

JOINT FAMILY HOMES AMENDMENT BILL

EXPLANATORY NOTE

1. This Bill provides for amendments to the Joint Family Homes Act 1950.

2. Under section 3 (1) (b) of that Act land cannot be settled as a joint family home if it is used by any person for business purposes or is occupied by any person who pays rent to the husband or wife. The wording precludes a settlement if the wife or any member of the family earns a few shillings by taking in washing or sewing or if a garage on the property is let. It is felt that such trifling deviations from the principle of the legislation should not deprive a home owner of its benefits. Consequently *clause 3* rewrites the provision so as to permit a settlement if the dwellinghouse and land are used *exclusively or principally* as a home for the husband and wife and such of the members of their household as for the time being reside in the home. The clause also increases from £4,000 to £5,000 the maximum value of the land which may be settled. In consequence of this increase, *clauses 13* and *14* of the Bill provide for corresponding increases in the amounts mentioned in sections 15 (1) (c) and 17 (b) of the Act.

3. *Clause 4* clarifies the basis for valuing a leasehold estate in land by providing that, if the lessee has an option to purchase or has agreed to purchase the land, the leasehold estate is to be valued as if it were an estate in fee simple: and that in other cases it is to be valued as a leasehold estate only.

4. *Clause 5* provides that applications to register joint family homes are not to be advertised in future unless the applicant requires this to be done and pays the prescribed advertising fee. Where applications are not advertised, the Registrar is to issue the certificate without waiting three months as at present, and the rights of creditors are to be safeguarded in the manner explained in *clause 10* of this note.

5. *Clause 6* provides that, where the persons on whom a joint family home is settled acquire an additional, new, substituted, or different registered estate or interest in the land, the Registrar shall thereupon register the Joint Family Home Certificate in respect of that estate or interest, and thus make the land continue to be a joint family home to the full extent of the owners' interest therein.

6. *Clauses 2* and *7* authorize the registration as joint family homes of residence sites held under the Mining Act 1926.

7. *Clause 8* provides that, where a settlement is made by only one of the spouses who will benefit, and the land is mortgaged, the other spouse must consent to the settlement and will thereupon become jointly and severally liable with the settlor for the liabilities of the settlor under the mortgage. This will make it unnecessary for mortgages to contain provisions requiring the execution of a deed of covenant in the event of a settlement and will save the expense of deeds of covenant. The clause also provides that, where a mortgage has been given before the settlement and secures future advances, all advances made after the settlement in accordance with the provision for future advances will stand charged upon the land as fully and effectively as they would have been if the land had not been settled as a joint family home.

8. *Clause 10* recasts section 8 (1) (e) of the Act which relates to the cancellation of the registration of Joint Family Home Certificates, and brings the provision into harmony with the amended wording of section 3 (1) (b) of the Act as set out in *clause 3* of the Bill. *Clause 10* also provides that the Registrar shall cancel the registration of a Joint Family Home Certificate in any case where the settlement is void as against the assignee in bankruptcy as explained in *clause 10 (a)* of this note.

9. *Clause 11* varies the class of cases in which a Court, Judge, or Magistrate may make an order in favour of a husband or wife for possession of a joint family home, for the cancellation of a Joint Family Home Certificate, or for the sale or lease of a joint family home and the disposition of the proceeds. The clause allows such an order to be made where there has been an order for maintenance or guardianship as well as where there has been a decree or order for divorce, nullity of marriage, judicial separation, or separation, but not where there has been a decree for restitution of conjugal rights. The jurisdiction of Magistrates' Courts under the section is restricted to making orders for possession in cases where no order in respect of the home has been made by the Supreme Court or any Judge thereof.

10. The principal Act, by section 7 (2) (d), restricts the rights of creditors to levy execution against a joint family home and, by section 14, makes special provision for the protection of creditors. Section 14 gives creditors a right to apply to the Supreme Court to have a settlement cancelled, or to have moneys raised by a sale or mortgage of the land and paid to them. Under this section the owners are protected against creditors to the extent of £2,000. *Clauses 9* and *12* of the Bill modify the £2,000 protection by providing—

(a) That, where the application is not advertised, the settlement shall be void as against the assignee in bankruptcy if the settlor becomes bankrupt within two years after the date of the registration of the Joint Family Home Certificate:

(b) That, on analogy to section 76 of the Bankruptcy Act 1908, where the owners have spent moneys in improving or paying off liabilities on a joint family home or in acquiring a better title to it within two years of an application made by a creditor to the Court under section 14 of the principal Act, then, if the Court directs a sale or mortgage of the land, the amount for which the owners would otherwise have protection is to be subject to reduction so that the fund available to meet the cost of the sale or mortgage and to pay creditors is to be at least equal to the amount so spent during that period.

