto at the office of the Minister and it becomes apparent to the Minister that there is a dispute concerning the area or boundary of such landholder's land the Minister may order such landholder to take proceedings in the Court for the determination of any such dispute.

(4) A notice under this section may be served upon the landholder or his representative in the district in which the land in respect of which the notice is given is situated.

24 Minister may direct a survey

If there is any dispute in regard to the area or boundaries of his holding as defined by any landholder or in regard to any other matter concerning his land the Minister may direct that a survey be made of the area or boundaries of such land.

25 Survey where holder and Minister agree

Should there be no dispute in reference to any area or boundary the Minister shall have a survey made of the land and file a copy of such survey in the office of the Minister at Nuku'alofa.

26 Survey after dispute settled by Court

After any decision of the Court or (where such decision has been appealed from) after the decision of the Appeal Court the Minister shall cause a survey to be made of the boundaries of the holding as finally determined by such decision and shall cause a copy of such survey to be filed in the office of the Minister at Nuku'alofa.

27 Minister may order holder to go to Court

Should any landholder after being ordered to do so by the Minister neglect or fail to bring an action in the Court within 14 days of being so ordered and the Minister takes action in accordance with section 23(2) the Court may order the landholder to pay all costs of the action.

28 Determination of boundaries to be final

In the case of any dispute as to the area or boundaries of a holding the decision of the Court or if there is an appeal the decision of the Appeal Court shall be final and in any case where there is no dispute the determination by the Minister and the landholder of the area and boundaries shall be conclusive and no further action or demand in regard thereto shall be maintainable.

29 Registration compulsory after determination

(1) Upon the boundaries of any allotment having been determined in the manner prescribed by this Part of this Act the holder shall forthwith register his holding in the office of the Minister for the district in which such allotment is situated and the Minister shall grant such holder a deed of grant in the form in Schedule V.

(2) Upon the boundaries of any hereditary estate having been determined in the manner prescribed by this Part of this Act the Minister shall deliver to the holder a tofia certificate in the form set out in Schedule VI.

PART III – HEREDITARY ESTATES

DIVISION I

RIGHTS OF HOLDERS

30 Felon, idiot or imbecile not to succeed

Any land granted as an hereditary estate shall descend to the lawful heirs of the body of the grantee in accordance with clause 111 of the Constitution:

Provided that no person shall be granted or be permitted to succeed to a noble's or matapule's hereditary estate who has been convicted of a criminal offence and sentenced to imprisonment for more than two years and has not been pardoned, or who is insane or imbecile.[16]

31 Holder's right to rents

The holder of a hereditary estate shall receive from every tax allotment holder on that estate the rent prescribed by this Act without deduction. He shall also receive 90 per cent of the rent reserved in any lease demising a part of the estate for a term of years.[17]

32 Holders may not dispossess allotment holder

The holder of a hereditary estate shall not dispossess in any manner other than the manner provided by the Act any holder of a tax or town allotment of his allotment. Any holder of an hereditary estate acting in contravention of this section shall be liable upon conviction to a fine not exceeding $20 or to imprisonment for a period not exceeding 3 months and shall also be liable in damages at the suit of the dispossessed holder, and the Court shall order the allotment to be returned to the dispossessed holder.

33 Holder's right to lease

(1) The holder of an hereditary estate may subject to the provisions of this Act lease such portions of the estate as have not been granted as allotments or will not, in the opinion of the Cabinet, be required for allotments within the term of the lease. The opinion of the Cabinet in such matter shall be conclusive and final.

(2) The total amount of land leased on an hereditary estate under subsection (1) (other than land leased to religious bodies and charitable institutions) shall in no case exceed 5 per cent of the total area of that hereditary estate:[18]

Provided that nothing in this section shall affect in any way whatsoever any lease granted prior to the 10th day of September 1945.[19]

34 Holder not to refuse land for allotments

(1) The holder of an hereditary estate shall admit into possession any person who has been granted an allotment upon his estate by the Minister:

Provided that a holder shall be permitted to reserve a portion of the hereditary estate, being of such area as may be determined by regulation, for the sole use of himself and his successors in title.

(2) Before making a grant of a tax allotment out of an hereditary estate the Minister shall consult the holder thereof and hear any objections he may make to the grant being made and where the Minister and the holder of the hereditary estate fail to agree, the Minister shall nevertheless grant the land as a tax allotment but such grant shall within 3 months of the making thereof be liable to review by the Court, the decision of which on the matter shall be final.

35 Holder may refuse permission to reside

(1) Nothing contained in section 34 hereof shall be deemed or construed as prohibiting any holder of an hereditary estate from refusing permission to take up residence on his hereditary estate to any person who belongs to another locality or holds a tax allotment elsewhere even though the wife of such person belongs to a village upon such holder's estate.

(2) Any such person coming to reside on an estate may be ordered in writing by the holder to leave, and if that person refuses or fails to obey such order within 7 days he shall be liable on conviction therefore to a fine not exceeding $4 and in default of payment to imprisonment for any period not exceeding one month.

36 Renewal of leases

(1) Where on the expiration of any lease of land forming part of any hereditary estate or of an allotment the holder of such hereditary estate or allotment fails to agree to the grant of a new lease for a period equal to that of the expiring lease at a rent not greater than that reserved in such expiring lease within 3 months after a request in writing so to do by the holder of such expiring lease it shall be lawful for the Minister at the direction of Cabinet to grant to such holder of such expiring lease a further lease for a period not exceeding that granted in the expiring lease and such further lease shall be as effective for all purposes as though granted by the holder of the hereditary estate or allotment of which it forms part:

Provided always that no lease shall be granted under this section whereby the total period of the original lease and any leases granted under this section shall exceed 99 years, unless the prior consent of His Majesty in Council has been obtained:

Provided further that no lease shall be granted under this section unless a request in writing for a new lease shall have been served on the holder of the hereditary estate or allotment of which the land leased forms part not less than 6 months before the termination of the expiring lease.[20]

(2) On the expiration of any lease of land forming part of Government land it shall be lawful for the Minister at the direction of Cabinet after a request in writing so to do by the holder of the expiring lease to grant to such holder of such expiring lease a further lease for a period not exceeding that granted in the expiring lease:

Provided that no lease shall be granted under this section whereby the total period of the original lease and any leases granted under this section shall exceed 99 years, unless the prior consent of His Majesty in Council has been obtained. [21]

(3) No lease shall be granted under this section unless all rent due shall have been paid and all other terms and conditions of the expiring lease shall have been observed and performed.[22]

DIVISION II

DEVOLUTION OF HEREDITARY ESTATES ON DEATH; TRUSTEESHIP

37 Loss of rights upon conviction, etc.

Any holder of any hereditary estate convicted of a criminal offence and sentenced to imprisonment for more than two years or certified by a medical officer to be insane or imbecile shall as from the date of such conviction or certificate cease to hold such title and the estate.[23]

Provided that the operation of this section and sections 30, 38(1), 40, and 41(b) and (h) shall be suspended in any case until the expiration of 42 days after the date of sentencing; and in cases where notice of appeal or leave to appeal is given within 42 days after the date of sentencing, until the determination of the appeal; and if the conviction is quashed on appeal or the sentence reduced to no more than 2 years imprisonment then the relevant provisions of those sections shall not have effect. [24]

38 King to publish name of lawful successor

(1) Upon the death of a holder of an hereditary estate or upon being convicted of a criminal offence and sentenced to imprisonment for more than two years or upon his being certified as insane or imbecile by a medical officer, His

Majesty shall cause the name of the lawful successor to the title of such holder to be published in the Gazette together with the date of his succession thereto which shall be the day following that on which the death of the holder took place or on which the holder was convicted of a criminal offence and sentenced to imprisonment for more than two years or was certified by a medical officer as insane or imbecile.[25]

(2) On a convenient day not more than 6 months after the date of such publication, or, where the lawful successor is on such date a minor, 6 months after the day he attains the age of 21 years, His Majesty shall summon the person so named to appear before him in the Privy Council and there to take the oath of allegiance set out in Schedule VII.

(3) The clerk of the Privy Council shall keep a roll of all persons holding hereditary estates.

39 Date succession operates

The successor to the title if he has attained the age of 21 years shall as from the date of succession published in the Gazette possess and enjoy the hereditary estate appurtenant to the title to which he has succeeded together with the rents and profits thereof and all other rights and privileges attached to the title.

40 Appointment, remuneration and accounts of trustees

(1) Whenever upon the death of a holder of an hereditary estate or upon his being convicted of a criminal offence and sentenced to imprisonment for more than two years or being duly certified as insane or imbecile, his lawful successor has not attained the age of 21 years, His Majesty shall appoint one or more fit and proper persons to act as trustees for such successor during his minority for the purpose of protecting, preserving and managing the hereditary estate appurtenant to the title to which he has succeeded and of applying for his maintenance and benefit all moneys or profits arising from such estate including the salary attached to the title and all moneys arising from the sale or hire of live stock or from the sale of copra or other produce until such time as the successor attains the age of 21 years.[26]

(2) Every trustee shall at the end of each period of 6 months present to His Majesty a statement of account concerning the estate of which he is trustee. Such statement shall be verified on oath and shall show clearly each item of receipt and outgoing in connection with the estate.

(3) Every trustee shall be paid such remuneration out of the estate of which he is trustee as may be determined by His Majesty.

(4) His Majesty may dismiss any trustee who is guilty of mismanagement, breach of trust, or fraud in connection with his trusteeship and appoint another trustee in his stead.

41 Rules of succession[27]

Upon the death of a holder of an hereditary estate the succession to the estate shall be as follows—

(a) only persons born in wedlock may inherit;

Explanation

Provided marriage precedes the birth of a child such child is legitimate and capable of succeeding no matter how short the interval between the parents' marriage and its birth.

(b) no person shall be entitled to succeed who is insane, or has since the granting of the Constitution been convicted of an convicted of a criminal offence and sentenced to imprisonment for more than two years; [28]

(c) the inheritance shall descend in the first place to the issue of the deceased holder in infinitum;

(d) the male issue shall be preferred to female issue of the same degree;

Examples

On the death of a holder leaving a son and a daughter, the son is entitled to succeed.

On the death of a holder leaving a grand-daughter and grand-son, children of the same parents, the grand-son will succeed.

(e) as between issue of the same degree of relationship to the deceased holder the eldest shall inherit;

Examples

On the death of a holder leaving 3 sons the eldest will succeed. Similarly in the case of a holder dying and leaving only daughters, the eldest would succeed. Again if a holder's only son predeceases him leaving 3 sons the eldest of such sons would succeed on the death of the holder.

(f) all the lineal descendants of any deceased person who if he had been alive would have been entitled to succeed shall represent their ancestor, that is, they shall have the same right to succeed as such person would have had if still living:

Provided always that no female and no male descendant claiming through a female shall be entitled to succeed by right of representation so long as any heir male of the body of the deceased holder survives;

Examples

A the holder dies leaving a son B, a daughter C and a grand-son E (child of A's eldest son D deceased). Under rules (d) and (e) D, if alive, would have succeeded in preference to C or B and as under this rule E stands in the same place as his father D if still living would have done, E will succeed in preference to C or B.

W a holder dies leaving a daughter X and a grand-daughter Z (child of W's deceased son Y). Under rule (d) Y, if alive, would have succeeded in preference to his sister X and as there are no heirs male of the deceased holder surviving Z will under this rule be entitled to stand in the same place as her father Y would have done and will therefore succeed.

A a holder dies leaving a daughter B and two grand-children viz. C the daughter of A's eldest son and D a son of A's youngest son. In this case although A's eldest son if alive would have succeeded before B or D, C the daughter of the eldest son will not so succeed as representing her father because she is a female descendant of the deceased holder and there is a male heir of the body of the holder still living namely D, D will therefore succeed. In the case last mentioned had C predeceased A leaving a son surviving her, D would still succeed in preference to such son, for D is an heir male of the body of the deceased holder while C's son although also a descendant of the deceased holder, claims through a female, viz. his mother C.

(g) on failure of lineal descendants of the deceased holder, the inheritance shall descend to his brothers and sisters and their issue subject to rule (d) and (e) and all lineal descendants of any deceased brother or sister who, if he or she had been living would have been entitled to succeed, shall have the same right to succeed as their ancestor would have had if still living:

Provided always that no female descendant of a brother and no male descendant of a brother claiming through a female shall be entitled to succeed by representation so long as any heir male of the body of any deceased brother survives;

(h) if upon the death, insanity or conviction of a criminal offence and sentenced to imprisonment for more than two years of any holder there is no heir to succeed to the title and estates, the estates shall revert to the Crown and shall be dealt with as Crown Lands until such time as the King grants the title of honour when such estates shall be granted to the holder of the title. [29]

42 Application

Nothing in this part of this Act shall apply to any person who is not of Tongan nationality.[30]

PART IV – TAX AND TOWN ALLOTMENTS

DIVISION I

GRANT OF ALLOTMENTS

43 Tongan subject may apply for allotment

(1) Every male Tongan subject by birth of 16 years of age not being in possession of a tax or town allotment shall be entitled to the grant of a tax or town allotment or if in possession of neither to the grant of a tax and town allotment.

(2) The grant shall be subject to the provisions of this Act and shall be made in accordance with the following rules —

(a) the applicant shall make an application on the prescribed form to the Minister;

(b) the applicant shall produce for the inspection of the Minister his birth certificate or some other proof of the date of his birth;[31]

(c) the applicant shall pay the prescribed fees.

44 Applicants refusing grant not to make second application

(1) Any person who has applied for and has been granted by the Minister an allotment and without reasonable cause refuses to accept the land granted to him shall not be entitled to make a further application and the Minister shall keep a record of all cases where an applicant has so refused and shall not entertain any second application if made.

Forfeiture

(2) Any person who has been granted an allotment and abandons the same for a period of more than 2 years shall forfeit such allotment to the holder of the hereditary estate or to the Crown as the case may be: in any such case the holder of the hereditary estate or the Minister where the allotment is situate on Crown Land shall take proceedings in the Land Court for the recovery of such allotment and on the abandonment being proved to the satisfaction of the Court, the Court shall declare such allotment to have been forfeited and shall order the register of allotments to be rectified accordingly and such allotment may be re-granted by the Minister.

45 Holder of tax allotment entitled to town allotment

A male Tongan subject by birth who when this Act comes into force is a registered holder of a tax allotment and who does not hold a town allotment shall be entitled to the grant of a town allotment.

46 Five hectare allotments

An applicant duly entitled in accordance with section 43 may apply for and may be granted a parcel of agricultural (bush) land of 5 hectares in one lot as a tax allotment. Upon acceptance of such land as a tax allotment his right to a town allotment shall be deemed to be extinguished:[32]

Provided that where a person has been granted an allotment of 3.3387 hectares as a tax allotment and provided that at the time of the grant to him of such allotment any land adjoining his allotment was not subdivided into tax allotments it shall be lawful for him at any time before such land is subdivided into tax allotments as aforesaid to apply for and he may be granted an allotment of land containing 5 hectares inclusive of the 3.3387 hectares he already holds. On the grant to him of such an allotment his town allotment shall revert to the Crown or tofia holder as the case may be.[33]

47 Subdivision of land into allotments exceeding area prescribed in Act

(1) Notwithstanding the provisions of this Act it shall be lawful for any noble, provided in the opinion of Cabinet having regard to the amount of land available for tax allotments there is sufficient land for the purpose, to grant to every Tongan subject making application for a tax allotment on such noble's hereditary estate an area of land containing 4 hectares to be held as follows —

(a) as a tax allotment an area of 3.3387 hectares;

(b) as a town allotment an area of 7000 square metres.[34]

(2) It shall be lawful for a noble with the consent of Cabinet to grant on application being made such an allotment of 4 hectares to be held as aforesaid to any other Tongan subject who already holds a tax allotment on such noble's hereditary estate and on the grant of such allotment of 4 hectares the grantee shall relinquish the tax allotment he already holds.[35]

48 No person to hold two allotments

No person who already holds a tax allotment or town allotment shall be granted a second allotment of the same kind as he already holds and any such grant shall be null and void.

49 Grant in excess of statutory size void

Subject to the provision of sections 46 and 47 hereof it shall be unlawful to grant an allotment in excess of the areas specified in section 7 and any such grant made after the coming into force of this Act shall be null and void:

Provided that to facilitate survey of the prescribed areas a tax allotment and a town allotment may be exceeded by areas of not more than 505.9 square metres and 12.6 square metres respectively.[36]

50 Rules for taking lands for allotments

Land for allotments shall be taken from the hereditary estates in accordance with the following rules —

(a) an applicant for an allotment lawfully resident in an hereditary estate shall have his allotments out of land available for allotments in that estate;

(b) where there is no land available in the estate in which the applicant is resident, then the allotment shall be taken out of some other estate held by the noble or matapule in one of whose estates the applicant is resident;

(c) if no land is available in any hereditary estate held by the noble or matapule in one of whose estates the applicant is resident then the allotment shall be taken out of the hereditary estate of any other noble who is willing to provide such allotment;

(d) if no land is available under rule (c) then the applicant may have his allotment from Crown Land;

(e) an applicant for an allotment to be granted out of Crown Land shall have his tax and town allotments from such particular portion of Crown Land as the Minister may decide:

Provided that an applicant already resident on Crown Land shall where possible be granted the allotments from the particular area of Crown Land in which the applicant is resident.

