

1969/169

THE NIUE LAND REGISTRATION REGULATIONS 1969

ARTHUR PORRITT, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 25th day of August 1969

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Niue Act 1966, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Niue Land Registration Regulations 1969.

(2) These regulations shall come into force on the date of the commencement of the Niue Amendment Act (No. 2) 1968.

2. Interpretation—In these regulations, unless the context otherwise requires,—

“The Act” means the Niue Act 1966:

“Dealing” means every transfer, transmission, charge, lease, encumbrance, or other alienation or transaction affecting any land or interest in any land under these regulations:

“Endorsement”, in addition to its ordinary meaning, includes anything written upon or at the foot of any document for giving effect to any of the purposes of these regulations:

“Instrument” means any printed or written document, map, plan, or other dealing affecting any land or interest in any land:

“To register” means to enter in the Land Register pursuant to these regulations; and “registration” and “registered” have corresponding meanings:

“Registrar” means the Registrar of the Land Court; and includes a Deputy Registrar:

A reference to a numbered form is a reference to a form so numbered in the First Schedule to these regulations:

Subject to the foregoing provisions of this regulation, expressions defined in the Act have the meanings so defined.

PART I—ADMINISTRATION

3. Duties of Registrar—The Registrar shall be responsible for the work to be carried out in the Land Registry.

4. Land Registry—There shall be a Land Registry established in the Land Court Office, which shall be open daily for public business from 10 a.m. to 3 p.m. except on Saturdays, Sundays, and public holidays.

5. Land Register—(1) The Registrar shall keep books comprising and to be called the Land Register.

(2) The number of parcels or subdivisions of land which may be included in one folium of the Land Register shall be at the absolute discretion of the Registrar.

(3) The Registrar shall record on each folium the particulars of all instruments, dealings, and other matters by these regulations required to be registered or entered on the Land Register.

6. Journal and index to be kept—In addition to the Land Register provided for by regulation 5 hereof, the Registrar shall keep the following:

- (a) A journal, in which shall be entered particulars of all instruments received for registration, referring to them by number in the order in which they are so received for registration, the volume and folio of the Land Register against which such instrument is to be registered and such other particulars and references as he thinks fit;
- (b) An alphabetical index, in which shall be entered appropriate references to every power of attorney or other instrument deposited in the Land Registry.

7. Instruments—(1) All instruments for registration or entry on the Land Register must be legibly and clearly written, typewritten, or printed on sheets of paper of foolscap size of good quality. Carbon copies of instruments shall not be filed. A margin of not less than one-eighth of the width of the paper shall be on the left side thereof.

(2) The Registrar may, at his discretion, waive the requirements of this regulation in whole or in part.

8. Correction of errors in Land Register—(1) Where a mistake has been made in the Land Register, the Registrar shall rectify the mistake by a new entry in such form as may be convenient, specifying the day and hour of each correction, and initialling the correction.

(2) The erroneous entry shall in no case be erased or obliterated.

PART II—REGISTRATION

9. Presentation of instruments for registration—(1) Every instrument presented for registration shall have endorsed thereon—

- (a) The names of the parties thereto; and
- (b) The nature of the instrument; and
- (c) A reference to the appropriate volume and folio of the Land Register; and
- (d) Such other particulars as the Registrar may, at his discretion, consider necessary.

(2) No registration of any instrument shall be invalidated by non-compliance with this regulation.

10. Registrar may refuse to register any instrument—The Registrar, at his discretion, may refuse to register any instrument on the grounds—

- (a) That it is invalid according to law; or
- (b) That it is subject to any material defect, error, or omission; or
- (c) That it is not made subject to any existing registered encumbrance, estate, or interest; or
- (d) That for any other reason it is incapable of complete registration.

11. Registration as to part of land affected—(1) Notwithstanding anything in regulation 10 hereof, an instrument may be accepted for registration as to part only of the land affected if a request for such partial registration is endorsed thereon and signed by the person presenting the instrument for registration.

(2) A partially registered instrument may, at the like request and on payment of the requisite fees, be re-registered as to the remainder or any other part of the land affected thereby.