11. *Clause 13* provides that amounts expended by an owner of a joint family home in acquiring a better title to the home, and sums which, in order to recoup amounts so expended, have been paid out of moneys raised by a sale or mortgage of the home, shall be exempt from gift duty.

12. *Clause 15* makes it clear that the only registration fee payable on any registration under this legislation is that prescribed by the regulations made under this legislation. It also provides that, in any case where for any reason a Joint Family Home Certificate is not issued in pursuance of an application therefor, the Registrar shall have a discretion to refund the fees paid for lodging or advertising the application or in anticipation of the issue and registration of a Joint Family Home Certificate.

13. *Clause 16* provides that Maori land cannot be settled as a joint family home without the consent of the Maori Land Court, and that the Court shall take into account the interests of the settlor or settlors when it is considering an application for its consent. Where Maori land is settled as a joint family home the provisions of the principal Act relating to the sale, transfer, mortgage, lease, or disposition of the joint family home are to be subject to the provisions of the Maori Land Act 1931.

Hon. Mr. Webb

JOINT FAMILY HOMES AMENDMENT

ANALYSIS

Title.	7. Settlements of residence sites granted under the Mining Act 1926.
1. Short Title.	8. Settlements of mortgaged land.
2. Interpretation.	9. Effect of bankruptcy where settlement is not advertised.
3. Land which may be settled as a joint family home.	10. Cancellation of registration.
4. Valuation of leasehold estates.	11. Provision for divorce, separation, &c.
5. Advertising of applications to be optional.	12. Rights of creditors.
6. Registration where additional interest in land is acquired.	13. Exemptions from gift duty.
	14. Exemptions from stamp duty.
	15. Registration fees.
	16. Settlements of Maori land.

A BILL INTITULED

AN ACT to amend the Joint Family Homes Act 1950. Title.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of
5 the same, as follows:—

1. This Act may be cited as the Joint Family Homes Amendment Act 1951, and shall be read together with and deemed part of the Joint Family Homes Act 1950 (hereinafter referred to as the principal Act). Short Title. 1950, No. 43

Interpretation.

2. Section two of the principal Act is hereby amended—

(a) By inserting, after the definition of the term “land”, the following definition:—

“ ‘Mining residence site’ means any residence site for which a licence has been granted under the Mining Act 1926 or under any former Mining Act:” 5

(b) By omitting from the definition of the term “registered proprietor” the words “in relation to any land”, and substituting the words “in relation to any mining residence site, means the person registered in the office of a Mining Registrar as the licensee of the site; and, in relation to any other land”: 10

(c) By omitting from the definition of the term “Registrar” the words “in relation to any land”, and substituting the words “in relation to any mining residence site, means the Mining Registrar in whose office the licence is registered; and, in relation to any other land”. 15 20

See Reprint of Statutes, Vol. V, p. 943

Land which may be settled as a joint family home.

3. Section three of the principal Act is hereby amended—

(a) By repealing paragraph (b) of subsection one, and substituting the following paragraph:— 25

“(b) The dwellinghouse and land are used exclusively or principally as a home for the husband and wife and such of the members of their household (if any) as for the time being reside in the home; and” 30

(b) By omitting the words “four thousand pounds” in each place where they occur, and substituting in each case the words “five thousand pounds”. 35

Valuation of leasehold estates.

4. Section three of the principal Act is hereby further amended by inserting, after subsection one, the following subsection:—

“(1A) For the purposes of paragraph (e) of subsection one of this section, but for no other purpose, the capital value within the meaning of the Valuation of Land Act 1925 of any leasehold estate in land shall,— 40

“(a) Where the lessee or lessees have an option to purchase or have agreed to purchase the

Ibid., Vol. VII, p. 1030

estate in fee simple in the land, be determined as if the leasehold estate were an estate in fee simple:

5 “ (b) Where the lessee or lessees have not an option to purchase and have not agreed to purchase the estate in fee simple in the land, be determined with reference to the leasehold estate only.”

10 5. (1) Section four of the principal Act is hereby amended by repealing subsection two, and substituting the following subsection:— Advertising of applications to be optional.

15 “ (2) If the applicant or applicants so request in writing, the Registrar shall, upon receipt of the application and of the prescribed advertising fee, give notice thereof in the prescribed manner.”