51 Subdivision of town allotments

(1) Where a town allotment is not less than 1618.7 square metres in area the holder thereof may apply to the Minister requesting him to subdivide the allotment between such sons, grandsons, brothers or nephews, of the applicant, being more than 16 years of age, as the applicant shall appoint, but the Minister shall not grant an allotment less than 752 square metres in area.[37]

(2) Where the holder of an allotment as in subsection (1) hereof set out has no relatives as aforesaid he may apply to the Minister for permission to surrender a part, or the whole of so much of his allotment as exceeds the statutory area,

and the land so surrendered shall be available for subdivision at the discretion of the Minister.[38]

52 Teacher's allotment

(1) The Minister upon the application of the Minister responsible for education shall make provision for an allotment of 3.3387 hectares of land for the use of the Head Teacher of any Government Primary School who is a male Tongan subject.[39]

(2) Such provision may be made from Crown land or from land in an hereditary estate.

(3) Any allotment granted under this section if forming part of Crown land shall be denominated and registered as the Teacher's allotment and shall be held by the Teacher during his term of office and thereafter by his successors and on failure of successors shall revert to the Crown.

(4) Whenever it shall be necessary for the Minister to make provision for a Teacher's allotment from land forming part of an hereditary estate the holder of such hereditary estate shall lease an area of 3.3387 hectares to the Minister at a nominal rental for a period of 99 years to be held by the Minister for the use of the teacher during his term of office and thereafter by his successors and on failure of successors or on the expiration of the term of lease the land shall revert to the holder of the hereditary estate.[40]

53 Subdivision of tax allotments

(1) Whenever the Cabinet is satisfied that it is possible so to do the Minister shall arrange for the subdivision of land into rectangular tax allotments and if by reason of such subdivision the holder of a tax allotment is deprived of the whole or part of his allotment he shall in addition to receiving other land in lieu therefore be entitled to the produce of the coconut trees growing on the land of which he has been deprived for a period not exceeding 6 years from the date on which he was deprived of the whole or part of his tax allotment as aforesaid and the period for which he shall be so entitled shall be determined by the Minister.[41]

Road access to rectangular allotments

(2) The road access to any such allotment shall not be of less width than 4 metres.[42]

54 Surrender of allotments

(1) Whenever the holder of a tax or town allotment desires to surrender such allotment or any part thereof, it shall be lawful for such holder with the consent of the Cabinet to surrender the said allotment or any part thereof as

aforesaid, and any allotment or any part thereof so surrendered shall, subject to the provisions of this Act, immediately devolve upon the person who would be the heir of the holder if such holder had died; and if there be no person on whom the allotment or any part thereof can so devolve the allotment or any part thereof if situate on Crown Land shall revert to the Crown and if situate on an hereditary estate shall revert to the holder thereof.[43]

(2) Notice of the Cabinet's consent to the surrender shall be published by the Minister in one issue of the Tonga Government Gazette and in 3 issues of a Tongan weekly newspaper within 2 months of the date of the notice.[44]

(3) The notice shall be in the form specified in Schedule IVA and will require any person claiming to be the legal successor to the surrendered land to lodge his claim in writing to the allotment or part thereof by the date specified in the notice which date shall not be less than 12 months from the date that the notice is first published in accordance with subsection (2), failing which the said allotment or part thereof will revert to the estate holder.[45]

55 Exchange of allotments[46]

(1) Cabinet may, at their own discretion and on the recommendation of the Minister, permit—

(a) an allotment holder to exchange his town or tax allotment for the town or tax allotment of another allotment holder;

(b) an allotment holder, who holds a town or tax allotment on an hereditary estate, to exchange his town or tax allotment for an unallocated town or tax allotment on the same hereditary estate or on another hereditary estate of the same noble or matapule;

(c) an allotment holder, who holds a town or tax allotment on Crown Land, to exchange his town or tax allotment for an unallocated town or tax allotment on Crown Land.

(2) It is hereby provided that in all cases in which an exchange is permitted in terms of subsection (1) if any allotment is held by Trustees for a minor, such an exchange will only be permitted if in the opinion of Cabinet such exchange is for the benefit of the minor.

(3) The fees payable on any exchange permitted by subsections (1) and (2) of this section shall be the same as those payable for the registration of allotments.

DIVISION II

LEASE OF ALLOTMENTS

56 Tax or town allotment may be leased[47]

The registered holder of a town or tax allotment may grant a lease over the whole or part of his town or tax allotment, provided that —

(i) the consent of Cabinet has been obtained in the manner provided in this Act;

(ii) the holder is not a widow holding the tax or town allotment of her deceased husband;

(iii) the holder is not the Head Teacher of a Government Primary School holding a tax allotment in terms of section 52 of this Act;

(iv) if the lease is in respect of the whole or part of a tax allotment, the period shall not exceed 20 years;[48]

(v) no mortgage is in force in respect of the allotment or part thereof.

57 Rentals[49]

(1) The amount of rental which shall be payable in respect of a lease, a tax allotment or any part thereof shall be calculated at the rate of $10 per acre, provided that His Majesty in Council may from time to time by Order alter the said rate.[50]

(2) The amount of rental which shall be payable in respect of a lease of a town allotment shall be as agreed between the parties thereto.

(3) The Minister shall collect the rents for all allotments or part or parts thereof leased in terms of the foregoing section and shall pay the same into the Treasury and shall issue a voucher in favour of the holder of the tax or town allotment for that amount of rent less 10 per cent thereof.

(4) The registered holder of a tax allotment leased in terms of the foregoing section shall remain personally liable for the rental payable in terms of section 64 of this Act to the holder of the hereditary estate or to the Minister as the case may be.

58 Effect of death of lessor[51]

If the registered holder of a tax or town allotment who has granted a lease in terms of this Part of this Act dies before the expiry of the period of the lease, then —

(i) Where there is a widow entitled to a life estate, she shall for such remaining period of the lease as she is entitled to the life estate —

(a) be bound by the terms of the lease;

(b) receive the rental due as provided by this Part of this Act; and

(c) be personally liable, in the case of a tax allotment, to the holder of the hereditary estate or to the Minister as the case may be for the rental payable in terms of section 64 of this Act;

(ii) Where there is no widow entitled to a life estate, but where there is an heir entitled to succeed in terms of the Act, the allotment shall devolve upon him in the manner provided by this Act, except that —

(a) he shall be bound by the terms of the lease;

(b) he shall receive the rental due as provided by this Part of this Act;

(c) he shall be personally liable in the case of a tax allotment, to the holder of the hereditary estate or to the Minister, as the case may be, for the rental payable in terms of section 64 of this Act;

(iii) Where there is no heir and where the allotment reverts to the holder of the hereditary estate or to the Crown as the case may be, then the holder of the hereditary estate or the Minister, as the case may be, shall —

(a) be bound by the terms of the lease;

(b) receive the rental due as provided by this Part of this Act.

59 Effect of surrender by lessor[52]

If the registered holder of a tax or town allotment who has granted a lease in terms of this Part of this Act surrenders the allotment before the expiry of the period of the lease, then —

(i) Where there is an heir entitled to succeed in terms of the Act, the allotment shall devolve upon him in the manner provided by this Part of this Act, except that —

(a) he shall be bound by the terms of the lease;

(b) he shall receive the rental due as provided by this Part of this Act;

(c) he shall be personally liable, in the case of a tax allotment, to the holder of the hereditary estate or to the Minister, as the case may be, for the rental payable in terms of section 64 of this Act;

(ii) Where there is no heir entitled to succeed then the allotment shall revert to the holder of the hereditary estate or to the Crown as the case may be and the holder of the hereditary estate or the Minister, as the case may be, shall —

(a) be bound by the terms of the lease;

(b) receive the rental due as provided by this Part of this Act.

60 Renewal

No lease granted in terms of this Part of this Act shall contain any clause conferring an automatic right of renewal or an option to renew, and any renewal of any lease

granted in terms of this Part of this Act shall be subject to the consent of Cabinet and shall in respect of the whole or part of a tax allotment be for a period not exceeding 10 years.[53]

61 Limitation

(1) No person may, at any given time, be the lessee of more than 10 leases of tax allotments.[54]

(2) No person may, at any given time, be the lessee of more than 5 town allotments.[55]

62 Lessee responsibility for cultivation

(1) During the period of lease of a tax allotment the lessee shall be responsible for any requirements of this or any other Act in relation to planting and upkeep of the allotment.

(2) In the event of the lessee being convicted of an offence under section 74 of this Act in respect of the allotment leased, the lessee shall automatically forfeit the lease but shall remain liable for the amount of rental eligible in respect thereof until expiry of the original term of lease.[56]

DIVISION III

RENT OF ALLOTMENTS

63 Rent of 5 hectare allotment

Where a person elects to take a 5 hectare lot in accordance with section 46 he shall pay an annual rent of 40 seniti therefor to the holder of the hereditary estate if the allotment is situate in an hereditary estate or to the Minister if the allotment is situate in Crown Land.

64 Rent of 3.3387 hectare allotment

The holder of a tax allotment shall pay an annual rent of 80 seniti to the holder of the hereditary estate in which the allotment is situated or to the Minister where the allotment is situate in Crown Lands:

Provided that where a tax allotment is situated partly on Crown land and partly on hereditary estate the holder shall pay 40 seniti as annual rent to the Crown and 40 seniti as annual rent to the holder of the hereditary estate.[57]

65 Tofia holder to keep rent roll

(1) Every holder of an hereditary estate shall keep a rent roll. The rent roll shall contain a list of all persons holding tax or town allotments on the hereditary estate and the holder shall enter therein at the time of payment every payment of rent made by an allotment holder. Upon receiving such rent the holder of the hereditary estate shall deliver a receipt to the allotment holder.

(2) Every holder of an hereditary estate who fails to deliver a receipt for the payment of rent as aforesaid shall be liable on conviction to a fine of $4.

66 Widow's obligation to pay rent

During the continuance of their respective life estates the widow or any daughter succeeding to an allotment shall pay the rent for such allotment and shall comply with all town regulations and where 2 or more daughters succeed as heirs they shall be jointly and severally liable for the rent but no daughter shall be liable for any rent accruing after the determination of her life estate.

67 Rent may be recovered by civil proceedings

Where the rent of a tax allotment is unpaid, the estate holder or where the tax allotment is situate on Crown Land the Minister may sue the holder of the allotment in the Magistrate's Court of the district in which such allotment is situate and may recover the said rent by civil proceedings. No claim shall be made for the recovery of any allotment rent which has been unpaid for more than 3 years.

DIVISION IV
EJECTMENT

68 Grounds for ejectment[58]

A holder of an allotment may be ejected therefrom upon proof in an action brought against him by the Minister in the Land Court of any of the following grounds —

(a) that the holder has failed to satisfy a judgment given in an action for the recovery of rent within 3 months from the date of such judgment;[59]

(b) that during a period of 5 years next preceding an action for ejectment 3 judgments have been given against him in actions for the recovery of rent;

(c) that during a period of 3 years next preceding an action for ejectment the holder has not maintained the allotment in the average state of cultivation for tax allotments in the district where the land in respect of which the action is brought is situate;

(d) that during a period of 3 years next preceding an action for ejectment the holder has been convicted more than twice for an offence against section 74;[60] or

(e) that any rent is 2 years in arrears.

69 Tofia holder to inform Minister of grounds for ejectment

A holder of an estate who shall have reason to believe that any of the grounds set out in section 68 exist in respect of any holder of a tax allotment situate on his estate shall inform the Minister thereof in writing.

70 Ejected holder not to resume possession

Any person from whom possession of a tax allotment shall have been recovered by an action for ejectment who without lawful authority re-enters upon and takes possession of such tax allotment shall be liable on conviction to a fine of $10 or in default of payment to imprisonment for 3 months.

71 Reversion after ejectment

When the Court is satisfied that the grounds for ejectment have been proved, it shall make an order accordingly, and the tax allotment shall revert to the holder of the estate or to the Crown as the case may be and in the case of an allotment reverting to the Crown shall be re-granted in accordance with regulations made under this Act.

DIVISION V

SURRENDER OF ALLOTMENTS

72 Application for new allotment on removal

A registered holder of an allotment who desires to remove permanently from the district in which his allotment is situated to another district may apply in writing to the Minister in the district to which the holder desires to remove for a tax and town allotment to be granted to him out of an hereditary estate or out of Crown Lands in that district and the Minister may upon the conditions hereinafter set forth grant to such applicant an allotment.

73 Grant of new allotment on removal

(1) Every application made under section 72 shall be subject to the rules governing the grant of allotments (Part IV: Division I) so far as the same are applicable and the applicant shall forward the deed of grant of the allotment

he already holds to the Minister in the district to which he desires to remove and shall pay to the Minister the prescribed fees.[61]

(2) The Minister shall thereupon, if land in the estate or Crown Land specified as aforesaid is available, grant to the applicant an allotment and shall forward the deed of grant delivered up by the applicant to the Minister in the district in which the allotment surrendered is situate and the Minister shall cause such deed of grant to be cancelled and shall rectify his register of allotments accordingly and the land described in such deed shall revert to the holder of the hereditary estate or the Crown as the case may be.

DIVISION VI

PLANTING OF TAX ALLOTMENTS

74 Allotment holder's duty to plant, etc.

(1) Every male Tongan subject who has been granted a tax allotment by the Minister shall within one year from the date of the grant have growing on such allotment 200 coconut trees planted in rows and so arranged that the trees are 9 metres apart or 4.5 metres apart in rows 18 metres distant from each other.[62]

(2) Every holder of a tax allotment shall carefully attend to the coconut trees growing thereon and keep them reasonably clean and free from weeds.

(3) Any holder who shall neglect or omit to comply with any of the requirements of this section shall be liable on conviction to a fine not exceeding $50.[63]

75 Procedure on prosecution

All prosecutions for offences against section 74 shall be brought in the Magistrate's Court. Such prosecutions in the island of Tongatapu shall be at the suit of the Director or an Inspector of Agriculture and in any other island shall be at the suit of the police until such time as an Inspector of Agriculture shall be appointed for any such island and from and after the date of his appointment shall be at the suit of such Inspector.[64]

76 Magistrate to order compliance before entering conviction

On the hearing of any charge brought against a holder under section 74 the Magistrate after hearing the evidence shall if the evidence supports the charge make an order directing the defendant to comply with the requirements of the said section within a time specified in the order and shall adjourn the hearing until some day after the time so specified and on such adjourned hearing shall not convict the defendant unless he has wilfully failed to comply with the said order.

77 Magistrate may exempt in cases of illness, etc.

If at the hearing of any prosecution for an offence under section 74 it is made to appear to the satisfaction of the Magistrate that the neglect or omission in respect of which such prosecution is brought was due to the illness or physical incapacity of the defendant it shall be lawful for the Magistrate to grant to the defendant such exemption from the requirements of section 74 or such extension of time for compliance therewith as having regard to all the circumstances of the case appears just and reasonable.

78 Minister to make annual return of all grants of allotments

The Minister as regards tax allotments in Tongatapu district and each Deputy Minister or other officer acting for the Minister as regards tax allotments in his district shall draw up not later than the 31st day of January in each year an annual return for the 12 months ended on the preceding 31st day of December. Such return shall state —

(a) the names of all persons (specifying whether male or female) who have succeeded to tax allotments or to whom tax allotments have been granted during the year in that district to which the return relates;

(b) the date of the grant or the succession in each case;

(c) the area and situation of each such allotment.

79 Annual return to be sent to Director of Agriculture and Forests

The Minister and each Deputy Minister or other officer acting for the Minister shall forthwith cause a copy of such return certified under his signature and official seal to be a true copy to be forwarded to the person authorized by section 75 to prosecute for that district to which such return relates and such copy shall in all proceedings for offences against section 74 be admissible as evidence of the holder's responsibility for any tax allotment therein specified as well as of the date of the grant or succession to such allotment.

