

REPUBLIC OF VANUATU

THE LAND SURVEYORS ACT NO. 11 OF 1984

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REPUBLIC OF VANUATU

THE LAND SURVEYORS ACT NO. 11 OF 1984

An Act to provide for the setting up of a Land Surveyors Board, for registration and regulation of professional conduct of land surveyors and for matters incidental thereto.

BE IT ENACTED by the President and Parliament as follows:-

PART 1 - PRELIMINARY

INTERPRETATION

1. In this Act, unless the context otherwise requires -
 - "the Board" means the Land Surveyors Board set up under section 4;
 - "Director" means the Director of the Department of Land Surveys;
 - "Government surveyor" means a surveyor employed by the Department of Land Surveys;
 - "Minister" means the Minister responsible for land matters;
 - "public surveys" means surveys conducted by the Department of Land Surveys;
 - "register" means the register of surveyors kept under the provisions of this Act;
 - "registration" means registration under this Act and "registered" has a corresponding meaning;
 - "secretary" means the secretary to the Board;
 - "surveyor" means a person registered as a land surveyor under the provisions of this Act.

PART 2 - THE DIRECTOR AND HIS DUTIES

THE DIRECTOR

2. There shall be a Director of Land Surveys who shall be a public servant.

DUTIES OF THE DIRECTOR

3. (1) The duties of the Director shall be to -
 - (a) direct and control all public surveys;
 - (b) supervise and control all other surveys;

- (c) examine all general and particular plans of surveys made in respect of leases of land and approve such plans if satisfied that such surveys have been carried out and the plans prepared in accordance with the provisions of this Act;
 - (d) take charge of and preserve all survey records;
 - (e) cancel or amend any survey plan or diagram found to be incorrect, out-dated or inadequate;
 - (f) prepare, certify and issue at the request of any person upon payment of the prescribed fees, copies of diagrams and documents filed within his department which are available to the public;
 - (g) require any surveyor to correct any errors in a survey carried out by him.
- (2) The Director shall be the authority for the preparation and publication of the official maps of Vanuatu, and no person shall, without the approval in writing from the Director and payment of the prescribed fees make use for publication of any map or any material prepared by the Department of Land Surveys.
- (3) The Director shall charge the prescribed fees for public surveys and for all documents issued or services rendered by the Department of Land Surveys.

PART 3 - THE LAND SURVEYORS BOARD

THE BOARD

4. (1) There shall be a board to be known as the Land Surveyors Board consisting of -
- (a) the Director who shall be chairman; and
 - (b) two surveyors appointed by the Minister, one of whom shall be a surveyor not employed by the Department of Land Surveys.
- (2) The appointed members shall hold office for a term of two years but may be re-appointed; their appointment may be terminated for cause by the Minister at any time.
- (3) The first two surveyors appointed by the minister under subsection (1)(b) shall be deemed to be Surveyors registered under the provisions of this Act.
- (4) The Board shall appoint a public servant to be Secretary.

PROCEEDINGS OF THE BOARD

5. (1) All members of the Board shall constitute the quorum.

- (2) The Board shall meet at such times and places as the Chairman shall direct.
- (3) The decisions of the Board shall be made by a majority of votes of the members.
- (4) Subject to the provisions of this section the Board shall regulate its own procedure.

DUTIES OF THE BOARD

6. The duties of the Board shall be -

- (a) to maintain a register of surveyors;
- (b) to determine the qualifications and experience of persons entitled to be registered as surveyors;
- (c) to hear and determine disciplinary proceedings against surveyors in accordance with the provisions of this Act; and
- (d) to carry out such other functions as may be prescribed by this Act or any other law.

PART 4 - REGISTRATION OF SURVEYORS

QUALIFICATION FOR REGISTRATION

7. (1) A person shall be entitled to be registered under this Act if he proves to the satisfaction of the Board that he is the holder of a certificate, diploma or degree granted by a recognized university, technical institute or professional institution in land survey and that he is entitled to practice as a land surveyor in the country in which the certificate, diploma or degree was granted.
- (2) The Board may require an applicant for registration to produce such documents or other evidence relating to his qualifications or submit to such examination for registration as the Board shall prescribe.
- (3) A person applying for registration shall pay the prescribed fee in respect of the application.