12. Alterations or erasures in instruments—(1) The Registrar may refuse to register any instrument containing an erasure or alteration.

(2) Mistakes should be corrected by deleting the words or figures written in error and writing the correct words or figures above them.

(3) Where any correction, interlineation, or addition affects or could affect the interests of the persons executing the instrument, it should be initialled by those persons and by the attesting witnesses. Where it affects or could affect the interests of the persons receiving the benefit under the transaction, it should be initialled by those persons.

13. Instrument not to be altered while retained in Registry or after registration—(1) Except where authorised by the Registrar or a Judge of the Land Court, no alteration whatever shall be allowed to be made to any application or instrument during retention thereof in the Land Registry.

(2) No alteration whatever may be made in any instrument after it has been registered.

14. Instruments executed by an attorney or representative—(1) Any instrument executed by one person on behalf of another as his attorney or authorised representative shall be accompanied by a statutory declaration to the effect that he has not received any notice or information of the revocation of his power of attorney or certificate of representation by death or otherwise.

(2) That statutory declaration shall be made immediately before or immediately after the execution of the instrument.

(3) No such declaration shall be necessary in the case of a legally irrevocable power of attorney, unless the power is irrevocable for a fixed time therein specified and that time has expired at the date of execution of the instrument.

15. Procedure for registration of instruments—(1) Upon the acceptance of any instrument for registration, the Registrar shall number the instrument and make a note thereon of the day and hour of the receipt thereof, and enter the same in the journal.

(2) The Registrar shall thereupon cause a memorial thereof to be entered in the appropriate volume and folio of the Land Register. The memorial shall state—

- (a) The number and nature of instrument; and
 - (b) The names of the parties thereto; and
 - (c) The date and hour of the production of the instrument for registration; and
 - (d) Such other particulars as the Registrar considers expedient.
- (3) Every memorial shall be signed by the Registrar.

(4) The original instrument shall, wherever possible, be filed and retained in the Land Registry.

16. Priority according to time of presentation for registration—Every instrument shall be registered in the order of time in which it is presented for registration.

17. Instruments to be in duplicate—Every instrument presented for registration shall (except in the case of an order of the Land Court or the Land Appellate Court) be in duplicate.

18. Memorial to be recorded on duplicate instrument—(1) Whenever a memorial of any instrument has been entered in the Land Register, the Registrar shall record the like memorial on the duplicate lease or other instrument evidencing title to the estate or interest intended to be dealt with or in any way affected, unless the Registrar, as hereinafter provided, dispenses with the production of that duplicate.

(2) The Registrar shall endorse on every instrument so registered a certificate of the date and hour on which the said memorial was entered in the Land Register, and shall authenticate each such certificate by signing his name and affixing his seal thereto.

(3) Every such certificate shall be received in all Courts as conclusive evidence that the instrument has been duly registered.

19. Registrar may dispense with production of duplicate instruments—

(1) The Registrar may, at his discretion, dispense with the production of any duplicate of any instrument.

(2) Where production has been dispensed with as aforesaid, then, upon the registration of any dealing, the Registrar shall notify in the memorial in the Land Register that no entry of that memorial has been made on the duplicate instrument, and every other dealing shall thereupon be as valid and effectual as if the memorial had been so entered:

Provided that before registering any such dealing the Registrar shall give at least 28 clear days' notice in the *Niue Island Gazette* of his intention to register the dealing.

20. Receipt may be given for instruments presented for registration or deposit—Every person by whom any instrument is brought or sent to the Land Registry for the purpose of registration or deposit may require a receipt for the instrument, which receipt shall be signed by the Registrar or some officer of the Land Registry duly authorised in writing in that behalf by the Registrar, and shall specify the nature and number of the instrument and the day and hour when it was received by the Registrar.

21. Persons having an estate or interest in land may be required to register any instruments—Any person having an estate or interest in land through any instrument authorised to be registered by these regulations or any other enactment may require any person having possession of that instrument to cause it to be registered. If he fails or refuses to do so, any Judge of the Land Court may, on application to him, make such order respecting the registration of the instrument and the costs thereof as he thinks fit.