(2) Section five of the principal Act is hereby amended by omitting from subsection one the words “ Any person ”, and substituting the words “ Where the Registrar gives notice as aforesaid, any person ”.

20 (3) Section six of the principal Act is hereby amended by omitting from subsection one the words “ Where the time limited for lodging a caveat against any such application has expired and all caveats so lodged have been withdrawn or expired, and the Registrar is satisfied
25 that the application has been duly made under this Act ”, and substituting the words “ Where the Registrar is satisfied that the application has been duly made under this Act, and (in the case of any application in respect of which the Registrar has given notice as aforesaid)
30 when the time limited for lodging a caveat against any such application has expired and all caveats so lodged have been withdrawn or expired ”.

35 (4) Where any application to register any land as a joint family home has been made before the date of the commencement of this Act and the Registrar has not given notice of the application under subsection two of section four of the principal Act before that date, the Registrar shall not give notice thereof if—

40 (a) The prescribed advertising fee was not paid before that date and is not thereafter paid before the Registrar issues a Joint Family Home Certificate in respect of the land; or

45 (b) The applicant or applicants apply for a refund of the prescribed advertising fee before the notice is given.

Registration
where additional
interest in
land is
acquired.

6. Section six of the principal Act is hereby amended by adding the following subsection:—

“ (3) Where an additional, new, substituted, or different estate or interest in any land for the time being settled as a joint family home is acquired by the husband and wife as joint tenants or by the survivor of them and they become the registered proprietors, or the survivor of them becomes the registered proprietor, of that estate or interest, the Registrar shall forthwith thereafter, without payment of any further fee, register the Joint Family Home Certificate in respect of that estate or interest in the manner prescribed by subsection two of this section; and upon that registration all the provisions of this Act shall apply to that estate or interest as if it had been settled as a joint family home by the settlor or settlors specified in the Joint Family Home Certificate.”

Settlements of
residence sites
granted under
the Mining
Act 1926.

7. (1) Section six of the principal Act is hereby amended by adding to subsection two the following paragraph:—

“ (c) Where the land being settled or any part of it is a mining residence site, by registering the certificate in like manner as instruments of transfer affecting the licence are registered.”

(2) Section eight of the principal Act is hereby amended by adding to subsection five the words “ and, in the case of a mining residence site, by the Registrar causing a memorial of the cancellation of the certificate to be entered in the register against the record copy of the licence ”.

Settlements
of mortgaged
land.

8. (1) The principal Act is hereby amended by adding to subsection one of section four the following proviso:—

“ Provided that, where the land is subject to any mortgage, charge, or encumbrance and the husband and wife are not both parties to the application, it shall be necessary (after the commencement of this proviso) for the one of them who is not a party to the application to consent to the application.”

(2) Section seven of the principal Act is hereby amended by adding to subsection one the following paragraph:—

5 “(c) If either the husband or wife was not a settlor in respect of the joint family home but consented to the application to register the land as a joint family home in accordance with the proviso to subsection one of section four of this Act, then, notwithstanding anything to the contrary in this Act or any other Act or any rule of law, the husband and wife shall become jointly and severally liable (so far as the settlor was liable) for the payment of all principal, interest, and other moneys secured over the land; and shall also become jointly and severally liable to the covenantee (so far as the settlor was liable to the covenantee) for the fulfilment and observance of every covenant and agreement contained or implied in the mortgage, charge, or encumbrance; and the covenantee shall have remedy directly against the husband and wife or either of them accordingly; but nothing in this paragraph shall extinguish the liability of any other person.”

(3) Section seven of the principal Act is hereby further amended by adding the following subsection:—

30 “(5) Where any mortgage, charge, or encumbrance over any land which is settled as a joint family home was given (whether before or after the commencement of this subsection) by the settlor or settlors before the land was so settled (whether the settlement was before or after the commencement of this subsection), and the mortgage, charge, or encumbrance secured future advances to the settlor or settlors, all advances to the settlor or settlors which are made in accordance with the provision for future advances after the registration of the Joint Family Home Certificate (whether the advances are made before or after the commencement of this subsection) shall be charged upon the land as fully and effectively as they would have been if the land had not been settled as a joint family home.

Effect of
bankruptcy
where
settlement
is not
advertised.

See Reprint
of Statutes,
Vol. I, p. 466

Cancellation of
registration.

Provision for
divorce,
separation, &c.