DIVISION VII

DEVOLUTION OF ALLOTMENTS

80 Widow entitled to life estate

On the death of the lawful male holder of any tax or town allotment his widow shall be entitled to a life estate in such allotment which estate shall terminate on her re-marriage or upon proof in legal proceedings (as provided by section 81) of her having committed fornication or adultery:[65]

Provided always that the failure of the deceased lawful male holder of any tax or town allotment to register the same under the provision of Division II of Part VIII of this Act shall not of itself be a bar to the grant to his widow of a life estate under this section, and that provided the Minister of Lands is satisfied upon enquiry that the deceased person was the lawful holder of the said allotment it shall be lawful for him to effect posthumous registration at the request of the widow.[66]

81 Land Court may determine life estate

Where it is sought to recover any tax or town allotment from a widow on the ground that she has committed fornication or adultery it shall be lawful for the person claiming such allotment to bring proceedings in the Land Court for the recovery thereof and upon proof of such fornication or adultery to the satisfaction of the Court the Court shall declare that the widow's estate is terminated and shall forthwith forward a certificate of such finding to the Minister.

82 Rules of succession to allotments

Subject to the life estate of the widow, the succession to a tax or town allotment shall be as follows —

(a) descent shall be traced from the last lawful male holder;

(b) only persons born in wedlock may inherit;

(c) the inheritance shall descend in the first place to the eldest son of the deceased holder or if such son is dead to the eldest male heir of the body of such son. If the eldest son of the deceased holder be dead without leaving any male heir of his body the succession shall devolve upon the next eldest son of the holder or if such son is dead to the eldest male heir of such son's body. If the second son of the deceased holder be dead without leaving any male heir of his body the succession shall go to the next eldest son of the deceased holder or the eldest male heir of his body and so on taking all the deceased holder's sons in succession in order of their ages;

(d) if the holder dies without leaving any son or heir male of the body of a son him surviving then any unmarried daughter of the deceased holder shall inherit for her life and if there are two or more unmarried daughters they shall inherit all together jointly for their lives. The life estate of any daughter shall terminate on her marriage or upon proof in proceedings against her in the Land Court to recover such allotment (after the manner provided in section 81 that she has committed fornication or adultery);

(e) in default of any unmarried daughter of the deceased holder an allotment shall descend to the deceased holder's brother or if such brother be dead to the eldest male heir of the body of such brother. If the deceased holder's eldest brother be dead without leaving any male

heir of his body then the holder's next eldest brother shall succeed or if he be dead the eldest male heir of his body and so on taking the deceased holder's brothers in succession in order of their ages;

(f) if the holder dies without leaving any brother or heir male of the body of a brother him surviving the inheritance shall go to the eldest brother of the deceased holder's father or if such brother be dead to the eldest male heir of the body of such brother. If the eldest brother of the deceased holder's father be dead leaving no male heir of his body then the next eldest brother of the deceased holder's father shall succeed or if he be dead the eldest male heir of his body and so on taking the brothers of the deceased holder's father in succession in the order of their respective seniority;

(g) in default of brothers of the deceased holder's father or male heir of the body of such a brother the allotment if situate on Crown Land shall revert to the Crown and if situate on an hereditary estate shall revert to the holder thereof:

Provided always that the failure of the deceased lawful male holder of any tax or town allotment to register the same under the provisions of Division II or Part VIII of this Act shall not of itself be a bar to the grant to his heir under this section, and that provided the Minister of Lands is satisfied upon enquiry that the deceased person was the lawful holder of the said allotment it shall be lawful for him to effect posthumous registration at the request of the heir.[67]

83 Reversion

On the death of the lawful male holder of any tax or town allotment without leaving any person entitled to succeed thereto in accordance with the provisions of this Act such allotment shall if situate on Crown Land revert to the Crown and if situate on an hereditary estate shall revert to the holder thereof.

84 Son or grandson may elect to take as heir

Save and except a son or grandson of the deceased holder, no person who already holds a tax or town allotment shall be permitted to succeed as heir to another allotment of the same kind as the allotment he already holds or to choose between an allotment already held by him and one to which he becomes entitled as heir:

Provided always that where a son or a grandson becomes entitled to succeed to an allotment of his deceased father or grandfather and already possesses an allotment of the same kind it shall be lawful for such son or grandson to elect between the allotment already held by him and that of his deceased father or grandfather.

85 Right to elect as between allotment of deceased holder and allotment already held

Where the heir being the son or grandson of the deceased holder elects to retain the allotment he already holds it shall be lawful for the eldest son of a son who is the heir of the deceased holder or for the brothers of a grandson who is the heir of the deceased holder provided such eldest son or brothers of a grandson already hold a town or tax allotment to elect in succession between the allotment they already hold and that of the same kind held by the deceased holder and if all the persons aforesaid elect to retain the allotments already held by them it shall be lawful for the next son of the deceased holder if alive and provided he already possesses an allotment of the same kind to elect as aforesaid but if he be dead or if he elects to retain his own allotment it shall be lawful for his sons provided they already hold allotments of the same kind to elect in the order of their ages and if they also elect to retain their allotments it shall be lawful for the next son and his sons to elect and so on until a son or grandson elects to take the allotment of the deceased holder but if all the sons and grandsons elect to retain the allotments they already hold the allotment of the deceased holder if situate on Crown land shall revert to the Crown and if situate on an hereditary estate shall revert to the holder provided that if any of the persons above-mentioned do not already possess an allotment of the same kind the right to elect shall pass to the next person entitled as though the person immediately preceding him had elected to retain his own allotment.[68]

Examples:

> A the holder of a tax allotment dies and leaves two sons B and D and grandsons F and G the sons of B and H and K the sons of C (a son who predeceased A) all of whom with the exception of H already at A's death hold tax allotments: B the eldest son is entitled to elect first. If he elects to retain his allotment B's sons F and G are entitled to elect in the order of their ages but they too elect to retain the allotments they already hold. H and K the sons of the deceased son C should be eligible to elect but H not holding an allotment cannot elect. If K elects to retain his own allotment D may then elect and if he elects to retain his own allotment the deceased holders' allotment reverts to the Crown or tofia holder. If B the eldest son predeceased A, B's eldest son F would if he already had an allotment of the same kind be entitled to the first election.

86 Disposition of surrendered allotment on election

Where a son or grandson elects to take the allotment of his deceased father or grandfather as the case may be and to surrender the allotment of the same kind already held by him, the allotment so surrendered shall be granted to any son of the person surrendering it who does not already hold an allotment of the same kind, and where such son is under 16 years of age the allotment shall be granted to one or more trustees to be held by them for the benefit of such son until he reaches 16 years of age whereupon the trustees shall inform the Minister who shall then grant the allotment to such son. As between two or more such sons the eldest shall be

preferred. In default of any such son the allotment so surrendered shall be granted by the Minister to any brother of the person surrendering it provided such brother is 16 years of age or upwards and does not already possess an allotment of the same kind. As between two or more such brothers the eldest shall be preferred. In default of any such brother the allotment if situate on Crown Land shall revert to the Crown and if situate on an hereditary estate shall revert to the holder.

87 Heir must claim within one year

If no claim to a tax or town allotment has been lodged by or on behalf of the heir or widow with the Minister or his Deputy within 12 months from the death of the last holder or by the date specified in the notice made pursuant to section 54 of this Act, such allotment if situate on Crown Land shall revert to the Crown and if situate on an hereditary estate shall revert to the holder.[69]

88 Minister may re-grant reverted allotment

Where any tax or town allotment shall revert to the Crown under the preceding provisions of this Division, such allotment unless required for Government purposes shall be granted out by the Minister in accordance with such regulations as may be made under this Act.

PART V – TONGAN LEASES

89 Consent of Cabinet

No lease shall be granted except with the consent of the Cabinet, but consent shall not be granted to a lease by a widow of the land of her deceased husband.[70]

90 Leases to Tongans other than allotment holders

Any Tongan subject of full age who does not hold a tax allotment may apply to the Minister on the prescribed form for a lease of a parcel of bush land to be granted to him. The Minister shall submit such application to the Cabinet and Cabinet may authorize the Minister to grant the lease upon such conditions and for such term and at such rent as it deems fit.

91 Leases to occupiers of land in excess of statutory area

(1) Whenever it is found that any person is holding land as a tax allotment which is of greater area than the statutory area, the Minister may give 21 days' notice in writing to such person informing him that he intends to subdivide

such land and to grant from out of the same to such person a tax allotment of the statutory area.

(2) In any such case it shall be lawful for the person holding land in excess of a tax allotment upon which improvements have been made over a greater area than the statutory area for allotments to receive a lease for all or any part of such improved portion.[71]

92 Form and conditions of lease

A lease granted under sections 90 or 91 shall be in the form prescribed in Schedule IX. The term shall not exceed 50 years, and shall be renewable upon such conditions as to rent and methods of cultivation as may be ordered by regulations made under this Act.

93 Restriction on permitting to occupy area leased

No person to whom a lease has been granted under the provisions of the foregoing sections may permit any alien to occupy or reside within the area thus leased to him unless such alien has first obtained a permit to reside therein in accordance with the provisions of sections 14 and 15 of this Act.[72]

94 Report to be made by Director of Agriculture and Forests

Upon receiving an application under sections 90 or 91, the Minister shall furnish the Director of Agriculture and Forests with the name of the applicant, the particulars of the land held by and of the land proposed to be leased by the applicant and shall request the Director to inspect the land and report —

(a) upon the state of cultivation of the land proposed to be leased, or

(b) upon the state of cultivation of the statutory allotment or both as the Minister may require.

95 Minister to submit report to Cabinet

Upon receiving the report of the Director the Minister shall submit the same with the application to the Cabinet in order that it may consent to the grant of the lease; and the Cabinet, if satisfied as to the ability and character of the applicant, and that he has complied with section 74 relating to planting, shall authorize the Minister to grant to the applicant a Tongan lease of the land proposed to be leased or such portion thereof as it may deem fit.

PART VI – MORTGAGES[73]

96 Interpretation

In this Act, unless the context otherwise requires —

"**mortgage**" shall mean a transfer of land as security for a debt effected as provided in this Act;

"**mortgagee**" shall mean the person or persons or corporate body in whose favour a mortgage has been granted, and his or their successors in title;

"**mortgagor**" shall mean the landholder who has granted a mortgage over the whole or part of his land, and his successors in title to the land;

"**mortgage lease**" shall mean the form of mortgage lease set out in Schedule VIII to this Act with such variation as the circumstances may require.

97 Mortgages may be granted

It shall be lawful to grant mortgages in accordance with the provisions of this Act.

98 Acceptable mortgagees

(1) A mortgage may be granted in favour of —

(i) the Government; and

(ii) the Westpac Bank of Tonga.

(2) His Majesty in Council may by Order in Council specify the names and addresses of other persons or bodies corporate or incorporate in whose favour mortgages may be granted.[74]

(3) No mortgage may be granted in favour of any person or persons or bodies corporate or incorporate other than those which have been specified in terms of the foregoing subsections.

99 Conditions of mortgage by lessee

A lessee of a registered lease may grant a mortgage over the whole or any part of the lands leased by him, provided that —

(i) the approval of the Minister has been obtained in the manner provided in this Part of this Act;

(ii) the mortgage deed is an assignation of lease in a form acceptable to the Minister;

(iii) the mortgage is for a period not exceeding the unexpired term of the lease excluding any period of renewal to which the lessee may have an option.

100 Conditions of mortgage by allotment holder[75]

(1) The registered holder of a tax or town allotment may grant a mortgage over the whole or part of his tax and town allotment provided that —

(i) the approval of the Minister has been obtained in the manner provided by this Part of this Act;

(ii) the holder is not a widow holding the tax or town allotment of her deceased husband;

(iii) the loan or advance or consideration in respect of which the mortgage is to be granted as security is to be used for the purposes of improvement of the allotment over which the mortgage is to be granted;

(iv) the mortgage is for a period not exceeding 30 years;

(v) the mortgage is created by a mortgage lease;

(vi) in the case of a tax allotment the holder remains personally liable for the payment of annual rental and other conditions relative to tax allotments in this Act.

(2) The Minister shall in his sole discretion decide whether the use to which the loan or advance or consideration is to be put constitutes an improvement in terms of paragraph (iii) of the foregoing subsection.

101 Conditions of mortgage by holder of an hereditary estate[76]

(1) The registered holder of an hereditary estate may grant a mortgage over an unallocated part or unallocated parts of his hereditary estate, provided that —

(i) the approval of the Minister has been obtained in the manner provided by this Part of this Act;

(ii) the loan or advance or consideration in respect of which the mortgage is to be granted as security is to be used for the purposes of improvement of the hereditary estate over which the mortgage is to be granted;

(iii) the mortgage is for a period not exceeding 30 years;

(iv) the mortgage is created by a mortgage lease;

(v) the total amount of all land mortgaged does not exceed 5 per cent of the total land comprising the hereditary estate or estates of the holder, said percentage to be in addition to the percentage of land which may be leased in terms of section 33 of this Act.

(2) The Minister shall in his sole discretion decide whether the use to which a loan or advance or consideration is to be put constitutes an improvement in terms of paragraph (ii) of the foregoing subsection.

102 Application for the consent of Minister

(1) Application for the approval of the Minister shall be made by any person wishing to grant a mortgage to the Minister on the prescribed form, which shall be signed by the applicant and by the proposed mortgagee, and the applicant will furnish the following information —

(a) name and address of applicant;

(b) the location and area of the land to be mortgaged;

(c) type of holding (i.e. hereditary estate, tax or town allotment or lease);

(d) the name and address of the proposed mortgagee;

(e) amount and particulars of loan;

(f) period of mortgage;

(g) period and details of repayment;

(h) interest;

(i) purpose of loan;

(j) details of any collateral security (i.e. any other security to be granted to the mortgagee);

(k) details of any other mortgage which has been granted by the applicant.

(2) If any person knowingly supplies wrongful information on an application form as prescribed in the foregoing subsection he shall be liable on conviction to a fine not exceeding $100 or in default of payment thereof to a term of imprisonment not exceeding 6 months, and if the Court is satisfied that wrongful information was knowingly supplied by a proposed mortgagee, the Court may declare void any mortgage registered as a result of such application.

103 Registration of mortgages

(1) There shall be a Register of Mortgages which shall be kept in the office of the Minister.

(2) All mortgage deeds shall be signed by the mortgagor and shall be delivered together with one signed copy thereof to the Minister for registration within 30 days of the final date of signature.

(3) Registration of the mortgage deed shall be effected by the Minister filing the copy of the deed in the Register and endorsing the original with the following memorial of registration —

Registered the..... day of..... 20.....

Register of Mortgages, Book ..... Folio .....

.....

Signature of Minister

(4) No mortgage shall be effective until it has been registered.

(5) No mortgage shall be registered unless it is certified by the mortgagee or by his law practitioner as being correct for the purpose of this Act.

104 Variation of mortgage[77]

(1) In the case of every mortgage registered under this Act —

(a) the amount secured by the mortgage may be increased or reduced;

(b) the rate of interest may be increased or reduced;

(c) the term of currency of the mortgage may be shortened, extended or renewed provided that the total amount of such term shall not exceed that allowed under sections 100 and 101 in respect of town and tax and hereditary estates;

(d) the covenants, conditions and powers contained or implied in the mortgage may be varied, negatived or added to by a memorandum in such one of the forms contained in Schedule VIII as is applicable:

Provided that it shall not be necessary for a mortgagor to execute a memorandum of reduction, or for the mortgagee to execute a memorandum of increase of the mortgage debt or of the rate of interest payable under the mortgage.

(2) The memorandum may include all or any of the matters mentioned in subsection (1) hereof, and in that case the said forms shall be modified accordingly.

(3) The memorandum shall be registered in like manner as the original mortgage.

(4) 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 he has consented thereto in writing on that memorandum or instrument, but that consent shall render the said memorandum or instrument binding on the mortgagee so consenting and shall be deemed to be notice to and shall be binding on all persons who may subsequently derive from him any interest in the mortgaged property.

105 Assignation of mortgage

(1) A mortgagee may assign the mortgage or any part thereof provided that —

(i) the approval of the Minister has been obtained in the manner provided by subsection (4) of this section;

(ii) if the mortgagor has not defaulted in his obligations to the mortgagee, either the consent of the mortgagor has been obtained or the Minister has consented to dispense with the mortgagor's consent as provided in subsection (2);

(iii) the assignee is an acceptable mortgagee within the meaning of section 98 of this Act.

(2) Where a mortgagor refuses to consent to the assignation of a mortgage, the Minister may at the request of the mortgagee and after such enquiry as he thinks fit, dispense with the consent of the mortgagor.

(3) The assignation of a mortgage shall be in form 4 contained in Schedule VIII with such variations as the circumstances may necessitate.

(4) Application to assign a mortgage shall be made to the Minister by the mortgagee on the prescribed form which shall be signed by the applicant and by the person to whom the mortgage is to be assigned, and the applicant will furnish the following information —

(a) registered number of mortgage;

(b) name and address of proposed assignee;

(c) consideration;

(d) details of any proposed alterations in terms of mortgage.

