

JOINT FAMILY HOMES BILL

EXPLANATORY NOTE

PROVISION for the establishment of family homes was first made in the Family Homes Protection Act, 1895, which provided that any owner of land on which he resided and had his home might settle the land for the use of the settlor and his wife and family under a scheme which terminated when the settlor had died and all his children had attained the age of twenty-one years or died under that age. That Act protected the home against claims by creditors and also exempted it from stamp duty and death duty.

The legislation, though re-enacted as Part I of the Family Protection Act, 1908, has been virtually a dead letter from its inception because—

- (a) The value of the land which could be settled was limited to £1,500; and
- (b) The home was liable to be broken up while it was still needed by the widow or tied up after the parents had died and the children had ceased to use it.

Children move away from home much more readily and at a much earlier age than they did in 1895 when the legislation was passed, or even in 1908 when it was re-enacted.

The present Bill provides a new scheme modelled substantially on the one embodied in the previous enactments, but adapted and modified to meet present day conditions. It enables a man and his wife to establish a family home of a value not exceeding £4,000. It aims at promoting a sense of dual ownership under which the family home will belong, not to the husband or wife separately, but to both of them jointly so as to pass to the survivor on the death of one of them. To encourage the adoption of the new scheme, provision is made that, provided the settlor is solvent at the date of the settlement, the settled home shall be protected against the claims of creditors to the extent of £2,000, and shall to that extent be exempt from death duties when it passes on the death of one of the beneficiaries to the survivor. The settled home is also protected from gift duty and stamp duty on the creation of the settlement.

Clause 3 provides that a husband and wife or either of them may settle land the value of which does not exceed £4,000 as a joint family home if they reside and have their home in a dwellinghouse on the land, if the dwellinghouse and land are used exclusively for residential purposes, and if the settlement will not defeat creditors when it is made.

Clauses 4, 5, and 6 provide machinery for the registration of joint family homes and for enabling creditors to oppose registration. They are modelled on corresponding provisions in the Family Protection Act, 1908.

Clause 7 provides that on the registration of a Joint Family Home Certificate the land shall vest in the husband and wife as joint tenants. It also provides that, while the certificate remains uncanceled, the husband and wife shall have equal rights to the ownership and possession of the land, the land shall devolve on the death of one of them to the survivor, the husband and wife or the survivor of them may sell, mortgage, lease, or otherwise dispose of the land, and (subject to the qualifications specified) the land shall be protected against creditors to the extent of £2,000. Unlike an ordinary joint tenancy neither has power to sell his or her undivided interest while both are living.

Clause 8 provides for a cancellation of a Joint Family Home Certificate where the husband and wife or the survivor of them applies for a cancellation, where they have both died or ceased to be the owners of the land, where the Court orders, where the land has ceased to be used for residential purposes and it is unlikely that the husband and wife will again take up residence or make their home in a dwellinghouse on the land or that either of them will do so, or where the District Land Registrar or Registrar of Deeds considers that the certificate should not have been issued.

Clause 9 provides that the cancellation of a Joint Family Home Certificate in respect of any land terminates the settlement in respect of that land; that, where the husband and wife are both living and are joint owners of the land when the certificate is cancelled, the land shall revert in the settlor or settlors; and that, subject to these qualifications, the cancellation of the certificate does not affect existing interests in the land.

Clause 10 provides for disputes regarding a joint family home to be decided in a summary manner.

Clause 11 provides that in the event of divorce or separation the Court may determine who is to have possession of the home; or may direct a sale or lease of the home or the cancellation of the registration of the Joint Family Home Certificate.

Clauses 12 and 13 follow sections 18 and 19 of the Family Protection Act, 1908. They declare that a joint family home may be taken compulsorily, and is not relieved from liability in respect of fencing, drainage, water supply, electricity, rates, taxes, and liens under the Wages Protection and Contractors' Liens Act, 1939.

Clause 14 modifies the general protection against debts conferred by *clause 7 (2) (d)* by providing that, where the value of the land exceeds £2,000, the Court, on the application of a creditor or assignee in bankruptcy who may benefit, may direct the cancellation of the registration of the Joint Family Home Certificate as to part of the land, or the mortgage or sale of the land. The owners are in each case protected to the extent of £2,000. Money realized from a mortgage or sale under the clause is to be paid to trustees appointed by the Court as on a sale in a partition action. See section 106 of the Property Law Act, 1908. In the case of a sale £2,000 is to be set aside for the beneficiaries under the settlement and, while it is in the hands of the trustees, it is protected against creditors and may be given by one beneficiary to the other notwithstanding that the gift defeats the claims of creditors of the donor. Except for this, the share of each beneficiary in the money borrowed or in the proceeds of sale is to be applied, in accordance with the directions of the Court, in payment of the debts of that person; and any balance is to be paid to that person.