9. Section seven of the principal Act is hereby amended by adding to paragraph (d) of subsection two the following further proviso:—

“ Provided also that, in any case where the Registrar has issued a Joint Family Home Certificate without giving notice in the prescribed manner of the application to register the land as a joint family home, if the settlor is adjudicated a bankrupt under the Bankruptcy Act 1908 within two years after the date of the registration of the Joint Family Home Certificate, the settlement shall be void as against the assignee in bankruptcy.”

10. (1) Section eight of the principal Act is hereby amended by repealing paragraph (e) of subsection one, and substituting the following paragraph:—

“ (e) Where neither the husband nor the wife resides on the land; or where the land has ceased to be used exclusively or principally as a home for the husband and wife or either of them and for such of the members of their, his, or her household (if any) as for the time being reside in the home:”

(2) Section eight of the principal Act is hereby further amended by inserting, after subsection one, the following subsection:—

“ (1A) The Registrar shall cancel the registration of a Joint Family Home Certificate, as to the whole or any part of the land to which the certificate relates, on the application of the assignee in bankruptcy in any case where the settlement is void as against the assignee under section seven of this Act.”

(3) Section eight of the principal Act is hereby further amended by omitting from subsection two the words “ the last preceding subsection ”, and substituting the words “ subsection one of this section ”.

11. The principal Act is hereby amended by repealing section eleven, and substituting the following section:—

“ 11. Where any decree or order is made by a Court, Judge, or Magistrate of competent jurisdiction for divorce, nullity of marriage, judicial separation, separation, maintenance, or guardianship, and the decree or

order relates to a husband and wife who are joint owners of a joint family home or to the maintenance or guardianship of the children of the marriage of the husband and wife, then, at the same or any subsequent time,—

5 “ (a) The Supreme Court or any Judge thereof may make such order as the Court or Judge thinks fit for the possession of the joint family home, or for the cancellation of the registration of the Joint Family Home Certificate, or for the
10 sale or lease of the joint family home and the disposal of any moneys received in consequence of the sale or lease thereof:

“ (b) If no order under this section has been made in respect of the joint family home by the
15 Supreme Court or any Judge thereof, a Magistrate’s Court may make such order as the Magistrate’s Court thinks fit for the possession of the joint family home.”

12. (1) Section fourteen of the principal Act is
20 hereby amended by repealing subsections one and two, and substituting the following subsections:—

Rights of
creditors.

“ (1) Subject to the provisions of this section, the
Supreme Court, on an application in respect of any joint
family home made by any creditor or assignee in
25 bankruptcy who may benefit in consequence, and after notice has been given to the owner or owners of the joint family home, may—

“ (a) Direct the cancellation of the registration of
30 the Joint Family Home Certificate as to any part of the land which is not essential for use in connection with the dwellinghouse in which the owner or owners of the land reside and have their home:

“ Provided that no such direction shall be
35 given without the consent of the owner or owners of the land if the effect of the cancellation will be to reduce the net value of the land which remains settled as a joint family home to two thousand pounds or less:

40 “ (b) Direct a mortgage or sale of the whole of the land and a distribution of the money borrowed or of the proceeds of sale in accordance with this section:

“ Provided that, unless the owner or owners consent to a greater sum being borrowed, the greatest sum which may be so borrowed shall be the amount two thousand pounds less than the net value of the land, or the amount determined under subsection two A of this section, whichever amount is the greater. 5

“ (1A) No application to the Supreme Court under subsection one of this section shall be made unless,— 10

“ (a) The net value of the land settled as a joint family home exceeds two thousand pounds at the date of the application; or

“ (b) Within two years of the date of the application, the husband and wife have, or either of them has, erected buildings on or otherwise improved the land settled as a joint family home, or repaid any mortgage, charge, or encumbrance secured over the land, or acquired any additional, new, substituted, or different estate or interest in the land, or provided any money which has been expended for or towards any such purpose. 15 20

“ (2) On any such mortgage or sale, the money borrowed or the proceeds of sale shall be paid to trustees appointed by the Court, and held by the trustees upon trust— 25

“ (a) In the event of a sale, to apply the proceeds in the discharge of all mortgages, charges, and encumbrances affecting the land: 30

“ (b) In the event of either a mortgage or sale, to pay out of the money borrowed or the balance of the proceeds of sale—

“ (i) All costs and expenses arising out of, or incurred in connection with, the mortgage or sale and the administration of the money borrowed or the proceeds of sale, but not any costs or expenses arising out of or incurred in connection with the administration of the sum mentioned in paragraph (c) of this subsection after that sum has been set aside as provided in that paragraph; and 35 40

“ (ii) All gift duty which becomes payable in consequence of the mortgage or sale other than gift duty in respect of a gift out of the sum set aside under paragraph (c) of this subsection:

5 “ (c) In the event of a sale, to set aside out of the balance of the proceeds of sale either the sum of two thousand pounds or the amount determined under subsection two B of this section, whichever sum is the lesser; and to hold the sum so set aside upon the trusts set out in subsection three of this section:

10 “ (d) In the event of either a mortgage or sale, to hold the balance of the money borrowed or of the proceeds of sale upon the trusts set out in subsection five of this section.