CERTIFICATE OF REGISTRATION

8. (1) Where a person is registered he shall be granted a certificate of registration on payment of the prescribed fees.
- (2) If the registration is cancelled or suspended the holder of the certificate of registration shall forthwith deliver it up to the Director.

BOARD TO MAINTAIN REGISTER

9. The Board shall maintain a register of surveyors in which shall be recorded the names, addresses and qualifications of all registered surveyors.

CANCELLATION OF REGISTRATION

10. (1) The Board shall cancel the registration of a surveyor if it is satisfied that he -
- (a) has obtained his registration by fraud, misrepresentation or mistake, or
 - (b) has been convicted of an offence punishable by imprisonment without the option of a fine, or
 - (c) is in the opinion of the Board by reason of a physical or mental incapacity, unable satisfactorily to exercise his profession.
- (2) A person whose registration has been cancelled may apply for re-instatement and upon receipt of satisfactory evidence of proper reasons for his re-instatement the Board may reinstate his registration.

APPEALS AGAINST DECISIONS OF THE BOARD

11. Any person aggrieved -
- (a) by the refusal of the Board of his application for registration; or
 - (b) by the cancellation of his registration under section 10; or
 - (c) by the refusal of the Board to re-instate his registration,
- may appeal to the Supreme Court.

PART 5 - PROFESSIONAL DISCIPLINE

COMPLAINTS OF UNPROFESSIONAL CONDUCT

12. (1) Any complaint of the conduct of a surveyor in his professional capacity must be made in writing to the Board and must contain specific allegations of acts or omissions on which the complaint is based.
- (2) The Board shall deal with all disciplinary matters in accordance with the provisions of this Act.

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CONDUCT OF DISCIPLINARY PROCEEDINGS

13. (1) The Board may invite the Attorney General or a law officer nominated by him to be a member of the Board for the purpose of the disciplinary proceedings but without the right to vote.
- (2) In any disciplinary proceedings before the Board the following rules shall apply -
- (a) a sufficient notice of the time and place of the hearing together with particulars of the complaint shall be given to the person against whom the complaint has been made and to the complainant;
 - (b) any party to the proceedings shall, if he so requires, be entitled to be heard by the Board and to be represented or assisted by a legal practitioner or a surveyor;
 - (c) unless the Board otherwise directs, the proceedings shall be held in public.

EVIDENCE IN DISCIPLINARY PROCEEDINGS

14. (1) The Board, by notice in writing signed by the Chairman or the secretary, may require any person to attend and give evidence before it at the hearing of any complaint under this Part, and to produce any documents in that person's custody or under his control relating to the subject matter of the complaint.
- (2) The Board may require evidence to be given on oath, and either orally or in writing, and for that purpose the Chairman may administer any oath.
- (3) Witnesses and legal practitioners and surveyors referred to in section 13(2)(b) shall have the same immunities and privileges in relation to proceedings before the Board as in proceedings in a court of law.
- (4) The secretary shall keep the minutes of the proceedings and record the evidence in such manner as the Board shall direct.
- (5) Any person who without lawful justification refuses or fails to attend and give evidence when required to do so by the Board, or to answer truly any question put to him or to produce any document required of him, shall be guilty of an offence.

Penalty: Imprisonment for 3 months or fine of 20,000 VT or both.

DISCIPLINARY POWERS OF THE BOARD

15. (1) If the Board finds that the acts or omissions alleged in the complaint -
- (a) have not been proved to the satisfaction of the Board; or

- (b) do not constitute misconduct of the surveyor in his professional capacity; or
- (c) are of trivial nature;

the Board shall dismiss the complaint, and may order the complainant to pay such sums, if any, as the Board shall determine, by way of the costs of the proceedings, or a part thereof, to the Revenue Fund and to the surveyor against whom the complaint had been made.