(5) If any person knowingly supplies wrongful information on an application form as prescribed in the foregoing subsection, he shall be liable on conviction to a fine not exceeding $100 or in default of payment thereof to a term of imprisonment not exceeding 6 months.

106 Registration of assignation

(1) All assignations shall be signed by the mortgagee (assignor) and assignee and shall be delivered together with one signed copy thereof to the Minister for registration in the Register of Mortgages within 30 days of the final date of signature.

(2) Registration of an assignment of a mortgage shall be effected by the Minister filing the copy of the assignation in the Register and endorsing the original with the following memorial of registration —

Registered the..... day of .....20 .....

Assignation of Mortgage ..... Book .....Folio .....

Book .....Folio.....

.....

Signature of Minister

(3) No assignation shall be effective until it has been registered.

(4) No assignation of a mortgage shall be registered unless it is certified by the assignee or by his solicitor as being correct for the purposes of this Act.

107 Documents affecting mortgages to be registered

(1) The registration of the following documents affecting mortgages shall be compulsory —

(a) assignations;

(b) assignations for the benefit of creditors;

(c) grants of Letters of Administration;

(d) grants of probate;

(e) injunctions affecting land and releases of such injunctions;

(f) memorials of pending suits affecting lands;

(g) orders of Court appointing a trustee or trustees or an official receiver;

(h) powers of attorney;

(i) discharge granted in terms of section 108 hereof;

(j) Gazette notice proclaiming the name of the lawful successor to an hereditary title;

(k) claim by or on behalf of the heir or widow for tax or town allotment;

(l) notification of default;

(m) sub-lease;

(n) agreement, bond or other document in any way regulating the terms of the mortgage transaction.

(2) The registration of any document required by the foregoing subsection to be registered shall be effected in the following manner —

(i) such document together with a true copy thereof shall be delivered to the Minister together with the original mortgage deed or any assignation thereof;

(ii) the Minister shall file in his office the true copy of the document to be registered by binding up the same in a book (to be called the register of documents affecting mortgages) and shall endorse the original with the following memorial of registration —

Registered the ..... day of..... 20 .....

Register of Documents affecting Mortgages.

Book..... Folio ..... Mortgage No .....

.....

Signature of Minister

(iii) the Minister shall endorse the original mortgage deed or any assignation thereof together with the duplicate of same on file in his office with a memorial of registration as the nature of the case requires, and shall return such deeds to the person entitled thereto.

108 Discharge

(1) When a mortgagor has discharged his obligations to the mortgagee prior to the expiry of the period of the mortgage deed, the mortgagee shall grant in favour of the mortgagor a discharge of the mortgage, which discharge shall be in form 5 set out in Schedule VIII with such variations as the circumstances may necessitate.

(2) On the expiry of the period of the mortgage deed and in the event of no discharge having been granted in terms of the foregoing subsection, obligations of the mortgagor to the mortgagee shall be deemed to have been discharged and the mortgagee shall give to the mortgagor the mortgage deed and a discharge thereof for the purpose of registration.

(3) A discharge granted in terms of this section shall be registered as provided in the foregoing section.

(4) No discharge of a mortgage shall be registered unless it is certified by the mortgagor or by his solicitor as being correct for the purposes of this Act.

109 Default[78]

(1) In the event of the mortgagee wishing to take possession of the lands mortgaged following default by the mortgagor of any of the obligations to the mortgagee set out in the mortgage deed or in any other document lodged with the Minister in terms of the next succeeding section the mortgagee shall give notification both to the mortgagor and to the Minister of his intention to take possession of the lands mortgaged and may thereafter take possession at any time after the expiry of 14 days from the date of said notification.

(2) After a mortgagee has taken possession, in terms of subsection (1) of the land mortgaged, he may either retain possession for the unexpired term of the mortgage lease or he may sub-lease the lands for the unexpired term of the mortgage lease, or he may sell the lease or sub-lease if the mortgaged land is a leasehold.

110 Effectiveness of mortgage

Except as provided by this or any other Act, a mortgage deed (or any agreement or bond relative thereto) is effective according to its terms between the parties to it.

111 *Repealed by Act 26 of 1990*[79]

112 Form of mortgages etc.

(1) All applications for a mortgage, mortgage lease and assignments of mortgage, shall consist of two original documents and be in the respective forms thereof

contained in Schedule VIII with such variations as the circumstances may require.

(2) All discharges of mortgages shall be in the form contained in Schedule VIII with such variations as the circumstances may require.

PART VIA - EASEMENTS[80]

112A Easements generally

(1) An "easement" is a right annexed to land to utilise other land of different ownership in a particular manner (not involving the taking of any part of the natural produce of that land or of that land or of any part of its soil) or to prevent the owner of the other land from utilising his land in a particular manner.

(2) The piece of land in respect of which an easement is enjoyed is called the "dominant tenement" and that over which the right is exercised is called the "servient tenement" and the expressions "dominant holder" and "servient holder" bear corresponding meanings.

(3) Without limiting the generality thereof the following easements are permissible —

(a) right of way;

(b) right to convey water;

(c) right to drain water;

(d) right to drain sewage.

(4) On the registration of any easement of the kinds specified in paragraphs (a) to (d) inclusive of subsection (3) the grantee thereunder shall have the respective rights and powers set out in Schedule XIV to this Act except so far as they may have been varied or negatived in the instrument creating the easement.

(5) Any rights and powers in addition to or in substitution for any of those set out in Schedule XIV to this Act and any terms covenants conditions or restrictions attaching to any easement may be set out in the instrument creating the easement.

112B Registration of easements

(1) There shall be a register of easements which shall be kept in the office of the Minister.

(2) All instruments creating easements upon being duly executed shall be delivered together with one signed copy thereof to the Minister for registration within 30 days of execution.

(3) Registration of the instrument creating the easement shall be effected by the Minister filing the copy of the instrument in the Register and endorsing the original with the following memorial of registration —

Registered the ..... day of..... 20 .....

Registered Easement ..... Book..... Folio .....

.....

Signature of Minister

(4)

(a) No easement shall be effective until it has been registered.

(b) A registration fee the same as that payable on the registration of a mortgage shall be paid.

(5) No easement shall be registered unless it is certified by the grantee or his solicitor as being correct for the purposes of this Act.

(6) If within 14 days after the service of the decision pursuant to subsection (3) of section 112C on him a holder refuses to execute an instrument as set out in Schedule XV the Registrar of the Land Court may execute such an instrument on his behalf.

112C Compulsory grant of easement

(1) The Minister shall, when exercising the power conferred on him by section 19(11) to compel the granting of an easement, give written notice to the holder specifying the following —

(a) the type of easement required; and

(b) that the holder has 28 days after receipt of the notice to object to such easement.

(2) The notice from the Minister shall be accompanied by a plan prepared by a surveyor which plan shall detail the line and dimensions of the proposed easement with reference to the boundaries of the holder's estate or allotment.

(3) If a holder wishes to object to the easement required by the Crown he shall do so in writing within 28 days of receipt of the notice referred to in subsection (1) and such objection, with reasons therefor shall be lodged with the Land Court and heard by a judge, sitting as an expert and not in his judicial capacity, and whose decision shall be final.

(4) A holder shall be entitled to compensation from the Crown for any reduction in value of his estate or allotment by virtue of the Crown compulsorily acquiring the right to an easement.

(5) In order to claim compensation the holder must within 28 days of either the receipt of notice under section 112C(1) or the receipt of the decision declining

his objection under subsection (3) hereof file with the Land Court and serve on the Minister and any mortgagee a notice in writing stating —

(a) each matter on account of which he claims compensation with full particulars of the nature and extent of the claim;

(b) the amount which he claims respectively for the loss of use of land or for land injuriously affected giving in both cases the amount for each item of such claim separately;

(c) if the land is mortgaged particulars of such mortgage including the name and address of the mortgagee.

(6)

(a) As soon as practicable thereafter a Judge will hear the parties and determine the holder's claim for compensation which shall be final, and in so doing he will be sitting as an expert and not in his judicial capacity.

(b) A copy of any award will be sent to the holder and if the land is mortgaged to the mortgagee.

(7)

(a) If the land in respect of which compensation is awarded is subject to a mortgage such compensation or so much thereof as is required for the purpose shall upon the application for the mortgagee be paid in discharge of the mortgage debt or of part thereof.

(b) The mortgagee if he requires the compensation to be paid to him pursuant to subsection (7)(a) hereof must advise the Court in writing within 28 days of receipt by him of the Court's award pursuant to subsection (6)(b) hereof.

112D Form of easement

Every instrument creating an easement shall be in the form contained in Schedule XV to this Act with such variations as the circumstances may require.

PART VII – THE FORESHORE

113 Foreshore the property of the Crown

The foreshore is the property of the Crown and the Minister may with the consent of the Cabinet grant permits to erect stores or wharves or jetties thereon or to reside on any portion thereof or he may with the like consent grant a lease for any of the purposes aforesaid.

114 Permits to cut stone, etc.

(1) The Minister may with the consent of the Cabinet and upon payment of the prescribed royalty grant to any person permission in writing to cut and remove stone from the foreshore not being part of a harbour.

(2) All stone cut under such permission shall be removed from the foreshore within 14 days after the same has been cut and if not so removed shall become the property of the Crown.

(3) Any person who shall cut and remove any stone from the foreshore without having previously obtained such permission as aforesaid shall be liable on conviction therefore to a fine not exceeding $10 and in default of payment to imprisonment for any term not exceeding 2 months and the Court by which any conviction under this section is pronounced may declare such stone forfeited to the Crown.

PART VIII – REGISTRATION OF TITLE

DIVISION I

HEREDITARY ESTATES

115 Form and contents of tofia certificate

Every tofia certificate shall be made out in duplicate in the form contained in Schedule VI and shall contain in addition to the words of grant a description and diagram of the lands comprised in the hereditary estate.

116 Minister to keep a register of tofias

One copy of the certificate shall be delivered to the holder and the Minister shall bind up the other in a book to be called the register of tofias, which shall be kept by the Minister in his office at Nuku'alofa.

117 Registration upon succession to tofia

A successor to an hereditary estate shall within 3 days of taking the oath of allegiance as provided by section 38 register himself as the person duly entitled to the estate in the manner following —

(a) the successor shall present the tofia certificate relating to the estate to the Minister and, if demanded by the Minister, shall produce a certificate from the clerk of the Privy Council to the effect that he has duly taken the oath as aforesaid and shall pay the prescribed fees;

(b) if the tofia certificate is lost or has been destroyed the successor shall inform the Minister of the facts of such loss or destruction verifying the same by the affidavit of himself or any other person who has a knowledge of such facts and the Minister shall then issue a new certificate;

(c) the Minister shall endorse on the certificate presented to him or granted by him in the cases of loss or destruction and endorse on the duplicate in the register of tofias a memorial of registration in the following form —

Succession: Registered the ..... day of ..... 20 .....

A.B. ..... the son of C.D. ..... etc., succeeded to the title and estates on the ..... day of ..... 20 .....

Seal

.....

Signature of Minister

118 Schedule of leases and allotments to be attached to certificate

There shall be endorsed upon or attached unto every tofia certificate a schedule of leases and a schedule of allotments granted out of the hereditary estate to which the certificate relates.

119 Schedule to be amended on registration of allotments

Upon any lease or any allotment being registered the Minister shall enter the particulars of the same in the schedule endorsed or attached to the tofia certificate kept in the register of tofias and shall call upon the holder of the hereditary estate to produce to him his tofia certificate and shall make thereon a like endorsement; and where any lease is surrendered or where any allotment reverts the Minister shall make appropriate endorsements in the schedules as aforesaid.

DIVISION II

REGISTRATION OF ALLOTMENTS

120 Form and contents of deed of grant

All deeds of grants of allotments shall be in duplicate and in the form prescribed in Schedule V and in addition to proper words of description shall contain a diagram of the land.

121 Minister to keep a register for allotments

The Minister shall sign and deliver to the grantee one duplicate and shall register the other by binding up the same in a book to be called the register of allotments.

122 Registration on succession, etc.

Whenever any person becomes entitled under the rules governing the devolution of allotments contained in Division VII of Part IV to an allotment he shall within one month of so becoming entitled present to the Minister the deed of grant formerly in the possession of his predecessor in title and the Minister shall endorse thereon and upon the duplicate deed in the register a memorial in the following form —

> Registration: Registered the..... day of ..... 20..... A.B. ..... (here set out the relationship to the previous holder) has from the ..... day of ..... 20 ..... become entitled (here set out how the title is acquired, *e.g.* by succession or by dispossession of the widow of ..... on order of the Land Court) to hold the allotment known as ..... situated at .....

123 New deed may be issued to successor in title

Where a person is entitled to succeed to an allotment but is unable to produce to the Minister the relevant deed of grant for endorsement under the last preceding section, he shall produce such evidence as the Minister may require to prove his title, and the Minister, upon being satisfied as to the entitlement of that person, may register that person as the holder of that allotment and issue to him a new deed of grant subject to such encumbrances as may be endorsed on the duplicate deed in the register, and upon the issue of the new deed of grant the former deed of grant shall be deemed to have been duly cancelled.[81]

DIVISION III

REGISTRATION OF LEASEHOLD TITLE

(A) FORM OF LEASES, ETC.

124 Form of leases, etc.

(1) All applications, leases, sub-leases, transfers and permits shall be in the forms prescribed in Schedule IX with such variations as circumstances may require and in the cases of leases, sub-leases, transfers and permits shall be in duplicate.[82]

(2) Every lease, sub-lease or transfer shall in addition to proper words of description contain a diagram of the lands thereby conveyed:

Provided always that no diagram or description shall be necessary in any sub-lease or transfer wherein the grantor conveys the whole land held by him under a previous lease, sub-lease or transfer.

(3) No lease shall be for a longer term than 99 years, except with the consent of His Majesty in Council.[83]

(4) Every lease shall be signed and sealed by the lessee and by the Minister with his seal of office and shall be countersigned by a Cabinet Minister who shall also impress his seal of office thereon.

125 Validity of permits to reside

(1) Except where the landholder is a person within the meaning of paragraph (a) in the definition of "Landholder" in section 2 of this Act, a permit issued in Form No. 6, or substantially in that Form, of Schedule IX to this Act shall not be capable of being transferred and shall cease to be valid on and after the date of the death of either the grantee of that permit or of the landholder of the day of issue of that permit.

(2) A permit issued in Form No. 2, or substantially in that Form, of Schedule IX to this Act shall not be capable of being transferred and shall cease to be valid on and after the death of the grantee of that permit.[84]

(B) REGISTRATION OF LEASES, SUB-LEASES, TRANSFERS AND PERMITS

126 All leases, etc., to be registered

No lease, sub-lease, transfer or permit until registered in the manner hereinafter prescribed shall be effectual to pass or affect any interest in land:

Provided always that the requirements of Division III (B) or Part VIII as to the registration shall not apply to a sub-lease not exceeding a term of 3 years from the making thereof.

127 Method of registration of lease

Registration of a lease or of a permit as the case may be shall be effected by the Minister filing one original thereof in the register of leases in his office and by endorsing the other with the following memorial of registration —

Registered the ..... day of ..... 20.....

Register of Leases (or Register of Permits *as the case*

may be) ..... Book: ..... Folio: .....

.....

Signature of Minister

The lease (or permit as the case may be) endorsed with the memorial of registration shall be delivered by the Minister to the person entitled thereto.

128 Registration of transfer

(1) Registration of a transfer or of a sub-lease shall be effected by the Minister filing one original of the document to be registered in the register of transfers (or register of sub-leases as the case may be) and endorsing the other original with the following memorial of registration —

Registered the ..... day of ..... 20 .....

Register of Transfers (or Register of Sub-Leases *as the case may be*) ..... Book: ..... Folio: .....

.....

Signature of Minister

(2) The Minister shall also endorse a memorial of registration upon both the original and the duplicate filed in his office of that instrument under which the grantor of the transfer or sub-lease holds the lands transferred or sub-leased. Such memorial of registration shall be in either of the following forms according to the requirements of the case —

Transfer, registered the ..... day of ..... 20.....

Register of Transfers ..... Book: ..... Folio: ..... A. to B.

conveying to him this land (or..... hectares of this land *as the case may be*) consideration .....

.....

Signature of Minister

Sub-lease, registered the ..... day of ..... 20 .....

Register of Sub-leases: ..... Book: ..... Folio: ..... X. to Y.

conveying this land (or..... hectares of this land *as the case may be*) for ..... years ending on the ..... day of .....: Yearly rent .....

.....