15 “ (2A) The amount which, by paragraph (b) of subsection one of this section, is required to be determined under this subsection shall be equal to the total of—

20 “ (a) The amount of the sums which, within two years of the date of the application to the Supreme Court under this section, have been expended by the owners of the joint family home, or either of them, in or towards erecting buildings on or otherwise improving the land and of any other sums provided by the owners of the joint family home, or either of them, during the period and expended for or towards any such purpose; and

25 “ (b) The amount of the sums expended by the owners of the joint family home, or either of them, during that period in or towards repaying any mortgage, charge, or encumbrance secured over the land or in or towards acquiring any estate or interest in the land, and of any other sums provided by the owners of the joint family home, or either of them, during the period and expended for or towards any such purpose.

“(2B) The amount which, by paragraph (c) of subsection *two* of this section, is required to be determined under this subsection shall be ascertained by deducting from the amount of the proceeds of sale—

- “(a) The amount which, under paragraph (a) of subsection two of this section, is applied in the discharge of mortgages, charges, and encumbrances affecting the land; and
 “(b) The amount determined under subsection *two A* of this section.”

(2) Section fourteen of the principal Act is hereby further amended by omitting from subsection three the words “The said sum of two thousand pounds”, and substituting the words “Any sum”.

Exemptions
from gift duty.

13. Section fifteen of the principal Act is hereby amended—

- (a) By inserting in paragraph (c) of subsection one, after the words “for the purpose of improving the joint family home” in each place where they occur, the words “or of acquiring any additional, new, substituted, or different estate or interest therein”:
 (b) By omitting from the second proviso to paragraph (c) of subsection one the words “that purpose”, and substituting the words “any such purpose”:
 (c) By omitting from the second proviso to paragraph (c) of subsection one the words “four thousand pounds”, and substituting the words “five thousand pounds”:
 (d) By inserting in subparagraph (i) and also in subparagraph (ii) of paragraph (e) of subsection one, after the words “to pay for improvements to the joint family home”, the words “or for acquiring any additional, new, substituted, or different estate or interest therein”.

Exemptions
from stamp
duty.

14. Section seventeen of the principal Act is hereby amended by omitting from the proviso to paragraph (b) the words “four thousand pounds” in each place where they occur, and substituting in each case the words “five thousand pounds”.

15 The principal Act is hereby amended by inserting after section seventeen, the following section:—

Registration fees.

“ 17A. (1) No fees other than those prescribed by any regulation made under this Act shall be payable on the registration or on the cancellation of the registration of a Joint Family Home Certificate.

“ (2) Where any application to register any land as a joint family home has been lodged with the Registrar either before or after the commencement of this section and for any reason whatsoever the Registrar has not issued and is satisfied that he will not thereafter issue a Joint Family Home Certificate in accordance with the application, the Registrar may refund to the person or persons who made the application the whole or such part as he thinks fit of the fees paid to the Registrar by that person or those persons in respect of the lodging or advertising of the application or in anticipation of the issue and registration of a Joint Family Home Certificate in respect of the land; and the amount so refunded shall be paid out of the Public Account without further appropriation than this section.”

16. The principal Act is hereby amended by inserting after the said section seventeen A, the following section:—

Settlements of Maori land.

“ 17B. (1) No Maori land within the meaning of the Maori Land Act 1931 shall be settled as a joint family home without the consent of the Maori Land Court, which Court shall take into account the interests of the settlor or settlers when it is considering an application for its consent. Where Maori land is settled as a joint family home with the consent of the Maori Land Court, nothing in the Maori Land Act 1931 shall require the confirmation of the settlement.

See Reprint of Statutes, Vol. VI, p. 103

“ (2) Where Maori land is settled as a joint family home, the provisions of this Act relating to the sale, transfer, mortgage, lease, or disposition of the joint family home shall be subject to the provisions of the Maori Land Act 1931.”