22. Certified copies of instruments to be evidence—The Registrar, upon payment of the prescribed fee, shall furnish to any person applying for the same a certified copy of any registered instrument affecting land, and every such certified copy signed by him, and sealed with his seal, shall be received in evidence for all purposes for which the original instrument might be put in evidence.

PART III—POWER OF ATTORNEY

23. Power of attorney may be deposited with Registrar—(1) The proprietor of any land or any person claiming any estate or interest in any land may, by power of attorney in form 1, and either in general terms or specially, authorise and appoint any person on his behalf to execute instruments therewith, or to make an application to the Registrar or to a Judge of the Land Court in relation thereto.

(2) Every power of attorney intended to be used under these regulations, or a duplicate or attested copy thereof, verified to the satisfaction of the Registrar, shall be deposited with the Registrar.

(3) Any power of attorney made or used under these regulations shall not be invalidated by reason of the power not having been created under seal.

(4) No memorial shall be made in the Land Register in respect of any power of attorney deposited in the Land Registry.

24. Revocation of power of attorney—(1) The donor of any revocable power of attorney may, by notice to the Registrar in form 2, revoke the power of attorney, either wholly or as to the land specified in the notice.

(2) No power of attorney shall be deemed to have been revoked by reason only of a subsequent power of attorney being deposited without express notice as aforesaid, nor shall any such revocation take effect as to instruments executed before the reception of the notice by the Registrar.

(3) No power of attorney shall be deemed to have been or to be revoked by the bankruptcy or insolvency of the grantee or by the marriage of a female grantee.

(4) When any instrument of revocation is deposited, the Registrar shall thereupon note on the power of attorney a minute of the revocation thereof and record the same in the alphabetical index.

PART IV—SEARCHES

25. Searches—(1) On payment of the prescribed fees any person may search the Land Register, the journal, the alphabetical index, and all registered and deposited instruments and plans at any time when the Land Registry is open for public business.

(2) For the purpose of assessing search fees, every search shall be deemed to be completed on the day on which it is commenced:

Provided that the Registrar may, at his discretion, allow a search not completed on one day to be completed on the following or a subsequent day without further fee.

26. Single search—A single search shall be deemed to include—

- (a) The inspection of any one folium of the Land Register and of all registered instruments and plans referred to therein;
- (b) The inspection of any one registered or deposited instrument or plan without reference to any particular folium of the Land Register.

27. General search—A general search shall be deemed to include inspection of any number of folios of the Land Register in the name of one proprietor with the relative instruments and plans.

28. Assistance to persons searching—Reasonable assistance may be afforded by the Registrar and his staff to any person searching, but no search may be made by the Registrar or his staff except by special arrangement previously approved by the Resident Commissioner, and no responsibility shall be incurred by the Registrar or his staff for the accuracy of any information obtained by any such search.

PART V—CAVEATS

29. Caveats to be signed by caveator, attorney, or authorised representative—(1) Every caveat shall be signed by the caveator or by his attorney or duly authorised representative, and shall state with sufficient certainty the nature of the right, title, estate, or interest claimed by the caveator, and shall appoint a place or give an address in Niue at which notices and proceedings relating to the caveat may be served or addressed.

(2) Every caveat shall be entered on the appropriate folium of the Land Register as of the day and hour of the reception thereof by the Registrar.

(3) A caveat shall be in form 3 or form 4, as the case may require.

(4) The Registrar may, at his discretion, enter a caveat—

(a) To protect the rights of any person beneficially interested under any trust, the existence of which trust is known to the Registrar; or

(b) To protect the rights of any person where consent is required to any dealing with land, the existence of which rights is known to the Registrar; or

(c) To protect the rights of any person who is an infant, or of unsound mind, or who is absent from Niue; or

(d) To protect the rights of the Crown; or

(e) To prevent any fraudulent or improper dealing.

(5) So long as a caveat remains in force, the Registrar shall not register any instrument presented for registration after the lodging of the caveat and affecting the estate or interest (at law or in equity) protected by the caveat.