Signature of Minister

129 Original lease to be endorsed

The original of the instrument under which the grantor of the transfer or sub-lease holds endorsed with the memorial of registration specified in section 128 and the duplicate original of the transfer (or sub-lease as the case may be) endorsed with the memorial of registration shall thereupon be redelivered by the Minister to the respective persons entitled thereto.

130 Method of surrender of lease

(1) The surrender of a lease or of a sub-lease shall be effected by the Minister endorsing upon the duplicate lease (or sub-lease as the case may be) filed in his office the word "surrendered" together with the date of the surrender and such endorsement shall be signed in the presence of the Minister by the lessee and holder of the estate or allotment where the intended surrender is of a lease or by the sub-lessee and sub-lessor where the intended surrender is that of a sub-lease. The Minister shall also affix his signature and seal of office to such endorsement.

(2) Where the intended surrender is of a lease the Minister shall likewise endorse upon the lease to be produced by the lessee for the purpose a memorandum of the fact and date of such surrender.

(3) Where the intended surrender is that of a sub-lease the Minister in addition to the endorsement upon the duplicate sub-lease specified in subsection (1) of this section shall endorse upon the sub-lease to be produced by the sub-lessee for that purpose a memorandum of the fact and date of such surrender and shall make a similar memorandum upon both the duplicate originals of that instrument under which the grantor of the sub-lease holds the lands thereby sub-let and such grantor shall produce to the Minister the duplicate of such instrument in his possession for the purpose of having such memorandum endorsed thereon.

(C) REGISTRATION OF DOCUMENTS AFFECTING LEASEHOLDS

131 Documents affecting leaseholds to be registered

The registration of the following documents affecting leaseholds shall be compulsory —

(a) assignments for the benefit of creditors;

(b) grants of Letters of Administration;

(c) grants of probate;

(d) injunctions affecting land and releases of such injunctions;

(e) memorials of pending suits affecting lands;

(f) mortgages (including therein assignments by way of mortgage);

(g) orders of Court appointing a trustee or trustees (including the appointment or discharge of a trustee in bankruptcy proceedings);

(h) orders of Court for the sale of interests in land under lease, transfer or sub-lease;

(i) powers of attorney to deal with any interest in lands whether by sale, surrender, mortgage, or otherwise, including powers to execute any document affecting lands.

132 Method of registration

The registration of any document required by section 131 to be registered shall be effected as follows —

(a) such document together with a true copy thereof shall be delivered to the Minister together with the original lease or transfer or (where the interest affected thereby is that of a sub-lessee) the sub-lease of any land affected by such document;

(b) the Minister shall file in his office the true copy of the document to be registered by binding up the same in a book (to be called the register of documents affecting leaseholds) and shall endorse the original with the following memorial of registration —

Registered the ..... day of ..... 20.....

Register of Documents Affecting Leaseholds:

Book: ..... Folio: .....

.....

Signature of Minister

(c) the Minister shall also endorse the original lease or transfer or the sub-lease (as the case may be) together with the duplicate of the same on file in his office with a memorial of registration in accordance with such one of the forms set out in Schedule X as the nature of the case requires;

(d) the original lease or transfer or the sub-lease (as the case may be) endorsed as provided in paragraph (c) together with the original of the document to be registered endorsed with memorial of registration shall be delivered by the Minister to the person entitled thereto.

133 Fees for registration

There shall be paid to the Minister for the registration of documents under this Act the fees specified in Schedule IV and the Minister shall give his official receipt for the payment of same.

134 Priority of registration

Should two or more instruments executed by the same proprietor and purporting to transfer or encumber the same land or portion of land be presented at the same time to the Minister for registration and endorsement he shall register and endorse the instrument presented to him by the person who shall present to him the lease transfer or sub-lease (as the case may be) of such land.

135 Register open to search

The register of documents affecting leaseholds shall be open to search or inspection and the fees set forth in Schedule IV shall be charged for such search or inspection which shall in all cases be done under the eye and direction of the Minister.

136 Minister to keep indices

The Minister shall keep a proper nominal index and also a lands index alphabetically arranged of each book of the registers kept by him in accordance with this Part of this Act.

DIVISION IV

CAVEATS

137 Rules governing caveats

(1) Any person claiming to be interested under any will, settlement or trust deed or any instrument of transfer or transmission or under any unregistered instrument or otherwise howsoever in any leasehold land may lodge a caveat with the Minister to the effect that no disposition of such leasehold land be made either absolutely or in such manner and to such extent only as in such caveat may be expressed or until notice shall have been served on the caveator or unless the instrument of disposition be expressed to be subject to the claim of the caveator as may be required in such caveat or to any conditions conformable to law expressed therein.

(2) A caveat may be in the form contained in Schedule XI and shall be verified by the oath of the caveator or his agent and shall contain an address within the Kingdom at which notices may be served.

(3) Upon the receipt of a caveat the Minister shall make a memorandum thereon of the date and hour of the receipt thereof and shall enter a memorandum thereof in the register and shall forthwith send a notice of such caveat through the post office or otherwise to the person against whose title such caveat shall have been lodged.

(4) So long as any caveat shall remain in force prohibiting the transfer or other dealing with any leasehold land the Minister shall not enter in the register any memorandum of any transfer or other instrument purporting to transfer or otherwise deal with or affect the land in respect of which the caveat may be lodged.

(5) The proprietor or other person claiming land may by summons call upon the caveator to attend before a Court of competent jurisdiction (hereinafter called the Court) to show cause why the said caveat should not be withdrawn and it shall be lawful for the said Court upon proof that such last mentioned person has been summoned and upon such evidence as the Court may require to make such order in the premises either *ex parte* or otherwise as to the said Court shall seem fit. And where a question of right of title shall require to be determined the proceedings shall be followed as nearly as may be in conformity with the rules of Court in relation to land cases.

(6) The caveatee may make application in writing to the Minister to remove such caveat and thereupon the Minister shall give 21 days' notice in writing to the caveator requiring that the caveat be withdrawn and after the lapse of 21 days from the service of such notice at the address mentioned in the caveat the Minister shall remove such caveat from the register by entering a memorandum that the same is discharged unless he shall have been previously served with an order from the Court extending the time as herein provided.

(7) Such caveatee shall give an address in the Kingdom at which notices and proceedings may be served.

(8) The caveator may either before or after receiving such notice from the Minister apply by summons to the Court for an order to extend the time beyond the 21 days mentioned in such notice and such summons may be served at the address given in the application of the caveatee and it shall be lawful for the Court upon proof that the caveatee has been summoned and upon such evidence as the Court may require to make such order in the premises either *ex parte* or otherwise as the Court shall think fit.

(9) The caveator may by notice in writing to the Minister withdraw his caveat at any time but such withdrawal shall not prejudice the power of the Court to make an order as to the payment of costs of the caveatee by the caveator incurred prior to the receipt by the caveatee of notice in writing of the withdrawal of such caveat.

(10) The Minister shall cause an entry to be made in the register of the withdrawal lapse or removal of any caveat or of any order made by the Court.

PART IX – LAND FOR PUBLIC PURPOSES

138 Minister to reserve Crown land for roads, etc.

(1) The Minister shall with the consent of the Cabinet reserve such portions of Crown Land as may from time to time be required for roads, public ways, commons, cemeteries, school sites, playgrounds, public health purposes and for use by Government Departments or for other public purposes and may grant a lease of land to trustees to be used as a cemetery for Europeans.

(2) The Minister shall consult the Minister of Health as to the suitability of any area of land to be declared, reserved or resumed for the purpose of creating a cemetery:

Provided that there shall also be consultation with the estate holder where the area of land to be declared, reserved or resumed by the Minister for the purpose of a cemetery is on land other than Crown Land.[85]

139 Cemeteries[86]

(1) It shall be an offence punishable by imprisonment not exceeding 6 months or a fine of up to $100 or both to use a cemetery for any purpose other than the burial of bodies.

(2) It shall be an offence punishable by imprisonment not exceeding 6 months or a fine of up to $100 or both to conceal or bury the body of any deceased person in any place other than a cemetery save for a body buried at sea which shall be buried in accordance with the Public Health Act, or the body of an executed criminal which shall be buried in accordance with the Criminal Offences Act and the Court may order the removal of such body to a cemetery.[87]

(3) In this section —

(i) **"body"** shall include the remains of any deceased person whether embalmed, cremated or otherwise treated;

(ii) **"cemetery"** shall mean any area of land declared by the Minister to be a cemetery and any area reserved under section 138 or resumed for the purpose of creating a cemetery.

140 Land heretofore taken to be deemed Crown Land

All commons, cemeteries, Government school sites heretofore constituted or taken under any law or custom shall be deemed to be Crown Land reserved for public purposes.

141 Land may be resumed compulsorily

(1) The King may, with the consent of the Privy Council, call upon any holder to give up possession of land held by him provided that the Council is satisfied that the land is required for public purposes.

(2) In all such cases the Minister shall, to the holder of the land to be resumed —

(a) in respect of the crops being grown on the land to be resumed, pay money compensation to be calculated at the rates and in the manner provided in this Part of this Act;

(b) in respect of the land to be resumed, at the Minister's own discretion, either grant other land in its place, or pay money compensation to be calculated at the rates and in the manner provided in this Part of this Act, or both grant other land and pay money compensation;

(c) in respect of any building or buildings erected on the land to be resumed, pay money compensation to be calculated at the rates and in the manner provided by this Part of this Act.[88]

(3) The powers of resumption granted to the Privy Council by this section shall not preclude nobles or others with the consent of Privy Council from voluntarily relinquishing land for public purposes and no compensation either in land or money shall be given to any noble or other person relinquishing land in accordance with this subsection.[89]

142 Notice of resumption to be given

Where the Crown intends to resume land held by any person, the Minister shall give to the holder thereof a notice in writing of such intention in the form specified in Schedule XIII to this Act, and the said notice must be given at least thirty (30) days before the date on which it is intended to resume possession of the land.[90]

143 Compensation for resumed land[91]

(1) The King may, with the consent of Privy Council, make regulations from time to time specifying the rates of money compensation to be paid for land resumed by the Crown under this Part of this Act; and for crops being grown and for buildings on such land and the method of calculation of such rates.

(2) The amount of money compensation to be paid based on said rates will be calculated within 30 days of the date of the said notice specified in section 142 of this Act.

PART X – THE LAND COURT

DIVISION I

CONSTITUTION AND JURISDICTION

144 Establishment of Court

There is hereby established and constituted for the Kingdom a Court which shall be called the Land Court.

145 Court to have seal

The Court shall have a seal bearing the device of the Tongan Arms with the inscription "Fakamaau'anga Fonua 'o Tonga" and every summons, writ, order or other process of the Court shall before being issued be signed by the Judge and sealed with the Seal of the Court.

146 Powers of Judge and assessor

(1) The Land Court shall consist of and be presided over by the Judge assisted by an assessor to be selected by the Judge from a panel of assessors.[92]

(2) The orders and judgments of the Court shall be formulated and pronounced by the Judge alone and the assessor shall have no voice or part therein.

(3) The duties of the assessor shall be to assist the Judge with explanation and advice in regard to Tongan usages and customs and other matters of a similar nature.[93]

147 Appointment of Judge

(1) The Judge and the panel of assessors shall be appointed by and hold office during the pleasure of His Majesty and the Privy Council.[94]

(2) It shall be lawful for His Majesty and the Privy Council in cases of temporary illness or absence of the Judge to appoint some fit and proper person to fill such office until the Judge shall resume the duties thereof.[95]

148 Appointment of clerk

(1) The Prime Minister with the consent of the Cabinet may from time to time appoint a clerk to the Court at such salary as may be provided in the Annual Estimates.

(2) The clerk shall attend all sittings of the Court and shall record the evidence and particulars in every case or matter heard and determined by the Court together with the decision of the Court thereon.

(3) He shall perform such other duties as may be prescribed by any rules made under this Part of this Act.

149 Jurisdiction of Court defined

(1) The Court shall have jurisdiction —

(a) to define the area and boundaries of every parcel of land in the Kingdom;

(b) to hear and determine all disputes, claims and questions of title affecting any land or any interest in land in the Kingdom and in particular all disputes, claims and questions of title affecting any tofia, tax or town allotment or any interest therein; excepting any disputes, claims and questions affecting any land or interest in land resumed by the Crown under Part IX of this Act;[96]

(c) to appoint one or more fit and proper persons with or without remuneration to act as trustees for any Tongan other than a noble or matapule who being entitled to any land is either under the age appointed by law for succeeding thereto or is by reason of mental infirmity incapable of managing his affairs for the purpose of protecting and managing such land and of applying in accordance with the directions of the Court for the maintenance and benefit of the person beneficially entitled to such land all moneys received from the management thereof including moneys arising from the sale or hire of livestock or the sale of copra or other products;

(d) to take the accounts of all such trust estates and to dismiss any trustee guilty of mismanagement, breach of trust or fraud in connection with the trust estate and to appoint another trustee in his stead;

(e) to hear and determine any question or amount of damages, loss, compensation, mesne profit, rent or claim in respect of any allotment, lease, sub-lease, permit or interests of any kind in any land.[97]

Appointment of trustee by the Court: relatives to be cited

(2) Whenever an application is made to the Court under this section for the appointment of a trustee or trustees for a minor, the lawful brothers and sisters of the mother and father and the grandparents of such minor shall be cited to appear at the hearing of such application.[98]

Fees payable in boundary disputes

(3) Whenever the Court exercising its jurisdiction in accordance with this section shall find that one of the parties to an action relating to the area and boundaries of any parcel of land has wilfully encroached on the land of the

other party to the action, the Court in addition to any other order it may make shall order the person who has so encroached to pay to the Minister the sum of $2.[99]

150 Jurisdiction exercisable on application by Minister

The jurisdiction of the Court may be exercised on the application of any person claiming to be interested or on the application of the Minister.

151 Power for enforcing process of Court

(1) The Court for the purpose of exercising its jurisdiction under this Act shall have and exercise all the powers of the Supreme Court of Tonga in regard to —

(a) enforcing the attendance of parties or witnesses;

(b) enforcing the production of any books, papers or documents;

(c) the administration of oaths and the hearing of evidence.

(2) The Court may whenever necessary —

(a) issue a writ of possession directed to the police officers of any district requiring them to deliver possession of any lands situated in such district and described in the writ to the person therein named;

(b) grant and issue injunctions affecting lands.

152 Orders as to costs

The Court may make such order in reference to payment of the costs of any proceedings before it as it thinks just.[100]

153 Power to punish for contempt

Every person who, being duly summoned to attend before the Court or to produce any books, papers or documents —

(a) fails or refuses to attend in obedience to the summons;

(b) refuses to be sworn or affirmed or to give evidence or to answer any question relevant to the matter at issue; or

(c) fails to comply with an order of the Court requiring the production of any book, paper or document therein specified which it is in his power to produce,

shall be liable for every such default to a fine not exceeding $40 and in default of payment to imprisonment for any period not exceeding 3 months and such fine may be imposed and imprisonment ordered by the Court without any further proceeding.

154 Sitting to be at Nuku'alofa or elsewhere

The sittings of the Court shall be held in the Supreme Court Nuku'alofa but sittings of the Court may be held elsewhere:

Provided always that reasonable notice of the time and place of such sitting has been given to the parties and the various witnesses concerned in the cases that are to be heard at such sitting.

155 Sitting to be public

The sittings of the Court shall be open to the general public so far as they can be conveniently accommodated in the Court.

156 Parties may be represented

Any party or person entitled to appear in any proceedings may conduct his case in person or by a lawyer duly licensed under the provisions of any Tongan law now in force or hereafter passed.

157 Affidavit may be made before the registrar

Every affidavit, declaration or affirmation for use in any proceedings in the Court may be made before any person lawfully empowered to take affidavits.[101]

158 Minister may be sued

The Minister may sue or be sued by his official designation in respect of any claim to any lands made by or against the Government.

159 Minister and assessor not to act if interested

Whenever either the Minister or the assessor is personally concerned in any claim regarding any lands or in any proceedings pending in the Court, it shall be lawful for the Privy Council to appoint some other person to discharge for the time being the duties of the Minister or the assessor as the case may be in reference to such claim or proceedings.

160 Judge to forward judgment to Minister

Whenever by any judgment of the Court from which no appeal has been taken any person is adjudged entitled to any lands the Judge shall forward to the Minister a copy of such judgment under his hand and the Seal of the Court.

161 Procedure for Minister on receipt of judgment

(1) The Minister shall on receipt of such copy of a judgment as is mentioned in section 160 hereof and on payment of the fees prescribed by law prepare in duplicate a tofia certificate or a deed of grant as the case requires in favour of the person entitled to the lands specified in the judgment.

(2) Such certificate or deed shall be in the prescribed form and shall be duly registered.