- (2) If the Board finds a surveyor guilty of misconduct in his professional capacity, it may, having regard to the gravity of the allegations proved in the proceedings -
 - (a) order that his registration be cancelled or suspended for such period not exceeding two years as the Board shall think fit;
 - (b) reprimand him;
 - (c) order him to pay such sum to the Revenue Fund, as the Board shall determine, by way of the costs of the proceedings or a part thereof.
- (3) Any sum ordered to be paid under this section may be recovered in a like manner as a civil debt.

APPEAL TO THE SUPREME COURT

16. Any person found guilty of misconduct under section 15 may appeal to the Supreme Court.

PART 6 - THE CONDUCT OF SURVEYS

DUTIES OF LAND SURVEYORS

17. (1) Every surveyor shall -
- (a) carry out every survey undertaken by him in such manner as will ensure accurate results and in accordance with the provisions of this Act;
 - (b) be responsible for the correctness of every survey carried out by him and of every general plan and diagram which bears his signature;
 - (c) sign and date all survey documentation made by him;
 - (d) deposit with the Director, for the purpose of being permanently filed in the office of the Director all plans, field notes and computations made by the surveyor;

- (e) when required by the Director, without delay correct any errors made in any survey made by him, as may be necessary to ensure the amendment of any diagram or plan based on an incorrect survey and to adjust the position of any survey mark placed in accordance with such incorrect survey.
- (2) Neither the Government nor any officer thereof shall be liable in respect of any defective survey or work appertaining thereto, performed by a surveyor not being a Government surveyor notwithstanding that a plan or diagram relating to such survey or work has been approved.

SURVEYS FOR PURPOSES OF ACT NO. 4 OF 1983

- 18. Every survey of land for the purposes of the Land Leases Act No. 4 of 1983 shall be carried out under and in accordance with the directions of the Director.

RECOGNITION BY COURTS

- 19. No surveys, plans of survey or diagrams shall be recognised by any court unless the same shall have been prepared and signed by a surveyor.

POWER TO ENTER LAND, ERECT TRIGONOMETRICAL STATIONS AND SURVEY MARKS

- 20. (1) The Director or any surveyor, with or without assistants may -
 - (a) enter upon or pass over any land for the purpose of any survey and may affix and set up trigonometrical stations, survey marks, beacons, poles, stones or blocks, or for the purpose of inspecting any such land or stations or altering, repairing, moving or removing any trigonometrical station, survey mark, beacon, pole, stone or block;
 - (b) do all things necessary for survey or for any inspection, alteration, repair, move or removal as aforesaid;
 - (c) clear and keep clear of any growth land within a radius of twenty (20) metres of any trigonometrical station.
- (2) Where the owner or occupier of any land has refused or is unwilling to consent to the entry upon, or passing over, the land by the Director or any surveyor, the Director or the surveyor may apply to the Magistrates Court for an order to authorize such entry or passing over.
- (3) In the exercise of the powers under by this section, neither the Director nor any surveyor shall acquire any right other than that of the user only in or over the soil of any land.
- (4) The powers conferred by this section may also be exercised in relation to any trigonometrical station, survey marks, beacon etc, fixed, placed or erected by a surveyor, or his agent prior to the date of commencement of this Act and existing at that date.

- (5) Every surveyor shall, when practicable, give reasonable notice to the owner or occupier of the land of his intention to enter thereon. Where the owner or occupier cannot be found notice may be placed in a conspicuous place on the land.
- (6) In the exercise of the powers under this section, the Director and the surveyor shall do as little damage as may be practicable and in any case shall pay full compensation to any person entitled thereto for all damage sustained by any person by reason or in consequence of the exercise of such powers.

Provided that no compensation shall be payable in respect of any right of user acquired under this section.

- (7) In the case of damage caused by the Director or by any Government surveyor or any person acting on his instructions, the compensation shall be payable from the Revenue Fund, and in the case of damage caused by a surveyor other than a Government surveyor or his agent the compensation shall be paid by the surveyor. In the event of any disagreement arising as to whether or not compensation is payable or as to the amount payable, the matter shall be referred to a competent court.
- (8) Nothing in this section shall be deemed to authorise any person, except with the authority of the Director to alter, move or remove any trigonometrical station or standard survey mark erected or set up by a Government surveyor.