(6) Upon the receipt of any caveat, the Registrar shall (if possible) notify in writing the existence of the caveat to the proprietor against whose estate or interest the caveat has been lodged.

(7) Any such proprietor may make an application to the Land Court for an order that the caveat be removed:

Provided that the Land Court shall not make any such order unless it be satisfied that, in accordance with the rules of the Court, the caveator or his attorney or duly authorised representative has been served with a copy of the application.

(8) On the hearing of any such application, the proprietor shall be entitled to such an order unless the caveator establishes to the satisfaction of the Court, that the caveat should not be removed.

(9) On making any such order, the Court may direct that the caveat be wholly or partly removed, or removed only for certain purposes, and either unconditionally or subject to such conditions as the Court considers proper.

30. Caveator may except certain instruments—A caveator may except from the operation of a caveat any instrument or class of instruments, and such a caveat shall not prevent the registration of any instrument or class of instruments so specifically excepted.

31. Service of notice as to caveats—Every notice relating to a caveat and any proceedings in respect thereof, if served at the place appointed in the caveat or forwarded through the Post Office by registered letter addressed as aforesaid, shall be deemed duly served.

32. Person lodging caveat without due cause liable for damages—

(1) Any person lodging any caveat without reasonable cause is liable to make to any person who may have sustained damage thereby such compensation as may be just.

(2) Such compensation shall be recoverable in an action in the High Court by the person who has sustained damage from the person who lodged the caveat.

(3) This regulation shall not apply to a caveat lodged by the Registrar.

33. Caveat may be withdrawn—Any caveat may be withdrawn by the caveator or by his attorney or duly authorised representative under a written authority, and either as to the whole or any part of the land affected, or the consent of the caveator or of his attorney or authorised representative may be given for the registration of any particular dealing expressed to be made subject to the rights of the caveator.

PART VI—MISCELLANEOUS PROVISIONS

34. Mergers—(1) The Registrar, upon being satisfied that any estate or interest shown on the Land Register has merged according to the rules of law and equity with any other estate or interest, may, upon the written application of the person in whom those estates or interests are shown on the Land Register as being vested, or of his duly authorised attorney, solicitor, or agent, make such entries in the Land Register as may be necessary to give effect to the merger.

(2) The same fees shall be payable hereunder as for the registration of an instrument.

35. Registrar to have and use seal of office—The Registrar shall have and use a seal of office, which shall be in such form as the Resident Commissioner approves; and every imprint of such a seal, and purport-

ing to be signed or issued by the Registrar, or by his Deputy, shall be received in evidence, and shall be deemed to be signed or issued by or under the direction of the Registrar, without further proof, unless the contrary is shown.

36. Forms—(1) The forms prescribed by these regulations for use in the Land Registry are set out in the First Schedule hereto and indicated by the corresponding numbers therein.

(2) The forms may be used with such modifications as may be required, and, if no form is prescribed by these regulations, then such form may be used as the Resident Commissioner may direct or approve.

37. Fees—(1) The fees set out in the Second Schedule hereto are hereby prescribed as the fees to be paid for the registration or deposit of any instrument and any search under these regulations.

(2) No fee shall be payable in respect of the following transactions:

- (a) The bringing of land and any relevant documents relating to the registration of the first title to land under these regulations; or
- (b) The filing or registration of any instrument or any search on behalf of the Crown or by the Registrar.

(3) Subject to the provisions of subclause (2) of this regulation, no instrument shall, without the leave of the Registrar, be registered or deposited, unless the prescribed fee has been paid.