DIVISION II

APPEALS

162 Appeal lies to the Court of Appeal or Privy Council[102]

(1) Any party may, upon payment of the prescribed fee, appeal from any order or judgment of the Court —

(a) if the order or judgment relates to the determination of hereditary estates or titles, to the Privy Council pursuant to clause 50 of the Constitution;

(b) in every other case, to the Court of Appeal.

Any such appeal shall be made in such manner as may be prescribed by rules of court within 42 days of the date of the order or judgment appealed.

(2) Sections 163 to 167 inclusive shall apply to appeals to the Privy Council.

(3) The Court of Appeal Act and any rules made thereunder shall apply to all other appeals.

163 Registrar's duties on appeal

On compliance by the appellant with the provisions of section 162 the clerk shall forward to the clerk of the Privy Council —

(a) the appellant's notice of appeal,

(b) a correct transcript of the proceedings and judgment in the Court.[103]

164 Clerk of Council to give notice of hearing

The clerk of the Privy Council shall as soon as possible give written notice to the parties of the date fixed by the Privy Council for the hearing of the appeal which shall be held at a meeting of the Privy Council at which the Chief Justice or a judge nominated by the Privy Council is present.[104]

165 Council may admit fresh evidence

Upon good cause shown by either party, fresh evidence may in the discretion of the Privy Council be admitted at the hearing of the appeal and the hearing may if necessary be adjourned to enable such evidence to be produced.

166 Council may rehear

(1) On the hearing of an appeal the Privy Council may —

(a) rehear the case; or

(b) give its decision on the evidence taken in the Court,

and in the latter case it may in its discretion recall for further examination all or any of the witnesses examined in the Court.

(2) The Privy Council may adjourn the hearing of the appeal and may affirm, reverse or vary the decision of the Court or make such order (including any order as to the payment of costs by either party) as it thinks just and may by its order exercise any power which the Court might have exercised.

167 Signed judgment to go to Registrar and the Minister

(1) Immediately after any decision affecting the possession of or title to any lands has been given on appeal the clerk of the Privy Council shall transmit to the Registrar of the Court and to the Minister a copy of such decision signed by the clerk of the Privy Council and impressed with the Seal of the Privy Council. Such copy shall be sufficient authority to the Court for the enforcement of the said decision and for the issue of such process (if any) as may be required for that purpose.[105]

(2) On receipt by the Minister of such copy of a decision on appeal as is specified by subsection (1) of this section and on payment of the fees prescribed by law he shall forthwith take such steps to give effect to the decision on appeal as he is required by section 161 to take on receipt of a copy of a judgment of the Court.

DIVISION III

PROCEDURE AND FEES

168 Judge may make rules of Court

The Judge may from time to time make, revoke and alter rules for regulating the practice and procedure of the Court and may also vary or add to the list of fees and the amount thereof given in Schedule XII. Any rules or alterations in fees so made shall not come into force until approved by His Majesty and the Privy Council.

169 Authority to take fees

The fees to be taken in the Court shall be those set forth in Schedule XII:

Provided that no fees shall be payable by the Minister in respect of any proceedings instituted by him in his official capacity.

DIVISION IV
LIMITATION OF ACTION

170 Limitation of action

No person shall bring in the Court any action but within 10 years after the time at which the right to bring such action shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims then within 10 years next after the time at which the right to bring such action shall have first accrued to the person bringing the same.

THE SCHEDULES

SCHEDULE I

(Sections 9 and 11)

HEREDITARY ESTATES[106]

Tofia	*Title*
Mu'a but not to include Havelu, Fatumu and Lavengatonga but it shall include Ha'atakalaua to Fua'amotu and Kai'avale and Ha'atui also that part of Navutoka that was divided by Malupo and Toi.	TUNGI.
Lapaha, Hamula and Toloa.	KALANIUVALU.
Pelehake and Ha'atalafale in Ha'apai and Ha'atalafale in Vava'u.	TU'IPELEHAKE.
Kolonga, Poha and Kotongo.	NUKU.
Fangale'ounga in Ha'apai.	NIUKAPU.
The landward side of Tokomololo and Vaini.	MA'AFU.
Fualu and Pea.	LAVAKA.
Havelu.	FIELAKEPA.
Kolovai and 'Atata.	ATA.
Fahefa and Pangai in 'Eua.	VE'EHALA.
Hihifo in Vava'u.	'ULUKALALA.
Tungua, Matuku, Ha'ateiho in Tongatapu but not including Manamo'ui, Ha'ateiho, in Ha'apai, Ha'ateiho in Vava'u, Vaikeli in Tongatapu and the town allotment of Fine'ehe in Pangai Ha'apai.[107]	TU'IHA'ATEIHO.
Ha'ano, Pukotala and Muitoa.	TU'IHA'ANGANA.
'Uiha, Taka'amoato'a and Teleki.	MALUPO.

‘Alele and western side of Angaha and ‘Ahau, Palau and Ha’ahoko.	FOTOFILI.
Vaipoa and Hihifo but not to include Falehau and Matavai and Tafahi; and in Niuatoputapu,-Vaotahi, Hunganga, Tavili and the waste land between Hunganga and Tavili. [108]	MA’ATU.
Nakolo, Malapo and Fetoa in Tongatapu, Tefisi in Vava’u.	LUANI.
Talasiu, Ofu, Okoa and Vasivasi.	TU ‘ILAKEPA.
Makave, Holopeka in Ha’apai, and Fonoifua.	TU’I’AFITU
Houma.	VAEA.
Ma’ufanga, Faleloa and Nga’akau.	FAKAFANUA.
Fo’ui and Ta’anea.	VAHA’I.
Nukunuku, Matafonua, Vaotu’u, Matahau.	TU’IVAKANO.
Ha’avakatolo and ‘Utui.	‘AHOME’E.
Hunga, Fangalepa and Loto’uiha.	FULIVAI.
Falevai.	FAKATULOLO.
Mahinafekite in Niua; and Angihoa in Nivatoputapu.[109]	TANGIPA.
Faletanu and eastern side of Angaha and Ma’ufanga in Niua.	FUSITU’A.
‘Utungake and Ha’afakahenga and Futu in Niuafo’ou.	TUITA.
Puke.	FOHE.
Te’ekiu and Haufolau.	MOTU’APUAKA.
Talafo’ou and Masilamea in Vava’u.	LAUAKI.
Ha’alaufuli.	AFU.
Leimatu’a.	FOTU.
Ha’afeva.	TU’UHETOKA.
Taunga.	‘AKAU’OLA.
Lakepa in ‘Ahau, Lakepa in Neiafu, Lakepa in Ha’atau, Lakepa in Kala’au, Lakepa in Ha’amea, Lakepa in ‘Eua, Lakepa in Navutoka, Fononga hina, and Tafangafanga in Hahake.	LASIKE.

Tongatapu —	VEIKUNE.
1. Longoteme and Matamoana.	
2. ‘Oneata (island).	
3. Kanatea (island).	
Vava’u —	VEIKUNE.
1. Pale’a to Fongotofe.	
2. Talahuo landward side of Fongotofe.	
3. Lolopipi between Nga’akau and Vaimalo.	
4. Longomapu.	
5. Kolotahi (island).	
6. Ha’akoka and Fangaeva.	
‘Utulau and all parts belonging to it in Tongatapu. Nomuka with Nomukeiki and Lofanga with Niniva in Ha’apai, Taoa and all parts belonging to it in Vava’u.[110]	HEIR APPARENT.

SCHEDULE II

(Section 10)

(Amended by Acts 4 of 1972, 14 of 1973 and 15 of 1980)

ROYAL ESTATES

Tongatapu and ʻEua

Lotoʼā, Sia ko Veiongo (being the area of ground bounded by Vuna Road, Sipu Road, Wellington Road and Vahaʼakolo Road), Pangai and Mapuʼafuiva (Nukuʼalofa), Kanokupolu, Mataliku, Houma (ʻEua).

Haʼapai

Pangai (ʻUta) in Lifuka; Tauʼakipulu; Pangai in Foa; Mango (island); Nukunamo (island).

Vavaʼu

Afinematá and Fuaʼamotu (island); Nuapapu (island); Pangaimotu (excepting Tokolo, Nukuleka, Haufolau, ʻUtulei and Haʼafakahenga); Tufutele (*ʼapi); Fatai (*ʼapi); ʻOvava (*ʼapi); Holonga; Fangaliki (*ʼapi); Keitahi (*ʼapi); Tamamuʼaloto (*ʼapi); Veitatalo (*ʼapi); Pipilotoi (*ʼapi).

Niuatoputapu

Falehau.

Niuafoʼou

Mataʼaho.

SCHEDULE III

(Section 10)

(Substituted by Act 4 of 1972)

ROYAL FAMILY ESTATES

Tongatapu and ʻEua

Tongatapu and ʻEua

Matāliku; Tufumāhina and Talangaholo; Matatoa, Finefekai, Pangaimotu (island); ʻOnevai (island); Taʼanga (ʻEua).

Haʼapai

Leaʼaetohi, Fiehua; Toumuʼa; Faikakai; Houma Tatangia, including Velitoa (Uoleva); Fuhu in Foa; Tamataʼepele in Foa; Siale (Lofanga); Mataʼaho (ʻUiha); Fakaʼosikato (Haʼafeva); Alaloa (Tungua); Niu-ʼa-Kalo (at Holopeka).

Vavaʼu

Havelu, Lotoʼa.

SCHEDULE IV[111]

(Sections 22 and 133)

SURVEY FEES[112]

	$
Site area up to 2000m²	40.00
Over 200m² to 1.3 hectare	60.00
Over 1.3 hectare to 3.5 hectares	70.00
Over 3.5 hectares to 6 hectares	180.00
Over 6 hectares to 8 hectares	200.00
Then for every additional hectare up to 40 hectares	7.60
up to 80 hectares	5.60
up to 200 hectares	4.70
up to 400 hectares	3.70
Then for every additional hectare or 5000m² together with expenses of travelling for surveyors and party from nearest port of entry	1.90
Survey of tax or town 'api' to determine boundary lines, not being the original grant of the same.	16.00

REGISTRATION FEES

	$
REGISTRATION OF LEASE	10.50
REGISTRATION OF TOFI'A.....	30.00
REGISTRATION OF SUB-LEASE.....	5.25
Registration of Lease	21.00

Registration of Tofi'a	60.00
Registration of Sub-Lease	10.50
Registration of Tax 'Api	7.00
Registration of Town 'Api	3.50
Registration of Document Affecting Leasehold Title	1.80
Registration of Permit	21.00
Registration of Appointment of Trustee	7.40
Application for a Mortgage	2.00
Registration of Mortgage	21.00
Registration of Discharge of Mortgage	10.50
Registration of Document Affecting a Mortgage	2.00
Application for Variation of Mortgage	2.00
Registration of Variation of Mortgage	21.00

TRANSFER FEES

Transfer of Lease	14.00
Transfer of Sub-Lease	7.00
Transfer of 'Api	1.80
Transfer of Town 'Api	2.00
Application to assign a mortgage	10.50

OTHER CHARGES

	$
For every plan or map	7.00
For search of register	0.90

For every general search of any register	1.80
For any office copy of document registered for extract therefrom - per folio of 72 words	0.30
For certificate and seal of Minister to any office copy	1.80
Permit to cut stone blocks 600m², each	0.05
Over 600m² each...	0.20
Application for permit to aliens to occupy Tongan land or reside with Tongan	
One quarter or any part thereof	1.80
One half year or any part thereof	3.50
One year or half thereof.	7.00
Inspecting any plan, charts, map or survey in Lands Office each one	0.40
Removing sand from foreshores or any Government property, for each tonne or part thereof (C.D. 797/78)	0.80
Removing stones or shingle or other material other than stone blocks, for each tonne or part thereof	0.90
Timber cut from Government property logs	17.50
300mm diameter per 4m	
For each additional 25mm diameter	3.50
For additional 300mm length part thereof	3.50

Permission to cut timber of less than 300mm diameter will not normally be granted.

SCHEDULE IVA[113]

LEGAL NOTICE - SURRENDER OF LAND

(Section 54)

1.The Cabinet on the day of 20 gave its consent to the surrender by

.....

of .....

of (part of) the tax/town allotment being (part of) the parcel of land situate

at .....

described in the Deed of Grant of Allotment registered in the Land Registry

For the District of .....

in Volume ..... Folio .....

2. Any Person claiming to be an heir to the above allotment (or part thereof) which has been surrendered is required to lodge his claim thereto in writing with the Minister of Lands by the ..... day of ..... 20... failing which it will revert to the estate holder

Dated this Day of 20

.....

Minister of Lands

SCHEDULE V

(Section 120)

GOVERNMENT OF TONGA

District of .....

DEED OF GRANT OF ALLOTMENT

Vol ..... Folio .....

Granted unto ..... to hold as his allotment in accordance with the Law of Tonga.

All that parcel of land known as ..... and situated at

Insert description of boundaries after the word "at"

being ..... hectares more or less, coloured green on the plan drawn hereon, the same being an accurate copy of the official survey plan.

In witness whereof I have affixed my seal and signature on this ..... day of .....20.....

.....

Minister of Lands.

SCHEDULE VI

(Section 115)

TOFIA CERTIFICATE[114]

Granted unto ..... to hold as his tofia in accordance with the Law of Tonga.

All that parcel of land known as ..... situated at ..... being ..... hectares more or less and coloured green on the plan hereon or attached hereto, the same being an accurate copy of the Government survey plan of the area in which the said tofia is situated.

In witness whereof I have set my Royal Seal and signature this day of ..... 20.....

Seal

Countersigned .....

Minister of Lands.

SCHEDULE VII

(Section 38)

FORM OF OATH

I swear by Almighty God that I will be loyal to King Tupou VI, the lawful King of Tonga his heirs and successors and that I will uphold the Constitution of Tonga and faithfully perform my duties as

Noble of.....

Matapule of.....

SCHEDULE VIII[115]

(Section 112)

FORM NO. 1

FORM OF APPLICATION FOR A MORTGAGE

Date .....

The Hon. Minister of Llands,

Sir,

I have the honour to make application for the mortgage of my hereditary estate, tax or town allotment or lease more particularly described as follows —

.....

.....

.....

.....

Name and address of applicant: .....

.....

Name and address of proposed mortgagee: .....

.....

Amount and particulars of loan: .....

Period of mortgage: .....

Period and details of repayment:.....

Interest: .....

Purpose of loan:.....

Details of any collateral security: .....

Details of other mortgages granted by the applicant:.....

.....

Signature of Applicant.....

Witness .....

FORM NO. 2

MEMORANDUM OF MORTGAGE

MORTGAGOR:.....

MORTGAGEE: .....

TYPE OF HOLDING:.....

LAND: .....

In consideration of a loan or loans made or to be made by the Mortgagee to the Mortgagor not exceeding in total the sum of T$ .....

(..... pa'anga) the Mortgagor COVENANTS with the Mortgagee as set out in the Schedule AND for the purpose of securing the repayment of such loan and interest and other moneys the Mortgagor HEREBY MORTGAGES BY WAY OF A LEASE to the Mortgagee all his rights title and interests in the land above described together with all buildings and fixed improvements thereon for a period of ..... years from the date hereof.

Dated this ..... day of ..... 20 .....

SIGNED by the above named)

.....)

as Mortgagor in the presence of—)

Correct for the purposes of the Land Act

.....

Mortgagee/Solicitor for the Mortgagee

FORM NO. 3

FORM OF APPLICATION TO ASSIGN A MORTGAGE

Date .....

The Hon. Minister of Lands,

Sir,

I have the honour to make application for the assignment of all my rights and interests as mortgagee over the mortgage more particularly described below —

Registered number of mortgage:.....

Name and address of proposed Assignee: .....

.....

Consideration: .....

Details of any proposed alterations in terms of mortgage: .....

.....

Signature of Mortgagee.....

Witness .....

Signature of Assignee .....

Witness .....

I ....., mortgagor of the above described mortgage hereby give my consent to the above described Assignment.

Signature of Mortgagor.....

Witness .....

Consent of the Mortgagor to above assignment dispensed with under section 105(2) of the Land Act.

Signed by the Minister of Lands .....)

this.....)

day of .....20.....)

in the presence of: .....)

FORM No. 4

ASSIGNATION OF A MORTGAGE

In consideration of the sum of T$....., receipt of which is hereby

acknowledged, I .....,

Mortgagee of mortgage registered No. .....

Hereby Assign all my rights and interests in the said mortgage to.....

Dated this ..... day of .....20.....

Signature of Mortgagee.....

Witness .....

Signature of Assignee .....

Witness .....

Correct for the purposes of the Land Act

.....

Assignee/Law Practitioner for the Assignee

FORM NO. 5

DISCHARGE OF A MORTGAGE

Received from the Mortgagor .....

this ..... day of ..... 20 .....

the sum of T$ ..... being

in full satisfaction and discharge of mortgage registered number .....