SURVEYOR'S POWER TO SEEK INFORMATION

21. (1) When any surveyor is in doubt as to the true boundary or limit of any land or is not familiar with any locality which he is employed to survey or as to any other matter affecting survey, he may question any person whom he thinks capable of giving him any relevant information.
- (2) Where any person being questioned refuses to answer the questions of the surveyor, the surveyor may apply to a Magistrates Court to have such person examined on oath.
- (3) Any person who disobeys an order made under sub-section (2) or knowingly gives information which is false in any material particular shall be guilty of an offence.

Penalty: Imprisonment for 3 months or fine of 20,000 VT or both.

PART 7 - PRESERVATION OF SURVEY MARKS

REMOVING OR DEFACING SURVEY MARKS

22. Any person other than a surveyor or a person working under the instructions of a surveyor who wilfully and unlawfully interferes with, removes, destroys, displaces, replaces or alters the position of any trigonometrical station, survey mark, beacon, pole, stone or block which has been fixed, placed or set up under the provisions of section 20 shall be guilty of an offence.

Penalty: Imprisonment for 6 months or fine of 50,000 VT. or both.

OBSTRUCTING SURVEYORS

23. Any person who wilfully obstructs or hinders the Director or any surveyor or their assistants in the exercise of their functions under this Act shall be guilty of an offence.

Penalty: Imprisonment for 3 months or fine of 20,000 VT. or both.

PART 8 - AUTHENTICATION OF PLANS

AUTHENTICATION OF PLANS

24. (1) For the purposes of registration under the Land Leases Act No. 4 of 1983 no land or tract of land shall be deemed to have been surveyed until the survey plan thereof has been authenticated by the signature of the Director.

(2) Every plan authenticated by the Director shall be conclusive evidence of the survey information comprised therein.

(3) Every plan purporting to bear the signature of the Director shall be deemed to be properly authenticated unless the contrary is proved.

CANCELLATION OF AUTHENTICATION

25. (1) Authentication of a plan shall be cancelled by the Director if -

(a) the plan is found to be inaccurate by reason of any error or omission in the survey; or

(b) the plan does not conform with the terms and conditions subject to which permission was granted for the survey of the land to which the plan relates.

(2) The Director shall upon the cancellation of authentication of any plan notify in writing the following -

(a) the owner of the land to which the plan relates;

(b) the surveyor who carried out the survey work; and

(c) the Director of Land Records.

PART 9 - AERIAL SURVEYS

AERIAL SURVEY

26. (1) Any person who intends to carry out any aerial photography of Vanuatu or any part of Vanuatu for use in mapping or similar purposes shall apply to the Director for approval.

(2) An application for aerial survey shall be submitted to the Director not less than one month before the date of the intended commencement of survey, or such shorter period as the Director may allow.

(3) Any person who has carried out any aerial photography for the purposes mentioned in subsection (1) shall furnish the Director with copies of all photographs taken for his inspection.

(4) The Director may retain copies of diagrams and photographs made from an aerial survey on payment of the cost thereof.

PART 10 - GENERAL

MINISTER'S POWER TO MAKE REGULATIONS

27. (1) The Minister may make regulations not inconsistent with this Act for the implementation of its purpose and provisions, and may prescribe anything that may be prescribed.
- (2) Without derogating from the generality of subsection (1), the Minister in such regulations may -
- (a) prescribe the manner in which surveys are to be made, the records to be kept by surveyors and the manner of keeping the same;
 - (b) prescribe the terms and conditions to which subdivisional surveys shall conform;
 - (c) prescribe the manner in which survey marks shall be constructed, maintained and preserved;
 - (d) provide for the readjustment of boundaries, areas, shapes and positions of any parcels of land surveyed before the commencement of this Act;
 - (e) prescribe the procedure for preparation, submission, amendment and addition to plans;
 - (f) provide for the forms and procedure for application and registration of surveyors;
 - (g) provide for the regulation of aerial surveys.

COMMENCEMENT

28. This Act shall come into force on the date of its publication in the Gazette.