SCHEDULES

FIRST SCHEDULE

Form 1

Reg. 23 (1)

POWER OF ATTORNEY

I, A.B., of [*Address and occupation*], being the proprietor of an estate [*Here state nature of the estate or interest*], subject, however to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon, in [*Here refer to Schedule for description and contents of the several parcels of land intended to be affected, which Schedule must contain reference to the existing volume and folio of the Land Register*], hereby appoint C.D., of [*Address and occupation*], attorney on my behalf to [*Here state the nature and extent of the powers intended to be conferred, as whether to sell, lease, mortgage, etc.*] the lands in the said Schedule described, and to execute all such instruments and do all such acts, matters, and things as may be necessary for carrying out the powers hereby given, and for the recovery of all rents and sums of money that may become or are now due or owing to me in respect of the said lands, and for the enforcement of all contracts, covenants, or conditions binding upon any lessee or occupier of the said lands or upon any other person in respect of the same, and for the taking and maintaining possession of the said lands, and for protecting them from waste, damage, or trespass.

SCHEDULE

In witness whereof I have hereunto subscribed my name this
day of 19 .

A.B.
.....

Signed by the above-named A.B. in the presence of—
G.H.

.....
[*Occupation and address*]

Form 2

Reg. 24 (1)

REVOCATION OF POWER OF ATTORNEY

I, A.B., of [*Address and occupation*], being the proprietor of an estate [*Here state the nature of the estate*] in all that piece of land [*Here describe the land, referring to the volume and folio of the Land Register*], hereby revoke the power of attorney given by me to C.D., of [*Address and occupation*], dated the day of 19 .

In witness whereof I have hereunto subscribed my name this day
of 19 .

A.B.
.....

Signed by the above-named A.B. in the presence of—
G.H.

.....
[*Occupation and address*]

Reg. 29 (3)

Form 3

CAVEAT FORBIDDING REGISTRATION OF DEALING

To the Registrar of the Land Court, Niue.
TAKE notice that I, A.B., of [Occupation and address], claiming estate or interest [Here state the nature of the estate or interest claimed, and the ground on which claim is founded] in [Here describe land], forbid the registration of any instrument affecting the said estate or interest until this caveat is withdrawn by me, or by order of the Land Court.

And I appoint [Here state an address in Niue] as the place at which notices relating hereto may be served.

Dated this day of 19 .

A.B.

Signed by the above-named [Name of caveator], as caveator, in the presence of—

C.D.

.....
[Occupation and address]

Reg. 29 (3)

Form 4

CAVEAT BY REGISTRAR FORBIDDING REGISTRATION OF DEALING

TAKE notice that the Registrar hereby forbids the registration of any instrument affecting the estate or interest described in the First Schedule hereto, upon the grounds set out in the Second Schedule hereto, until this caveat is withdrawn by him, or by order of the Land Court or a Judge thereof, or by order of the Land Appellate Court.

As witness the hand of the Registrar (Deputy Registrar) and the seal of office of the Registrar this day of 19 .

FIRST SCHEDULE

SECOND SCHEDULE

Signed by the Registrar }
(Deputy Registrar) and }
sealed with the Registrar's } Registrar (Deputy Registrar)
seal of office in the presence }
of: }

Witness:
Occupation:
Address:

Notices relating hereto must be addressed to the Registrar at the Land Registry in Niue.

SECOND SCHEDULE

FEES	Reg. 37
	\$
1. For registering any instrument	1.00
2. For every entry of a memorial of registration	0.20
3. For every power of attorney deposited	1.00
4. For depositing every revocation of a power of attorney	1.00
5. For registering any caveat	1.00
6. For cancelling or withdrawal of caveat and for every notice relating to any caveat	0.50
7. For any instrument deposited for safe custody	1.00
8. For registering or noting anything not otherwise provided for	1.00
9. For every single search	0.20
10. For every general search	0.50
11. Certified copies:	
(a) Of any instrument or extract from the Land Register— for every 100 words or part thereof	0.05
(b) Of any page or part thereof supplied by photocopy or other reproduction processes	0.20

P. J. BROOKS,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations provide for the establishment of a land registration system for Niue.

The regulations establish a Land Registry, which will be under the control of the Registrar of the Land Court, and provide for the constitution of a Land Register, the keeping of appropriate books, the registration procedure, the deposit of powers of attorney, searches, the lodging of caveats, and other miscellaneous matters.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 28 August 1969.

These regulations are administered in the Department of Maori and Island Affairs.