Signature of Mortgagee.....

Witness .....

Correct for the purposes of the Land Act

.....

Mortgagor/Law Practitioner for the Mortgagor

FORM NO. 6

VARIATION IN PRINCIPAL OF MORTGAGE

The principal sum intended to be secured by Memorandum of Mortgage Book .....

Folio ..... is hereby increased (reduced) to .....

Dated .....

.....
Mortgagor

.....
Witness

.....
Mortgagee

.....
Witness

FORM NO. 7

VARIATION IN RATE OF INTEREST

The rate of interest payable under Memorandum of Mortgage Book .....
Folio..... is hereby increased (reduced) to .....

Dated .....

.....
Mortgagor

.....
Witness

.....
Mortgagee

.....
Witness

FORM NO. 8

VARIATION IN TERM OF MORTGAGE

The term or currency of Memorandum of Mortgage Book Folio ..... is hereby renewed, shortened or extended to .....

Dated .....

.....
Mortgagor

.....
Witness

.....
Mortgagee

.....
Witness

FORM NO. 9

VARIATION IN TERMS OF MORTGAGE

The Covenants, conditions, and powers contained or implied in Memorandum of Mortgage

Book ..... Folio ..... are hereby varied as follows

.....

Dated .....

.....
Mortgagor

.....
Witness

.....
Mortgagee

.....
Witness

SCHEDULE IX[116]

(Section 124)

FORM No. 1

FORM OF APPLICATION FOR LEASE

.....

.....20.....

The Hon. the Minister for Lands,

Nuku'alofa.

Sir,

I have the honour to make application for the lease of certain property at

..... more particularly described below. The purpose for which I

wish to put to use the said property is .....

District of	Estate of	'Api kolo of and date registered	Area of holding
Area required	Term of years	Rent per annum	Amount of Survey fee

Signature of applicant.....

I hereby agree to the lease of the property as described above and declare that there is no impediment to prejudice this lease.

Signature of grantor .....

Witness to signatures.....

Remarks by Minister.....

TOFIA

Total number of Taxpayers	Area leased to Foreigners	Area leased to Tongans

Survey fee official receipt no. .....

Date ..... 20 .....

.....

Minister

FORM No. 2

PERMISSION FOR FOREIGNERS TO RESIDE ON LAND OF TONGAN SUBJECT

No..... Office of the Minister of Lands,

..... 20 .....

..... of ..... in Tonga, a Tongan subject is hereby granted permission to allow ..... of ..... in Tonga, a foreigner, to reside on his land at ..... for a period of ..... quarters ending the ..... day of ..... 20..... for which permit he has paid the sum of $ .....

.....

Minister of Lands

FORM No. 3

FORM OF LEASE

THIS DEED OF LEASE made this .....day of the month of..... in the year of Our Lord 20..... by His Majesty King Tupou VI, King of Tonga, of the one part, hereinafter called in this Deed the Lessor, and ..... of ..... of the other part, hereinafter called in this Deed the Lessee.

Witnesseth that in consideration of the payment of the yearly rent that is recorded in this Deed and the performance of the covenants in this Deed by the Lessee, his heirs and representatives, the Lessor leases for himself and his successors to the Lessee, his heirs, and representatives all that piece of land ..... in accordance with the Land Act. And the Lessee, his heirs, and representatives, shall hold the piece of land described in this Deed from the ..... day of the month of ..... in the year of Our Lord 20 ..... until the ..... day of the month of ..... in the year of Our Lord 20.....

And the Lessee covenants for himself, his heirs, and representatives, that he will pay the sum of ..... in legal currency on the ..... day of the month of ..... in each and every year to the Lessor or his successors because of this Lease. And will make the first payment of the same on the execution of this Deed. And the Lessee for himself, his heirs, and representatives, hereby covenants that he will comply with the regulations made by the King and the Legislative Assembly and Government: such as the laws relative to weeding the frontage and making the roads, and all municipal laws and ordinances which shall be made by the King and the Legislative Assembly and the Government. And the Lessee further covenants for himself, his heirs and representatives that he will not grant a sub-lease of, or transfer this lease without the consent of Cabinet beforehand obtained; and furthermore, the Lessee Covenants for himself, his heirs and representatives that in respect of the land hereunder leased, he will not —

(a) abandon, neglect or fail to use it for any period or periods of altogether 3 years; or

(b) use or permit any person or persons to use it for any purpose other than that upon which application and approval have hitherto been made.

If any of the above covenants are not complied with by the lessee, his heir or representative, then Cabinet may at its discretion terminate this lease. [117]

But it shall be lawful for the Lessee, his heirs or those that represent him to remove all houses and improvements which may have been built on the said land. And it is hereby agreed by these presents if at the expiration of twenty-one (21) days from the day the rent becomes due by the Lessee, his heirs, or his representatives, to the Lessor or his successors because of this Lease, as is recorded in this Deed, the rent hereby reserved or any part of it should remain unpaid, it shall be lawful for the Lessor or his successors to take possession of all or parts of the lands herein leased by this Deed, or to sell by auction the houses or house or anything which may be on this land, to the amount of rent owing by the Lessee, his heirs or representatives, because of the rent of his land or to take civil proceedings in a court of competent jurisdiction of the Kingdom for the recovery of the said rent.[118]

WITNESS the signature of the Minister of Lands and the seal of his office both affixed hereto in the name of His Majesty and in accordance with clause 110 of the Constitution of

Tonga on the ..... day of the month of ..... in the year of Our Lord 20 ..... and the signature of the Lessee and his seal done on the ..... day of the month of ..... in the year of Our Lord 20..... .

..... ……

Cabinet Minister *Minister of Lands.*

....

Witness to the signature of Lessee *Lessee*

REGISTERED in the Registry of Leases of the Tonga Government in the Office of the Minister of Lands, Nuku'alofa, on the ..... day of the month of ..... 20 .....

No..... .....

Minister of Lands.

FORM No. 4

FORM OF SUB-LEASE

Sub-Lease

THIS DEED made this ..... day of the month of ..... in the year 20..... between ..... of ..... of the one part and ..... of ..... of the other part.

WITNESSETH that it is agreed that in consideration of the rent hereinafter stated and the performance of the covenants of this deed by the said ..... his heirs and representatives the said ..... sub-leases and lets for himself and his successors to the said ..... his heirs and representatives all that piece of land ..... as is shown by the plan drawn hereon together with all buildings and erections thereon. And the said ..... his heirs and representatives shall hold the piece of land described in this deed from the ..... day of the month of ..... in the year 20..... until the ..... day of the month of ..... in the year 20 ..... And it is covenanted by the said ..... for himself his heirs and representatives that he will pay the sum of ..... in legal currency on the ..... day of the month of ..... (fill in here, annually, quarterly or monthly) in each and every year of the said ..... or his successors because of this sub-lease and will make the first payment of the same on the ..... day of the month of ..... in the year 20 ..... And it is covenanted by the said ..... for himself his heirs and representatives that he will comply with the regulations made by the King and the Legislative Assembly and the Government such as the laws relating to weeding the frontage and making the roads and all municipal laws and ordinances which shall be made by the King and the Legislative Assembly and by the Government which affect the said land in this sub-lease. And when the time for which this deed is made shall expire the said ..... his heirs or his representatives shall give up quietly and peaceably the land described in this deed to the said ..... or his successors. But it shall be lawful for the said ..... his heirs or representatives to remove all houses and improvements which may have been built upon the said land during the term of this deed and either during the said term or at the expiration of the same. And the said ..... further covenants for himself his heirs and representatives that he will keep in good order and condition all houses buildings and erections now upon the said land fair wear and tear alone excepted (*and also damage by fire or hurricane excepted [**Fill in here as agreed by the parties.*]) and deliver them up in such condition at the expiration of the said term or the sooner determination thereof and that he will not do or suffer or omit any act or thing whatsoever whereby in consequence whereof the lease under which the said premises are now held by the said ..... may be forfeited or become voidable.

And it is hereby agreed if at the expiration of ..... from the day the rent becomes due by the said ..... his heirs or representatives under this deed the said rent is not paid it shall be lawful for the said ..... or his successors to take possession of all or any part of the land hereby leased and to sell by auction any house or building or improvement or anything which may be on the land to the amount of rent owing by the said ..... his heirs or representatives together with the expense of such seizure and sale. And the said ..... for himself and his successors covenants that he or they will duly and

punctually pay the rent reserved by the original deed of lease from His Majesty the King and will observe and fulfil all covenants and conditions in the said original lease mentioned and on his or their part to be observed and performed.* (*Here fill in any other conditions agreed on by the parties.*)

IN WITNESS thereof the said parties have hereto set their hands and affixed their seals at ..... in the Kingdom of Tonga the day and year first above written.

.....

Witness.

....

FORM No. 5

FORM OF TRANSFER

THIS INDENTURE made this ..... day of the month of ..... in the year of Our Lord 20 ..... by ..... of..... of the one part and ..... of ..... of the other part.

WITNESSETH that in consideration of the payment of the sum of ..... to the said ..... by the said ..... (the receipt whereof the said..... hereby acknowledges) the said ..... assigns unto ..... for himself, his heirs, and his successors, all that parcel of land comprised in and demised by the deed of lease annexed hereto.

No.....

To HOLD the same unto the said ..... his heirs, and his successors, for all the residue now unexpired of the term of the said annexed lease, subject to the rent reserved by the said deed of lease, and the covenants and conditions of the said lease which henceforth on the part of the Lessee his heirs and representatives ought to be observed and performed.

IN WITNESS whereof the said parties have hereunto set their hands and seals the day and month and year first above written.

REGISTERED In the registry of leases of the Tonga Government in the office of the Minister of Lands on the .....day of the month of ..... in the year 20.....

No.....

.....

Minister of Lands.

FORM No. 6

FORM OF PERMIT

THIS PERMIT made this ..... day of the month of ..... in the year of Our Lord 20.....

WITNESSETH that in consideration of the payment of ..... rent that is recorded in this permit ..... permission is granted to ..... of ..... to .....

AND TO HOLD this permission until the ..... day of the month of ..... in the year of Our Lord 20 ..... And shall pay the sum of ..... in legal currency on the ..... day of the month .....

And when the time for which this permit is made is expired possession shall be given up quietly and peaceably. But it shall be lawful to remove all improvements which may have been made and it is hereby agreed by these presents if at the expiration of 21 days from the day the rent became due because of this permit the said rent is not paid, it shall be lawful for the Government to take possession of the place referred to in this permit and to sell by auction anything which may be on the same to the amount of rent owing.

WITNESS the signature of the Minister of Lands and the seal of his office done on the ..... day of the month of ..... in the year of Our Lord 20 .....

REGISTERED In the register of leases of the Tongan Government in the office of the Minister of Lands on the ..... day of the month of ..... in the year of Our Lord 20.....

Permit No.....

.....

Minister of Lands.

FORM No. 7

FORM OF ADDITIONAL COVENANT IN TOWN LEASES

And the Lessee for himself, his executors, administrators and assigns doth hereby covenant that the said Lessee will not at any time erect or cause to be erected upon the premises hereby demised any building or structure without the consent thereto of the Minister of Lands having first been obtained, and if the Lessee in breach of the said covenant shall erect or cause to be erected any such building without having first obtained such permission it shall be lawful for the said Minister of Lands to enter upon the lands hereby demised and remove or cause to be removed such buildings at the expense of the Lessee.

FORM No. 8

FORM OF ADDITIONAL COVENANT IN LEASE TO TONGAN SUBJECT

And the Lessee for himself, his executors, administrators or transferees doth hereby covenant that he will not during the term of this lease transfer, assign or sub-let the land leased, or any part thereof, or otherwise by any act or deed procure the said land, or any part thereof, to be transferred or sub-let without the consent of the Cabinet first had and obtained.

FORM No. 9

APPOINTMENT OF TRUSTEE(S) IN THE MATTER OF THE ESTATE[119]

..... of .....

..... of .....

To..... of .....

(AND TO ..... of .....)

WHEREAS ..... of ..... died at

..... on the day of ..... 20 .....

AND WHEREAS the said ..... at the time of his death was the holder of the Tax Allotment and the Town Allotment more particularly described in the Schedule hereto

AND WHEREAS no Trustee has been appointed by the Supreme Court in respect of the estate of the said .....

AND WHEREAS ..... of ..... is lawfully entitled to succeed to the said Tax Allotment and the said Town Allotment but is at present a minor.

Now THEREFORE I, ... Minister of Lands in pursuance of the powers conferred upon me by section 19(8) of the Land Act Do HEREBY NOMINATE AND APPOINT YOU the said ..... (and you the said.....) to be the Trustee(s) of the said ..... in respect of the said Tax Allotment and Town Allotment during his minority.

THE SCHEDULE

All that the Tax Allotment known as ..... at .....

comprising ..... hectares

All that the Town Allotment known as ..... at .....

comprising ..... hectares

Given under my hand and the Seal of my Office at Nuku'alofa this..... day of ..... 20.....

.....

Minister of Lands

I (WE) ..... of .....

(and ..... of .....)

Do HEREBY ACCEPT nomination and appointment as Trustee(s) for ..... of ..... AND I (WE) do (jointly and severally) undertake and promise faithfully to carry out each and every duties and obligations imposed upon me (us) under the provisions of the Law.

SIGNED by the said

.....

in the presence of

.....

SIGNED by the said

.....

in the presence of

.....

FORM No. 10

FORM OF ADDITIONAL COVENANT TO EVERY LEASE[120]

And it is agreed by and between the parties hereto that the rent payable under the conditions of this lease shall be subject to revision by mutual agreement between the parties at the termination of each 5 years from the date hereof and if the parties shall fail to agree the rent shall be determined by the Cabinet and any such revision shall be endorsed upon this lease and duly authenticated.

FORM No. 11

FORM OF APPLICATION FOR ALLOTMENT[121]

.....

The Honourable the Minister of Lands, Nuku'alofa or the Deputy Minister, Ha'apai, Vava'u, Niuafo'ou and Niuatoputapu.

Sir,

I have the honour to make application for the grant of the ..... allotment at ..... more particularly described below—

District	Estate of	Name of allotment	Last registered owner

I hereby declare that I am a male Tongan subject by birth, over 16 years of age and that I am not in possession of a ..... allotment.

Signature of applicant .....

I hereby agree to the grant of the allotment as described above and declare that there is no impediment to prejudice this grant.

Signature of Tofi'a Holder .....

Witness to signatures .....

(Forms may be had at a charge of one seniti from the Lands Office, Nuku'alofa or the Governor's Office, at Ha'apai and Vava'u.)

SCHEDULE X

(Section 132)

FORM OF MEMORIAL OF REGISTRATION

Forms of Memorial of Registration to be endorsed by the Minister of Lands on original lease transfer or sub-lease and also on the duplicate of same filed in his office.

(1)

Assignment dated ..... 20 ..... by A. B. assigning this land to C. D. as trustee for the benefit of creditors of A.B.

(Register of Documents Affecting Leasehold Titles: Book: Folio:)

.....

Minister of Lands

(2)

A.B. died ..... 20 ..... Grant of Administration dated ..... 20 ..... to C.D.

(Register of Documents Affecting Leasehold Titles: Book: Folio:)

.....

Minister of Lands.

(3)

A.B. died .....20..... Will dated ..... 20 ..... Grant of Probate ..... 20 ..... to C.D. executor.

(Register of Documents Affecting Leasehold Titles: Book: Folio:)

.....

Minister of Lands.

(4)

Injunction dated ..... 20 ....., restraining (or commanding) A.B. to (*here state briefly the purport of the injunction as affecting the lands).*

(Register of Documents Affecting Leasehold Titles: Book: Folio:)

.....

Minister of Lands.

(5)

Lis Pendens dated ..... 20..... Order of Court declaring (*state briefly effect of order on the lands).*

(Register of Documents Affecting Leasehold Titles: Book: Folio:)

.....

Minister of Lands.

(6)

Mortgage (or Assignment by way of mortgage or Equitable Mortgage dated ..... 20 ....., by A.B: mortgaging this land for $ ..... at..... per cent till ..... 20.....

(Register of Documents Affecting Leasehold Titles: Book: Folio:)

.....

Minister of Lands.

(7)

Discharge (or Surrender) dated ..... 20 ..... of Mortgage (or Assignment by way of mortgage) dated ..... 20 ..... by A.B. mortgaging this land to C.D. for

$ .....

(Register of Documents Affecting Leasehold Titles: Book: Folio:)

.....

Minister of Lands.

(8)

Order of Court dated ..... 20 ....., appointing C.D. trustee of this land.

(Register of Documents Affecting Leasehold Titles: Book Folio:)

.....

Minister of Lands.

(9)

Order of Court dated ..... 20 ....., declaring A.B. a bankrupt and appointing C.D. trustee of the bankruptcy.

(Register of Documents Affecting Leasehold Titles: Book: Folio:)

.....

Minister of Lands.

(10)

Order of Court dated ..... 20 ....., for sale of interest of A.B. in this land.

(Register of Documents Affecting Leasehold Titles: Book: Folio:)

.....

Minister of Lands

(11)

Power of Attorney dated ..... 20 ....., by A.B. authorizing C.D. to *(state briefly the power conferred in regard to dealings with land).*

(Register of Documents Affecting Leasehold Titles: Book: Folio:)

.....

Minister of Lands

SCHEDULE XI

(Section 137(2))

FORM OF CAVEAT

To the Minister of Lands.

Take notice that I, A.B. of ..... claiming (*here state nature of the interest and the grounds on which such claim is founded*) in (here describe the land and refer to the folium in the register relating to such land) forbid the registration of any dealing with the before mentioned land until this caveat be withdrawn by the caveator or by the order of the Court, or unless such dealing be subject to the claim of the caveator, or until after the lapse of 21 days from the date of the service of the caveat by the caveatee at the following address: .....

Dated this ..... day of ..... 20 .....

I, the above named A.B. make oath (or affirm), and say that the allegations in the above caveat are true in substance and in fact (or if no personal knowledge as I have been informed and verily believe).

Sworn etc.:.....

SCHEDULE XII

(Section 169)

LAND COURT FEES[122]

		$
1.	Summons in respect of claim to allotment	60.00
2.	Summons in respect of claim to Tofi'a	60.00
3.	Summons in any trustee matter	20.00
4.	Service of process (on each person served)	7.50
5.	Subpoena	4.50
6.	Sealed photocopy of Judgment,	
	per page or part page	1.00
7.	Writ of Possession	24.00

APPEAL FEES

8.	Filing of copies of Notice of Appeal and Petition	120.00

GENERAL

9.	All Applications (whether granted or not)	9.25
10.	Affidavits	6.00
11.	Evidence -	
	Where transcription is required, per page or part page	3.00
	Where photocopying is required, per page or part page	.50
12.	Search of any Record	6.00
13.	Photocopy of any document filed in court-	
	Where sealed	1.00

	Where not sealed	.50
14.	Certificate of Costs	14.75
15.	Certificate under section 81	30.00

SCHEDULE XIII

(Section 142)

FORM OF NOTICE OF INTENTION TO RESUME POSSESSION OF LANDS[123]

Office of Minister of Lands

(date)

To:

I hereby give you notice that, in pursuance of the powers vested in Part IX of the Land Act, the Crown intends to resume for public purposes possession of the land held by you

situated at ..... and extending in area to ..... as per the sketch plan attached thereto.

Compensation will be paid as provided by Part IX of the Land Act. For the purpose of calculating the amount of money compensation to be paid to you, the Government representative will call at the land at ..... on ..... 20 ..... You are requested to be present at that time.

The date on which the Crown intends to resume the land is ..... and you will be required to vacate it by that date.

This notice is sent to you in accordance with the terms of section 142 of the Land Act as amended.

BY AUTHORITY,

.....

Minister of Lands

SCHEDULE XIV[124]

(Section 112A)

RIGHTS AND POWERS OF GRANTEES IMPLIED IN CERTAIN EASEMENTS

1. RIGHT OF WAY

The full, free, uninterrupted, and unrestricted rights, liberty, and privilege for the grantee, his servants, tenants, agents, workmen, licences and invitees (in common with the grantor, his tenants, and any other person lawfully entitled so to do) from time to time and at all times by day and by night to go, pass and repass, with or without horses and domestic animals of any kind and with or without carriages, vehicles, motor vehicles, machinery, and implements of any kind, over and along the land over which the right of way is granted or created.

2. RIGHT TO CONVEY WATER

The full, free, uninterrupted, and unrestricted right, liberty, and privilege for the grantee and his tenants (in common with the grantor, his tenants, and any other person lawfully entitled so to do) from time to time and at all times to take, convey, and lead water in a free and unimpeded flow (except when the flow is halted for any reasonable period necessary for essential repairs) and in any quantity, consistent with the rights of other persons having the same or similar rights, from the source of supply or point of entry, as the case may be, and following the stipulated course (where a course is stipulated) across the land over which the easement is granted or created, together with the additional rights incidental thereto set out in clause 5 of this Schedule.

3. RIGHT TO DRAIN WATER

The full, free, uninterrupted, and unrestricted right, liberty, and privilege for the grantee and his tenants (in common with the grantor, his tenants, and any other person lawfully entitled so to do) from time to time and at all times to drain and discharge water (whether rain, tempest, spring, soakage, or seepage water) in any quantities along the stipulated course (where a course is stipulated) across the land over which the easement is granted or created, together with the additional rights incidental thereto set out in clause 5 of this Schedule (or, where open drains are provided for, similar rights in regard to those drains, with the necessary modifications as are provided for in respect of pipe lines in the additional rights so set out).

4. RIGHT TO DRAIN SEWAGE

The full, free, uninterrupted, and unrestricted right, liberty, and privilege for the grantee and his tenants (in common with the grantor, his tenants, and any other person lawfully entitled so to do) from time to time and at all times to drain, discharge or convey sewage and other waste materials and fluid in any quantities along the stipulated course (where a course is stipulated) across the land over which the easement is granted or created, together with the additional rights incidental thereto set out in clause 5 of this Schedule.

5. ADDITIONAL RIGHTS ATTACHING TO EASEMENTS OF RIGHT TO CONVEY AND OF RIGHT TO DRAIN WATER AND OF RIGHT TO DRAIN SEWAGE

The full, free, uninterrupted, and unrestricted right, liberty, and privilege for the grantee and his tenants (in common with the grantor, his tenants, and any other person lawfully entitled so to do) for the purposes of the easement concerned –

(a) to use any line of pipes already laid on the stipulated course or any pipe or pipes in replacement or in substitution for all or any of those pipes;

(b) where no such line of pipes exist, to lay, place, and maintain, or to have laid, placed, and maintained, a line of pipes of a sufficient internal diameter and of suitable material for the purpose under or over the surface (as the parties decide) of the land over which the easement is granted or created and along the line defined for the purpose where such a line has been so defined;

(c) in order to construct or maintain the efficiency of any such pipe line, the full, free uninterrupted and unrestricted right, liberty, and privilege for the grantee, his tenants, servants, agents, and workmen, with any tools, implements, machinery, vehicles, or equipment of whatsoever nature necessary for the purpose, to enter upon the land over which the easement is granted or created (or where only the position of the pipe line is defined in the easement, upon such part of the land of the grantor by such route as is reasonable in the circumstances) and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining and renewing the pipe line or any part thereof and of opening up the soil of that land to such extent as may be necessary and reasonable in that regard, subject to the condition that as little disturbance as possible is caused to the surface of the land of the grantor and that the surface is restored as nearly as possible to its original condition and any other damage done by reason of the aforesaid operation is repaired.

SCHEDULE XV[125]

(Section 112D)

FORM OF INSTRUMENT CREATING AN EASEMENT

Grantor.....

Grantee.....

Type of Holding.....

Land of Grantor.....

Land of Grantee.....

Variations.....

The Grantor hereby grants to the Grantee an easement of ..... over that part of the Grantor's land coloured ..... on the plan attached hereto and the Grantee doth hereby accept such easement

Signed by the abovenamed

.....

Grantor in the presence of:

.....

Signed by the abovenamed

.....

Grantee in the presence of:

.....

Correct for the purposes of the Land Act

.....

Grantee/Law Practitioner for Grantee

ENDNOTES

[1] 1988 Revised Edition, Chapter 132 — Acts 20 of 1903, 19 of 1927, 9 of 1929, 17 of 1930, 16 of 1933, 15 of 1934, 19 of 1934, 13 of 1936, 4 of 1937, 7 of 1940, 5 of 1941, 22 of 1942, 7 of 1943, 7 of 1945, 9 of 1945, 5 of 1947, 10 of 1948, 12 of 1949, 13 of 1949, 20 of 1950, 3 of 1951, 5 of 1952, 9 of 1953, 16 of 1953, 8 of 1955, 9 of 1958, 12 of 1959, 9 of 1962, 10 of 1963, 20 of 1966, 9 of 1967, 9 of 1968, 4 of 1972, 6 of 1973, 14 of 1973, 20 of 1974, 18 of 1976, 18 of 1977, 6 of 1978, 4 of 1980, 11 of 1980, 15 of 1980, 7 of 1982, 1 of 1983, 18 of 1983, 16 of 1984, 21 of 1984, 7 of 1986, 4 of 1987, 46 of 1988, and GSs43/1972, 13/1976, 38/1979, 117/1986, 1/1987, and Gs 49/1976, 137/1977

Amending Acts	Commencement
Act 13 of 1990	8 August 1990
Act 18 of 1991	4 February 1992
Act 23 of 1991	4 February 1992
Act 18 of 1993	3 January 1994
Act 3 of 1997	25 June 1997
Act 8 of 1999	1 July 1999
Act 19 of 1999	14 December 1999
Act 16 of 2002	20 December 2002
Act 1 of 2013	3 May 2013

[2] Amended by Acts 11 of 1980 and 21 of 1984

[3] Substituted by Act 8 of 1955 and Amended by Acts 11 of 1980 and 21 of 1984

[4] Substituted by Act 4 of 1987

[5] Amended by Act 18 of 1983

[6] Amended by Act 12 of 1949

[7] Amended by Acts 9 of 1968 and 46 of 1988

[8] Amended by Act 14 of 1973

[9] Substituted by Act 20 of 1974 and Amended by Act 8 of 1999

[10] Amended by Act 8 of 1999

[11] Added by Act 19 of 1934

[12] Added by Act 19 of 1934

[13] Inserted by Act 18 of 1976

[14] Inserted by Act 23 of 1991

[15] Amended by Act 7 of 1982

[16] Amended by Acts 46 of 1988 and Act 1 of 2013

[17] Amended by Act 4 of 1980

[18] Amended by Acts 8 of 1955, 4 of 1980 and Act 46 of 1988

[19] Added by Act 7 of 1945

[20] Amended by Acts 14 of 1973 and 20 of 1974

[21] Amended by Acts 14 of 1973 and 20 of 1974

[22] Added by Act 15 of 1934

[23] Amended by Act 46 of 1988 and 1 of 2013

[24] Inserted by Act 1 of 2013

[25] Amended by Act 45 of 1988 and 1 of 2013

[26] Amended by Act 46 of 1988 and 1 of 2013

[27] Amended by Act 46 of 1988

[28] Amended by Act 1 of 2013

[29] Amended by Act 1 of 2013

[30] Added by Act 13 of 1936

[31] Amended by Act 4 of 1980

[32] Amended by Act 9 of 1958

[33] Added by Act 13 of 1936 and Amended by Acts 11 of 1980 and 21 of 1984

[34] Amended by Acts 9 of 1958, 11 of 1980 and 21 of 1984

[35] Added by Act 19 of 1934; Amended by Acts 9 of 1958, 11 of 1980 and 21 of 1984

[36] Added by Act 17 of 1930; Amended by Acts 12 of 1959, 11 of 1980 and 21 of 1984

[37] Amended by Act 8 of 1955 and Acts 9 of 1962, 11 of 1980 and 21 of 1984

[38] Added by Act 13 of 1936, Amended by Act 8 of 1955

[39] Amended by Acts 11 of 1980 and 21 of 1984

[40] Substituted by Act 19 of 1934 and Amended by Acts 11 of 1980 and 21 of 1984

[41] Amended by Act 9 of 1958

[42] Added by Act 19 of 1934 and Amended by Act 11 of 1980

[43] Substituted by Act 14 of 1973

[44] Inserted by Act 18 of 1991

[45] Inserted by Act 18 of 1991

[46] Substituted by Act 14 of 1973

[47] Inserted by Act 18 of 1976

[48] Amended by Acts 6 of 1978 and 1 of 1983

[49] Inserted by Act 18 of 1976

[50] By Order at G. 302/78, His Majesty in Council ordered that the rental be such as is agreed between the parties.

[51] Inserted by Act 18 of 1976

[52] Inserted by Act 18 of 1976

[53] Inserted by Act 18 of 1976, and Amended by Act 6 of 1978

[54] Amended by Act I of 1983

[55] Inserted by Act 18 of 1976

[56] Inserted by Act 18 of 1976

[57] Added by Act 19 of 1934

[58] Added by Act 16 of 1933

[59] Substituted by Act 19 of 1934

[60] Amended by Act 9 of 1958;

[61] Amended by Act 4 of 1980

[62] Amended by Acts 13 of 1936 and 11 of 1980

[63] Amended by Act 4 of 1980

[64] Amended by Act 9 of 1958

[65] Amended by Act 9 of 1958

[66] Added by Act 13 of 1949

[67] Added by Act 13 of 1949

[68] Substituted by Act 19 of 1934

[69] Amended by Acts 7 of 1943 and 18 of 1991

[70] Amended by Acts 10 of 1963 and 4 of 1980

[71] Substituted by Act 9 of 1929

[72] Added by Act 12 of 1949

[73] Inserted by Act 18 of 1976

[74] Tonga Development Bank (G. 246/1977), International Finance Services, Limited (GS 9/1987), ANZ Banking Group Limited (GS 1/1994), MBf Bank (Tonga) Limited (GS 1/1994), C and J Johnson (GS 5/1999), National Reserve Bank re house loans for employees (G 65/2014)

[75] Inserted by Act 18 of 1976 and Amended by Act 4 of 1980

[76] Inserted by Act 18 of 1976 and Amended by Act 4 of 1980

[77] Inserted by Act 4 of 1980

[78] Inserted by Act 18 of 1976 and Amended by Act 8 of 1999

[79] This section is impliedly repealed by the Contract (Repeal) Act 1990 (Act 26 of 1990)

This section provided as follows –

> "Sections 3 to 7 of the Contract Act shall have no application to mortgages registered under this Act."

[80] Inserted by Act 23 of 1991

[81] Substituted by Act 9 of 1967

[82] Substituted by Act 4 of 1980

[83] Amended by Act 4 of 1980

[84] Substituted by Act 9 of 1967

[85] Inserted by Act 18 of 1993

[86] Inserted by Act 4 of 1980

[87] Amended by Act 18 of 1993

[88] Substituted by Act 6 of 1973

[89] Added by Act 19 of 1934

[90] Substituted by Act 6 of 1973

[91] Substituted by Act 6 of 1973

[92] Substituted by Act 5 of 1952

[93] By G. 29/1955, Land Court (Assessors Fees) Regulations, it was provided that "the fees payable to an assessor sitting in the Land Court in accordance with section 146(1) of the Land Act shall be such as are fixed from time to time by His Majesty's Cabinet"

[94] Substituted by Act 5 of 1952

[95] Added by Act 17 of 1930

[96] Amended by Act 6 of 1973

[97] Inserted by Act 3 of 1997

[98] Added by Act 19 of 1934

[99] Added by Act 19 of 1934

[100] Amended by Acts 10 of 1948 and 3 of 1997

[101] Amended by Act 17 of 1930

[102] Substituted by Act 13 of 1990

[103] Amended by Act 17 of 1930

[104] Amended by Acts 22 of 1942 and 18 of 1977

[105] Amended by Act 17 of 1930 and Act 13 of 1936

[106] Amended by Act 14 of 1973 and G.S. 147/79

[107] Substituted by Act 16 of 1953

[108] Amended by G. S. 147/79

[109] Amended by G.S. 147/79

[110] Amended by Act 4 of 1937

[111] Substituted by Act 18 of 1991

[112] By G. 65/1964 the Minister ordered – "From and after the publication of this Notice all persons making application for the lease of any land in the Kingdom of Tonga must forward with the application the approximate survey fee of the piece of land applied for. If the applicant does not come to the Lands Office within 3 months after notification has been sent to him that the lease is ready for execution to sign and execute the deed of lease and does not pay the full amount required by the Department to enable the lease to be registered, the money paid for the approximate survey fee may be forfeited to Government at the discretion of His Majesty's Cabinet."

[113] Inserted by Act 18 of 1991

[114] Substituted by Act No. 3 of 1951

[115] Inserted by G. 137/77, Amended by G.S. 38/79

[116] Amended by G.S. 13/76

[117] Amended by Act 15 of 1934, Act 5 of 1947 and G.S. 13/76 and G.S. 117/86 and Act 8 of 1999

[118] Amended by G. 49/76

[119] Added by Act 9 of 1953

[120] Added by Act 16 of 1953

[121] Inserted (as Form 9) by G. 32/1947

[122] Substituted by Act 16 of 2002

[123] Inserted by Act 6 of 1973

[124] Inserted by Act 23 of 1991

[125] Inserted by Act 23 of 1991