Clause 15 provides that no gift duty shall be payable in respect of a settlement of any land as a joint family home, or in respect of any money expended by a beneficiary in repaying mortgages secured on the home at the date of the settlement. By *clause 3 (1) (e)* the value of any land settled under the provisions of the Bill is limited to £4,000. *Clause 15* also provides that money spent in improving a home is to be exempt from gift duty except to the extent that the amount so expended, when added to the original value of the land, exceeds £4,000. Exemption from gift duty is also granted in respect of proper adjustments between the beneficiaries where a Joint Family Home Certificate is cancelled or the beneficiaries derive money from a sale, mortgage, lease, or disposition of the land. The clause makes it clear that gift duty shall be payable where any beneficiary obtains any money or benefit, to which he or she would not have been entitled apart from the settlement, as a result of the cancellation of any such certificate or as a result of any such sale, mortgage, lease, or disposition.

Clause 16 provides that a joint family home shall be exempt, to the extent of £2,000, from estate duty and succession duty in the estate of the first joint owner to die, and from inclusion in the value of the surviving joint owner's succession. This provision does not affect the rate of estate duty on the other assets of the estate.

Clause 17 provides that applications, certificates, and declarations for the purposes of the Act shall be exempt from stamp duty but that, in the case of an application to cancel the registration of a Joint Family Home Certificate where the value of the land has increased since the settlement, the exemption shall be limited to £4,000.

Clause 18 gives power to make regulations for giving effect to the provisions of the Act and for the due administration thereof.

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

*House of Representatives,
19th October, 1950.*

Hon. Mr. Webb

JOINT FAMILY HOMES

Title.	ANALYSIS
1. Short Title.	11. Provision for divorce or separation.
2. Interpretation.	12. Home not relieved from being taken compulsorily.
3. Provision for joint family homes.	13. Home not relieved from certain liabilities.
4. Application to register a joint family home.	14. Rights of creditors where value of a joint family home exceeds £2,000.
5. Creditors may oppose registration.	15. Exemptions from gift duty.
6. Registration.	16. Exemptions from death duty.
7. Effect of registration.	17. Exemptions from stamp duty.
8. Cancellation of registration.	18. Regulations.
9. Effect of cancellation.	
10. Disputes regarding a joint family home to be decided in a summary way.	

A BILL INTITULED

AN ACT to Provide for Joint Family Homes and for Exemptions from Gift Duty, Death Duty, and Stamp Duty in respect thereof. Title.

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

1. This Act may be cited as the Joint Family Homes Act, 1950. Short Title.

10 2. In this Act, unless the context otherwise requires,— Interpretation.
“ Husband and wife ”, in relation to any joint family home, means the husband and wife on whom the joint family home is settled under this Act:

- “ Joint family home ” means any land settled as a joint family home under this Act:
- “ Joint Family Home Certificate ” means a Joint Family Home Certificate issued by a Registrar under this Act: 5
- “ Land ” includes all estates and interests, whether freehold or chattel, in real property:
- “ Prescribed ” means prescribed by this Act or by regulations made under this Act:
- “ Registered proprietor ”, in relation to any land, 10 means the person registered as proprietor of the land under the Land Transfer Act, 1915, or the person entitled to the land under any instrument registered under the Deeds Registration Act, 1908: 15
- “ Registrar ”, in relation to any land, means the District Land Registrar or the Registrar of Deeds for the land registration district in which the land is situated.

See Reprint of
Statutes, Vol.
VII, p. 1162
Ibid., p. 1143

Provision
for joint
family homes.

3. (1) A husband and his wife or either of them may 20 settle any land on the husband and wife as a joint family home under this Act where—

- (a) The husband and wife reside and have their home in a dwellinghouse erected on the land; and 25
- (b) The dwellinghouse and land are used exclusively for residential purposes, and are not used by any person for business purposes or occupied by any person who pays rent to the husband or wife; and 30
- (c) The settlement is made by the registered proprietor of the land; and
- (d) The settlor, or (where there are two settlors) each settlor, is able to pay all his or her debts, other than debts charged on the land, without 35 the aid of the land; and
- (e) The capital value of the land, within the meaning of the Valuation of Land Act, 1925, does not exceed four thousand pounds; and
- (f) Neither the husband nor his wife is the owner 40 or a joint owner of any other joint family home registered as such under this Act.

Ibid., p. 1030

(2) If the Registrar considers that the said capital value of the land may exceed four thousand pounds, he may require the settlor or settlors to furnish to him, as evidence of that value, a certificate given by the Valuer-
5 General under the *next succeeding* subsection setting forth the capital value of the land at such date as the Registrar may specify.

(3) It shall be the duty of the Valuer-General, on the application in the prescribed manner of the person or
10 persons who may settle any land as a joint family home if the capital value thereof does not exceed four thousand pounds, and on payment of such fee as may be required by the Valuer-General, to make a valuation of the land
15 as at such date as the applicant or applicants may specify, and to give to the applicant or applicants a certificate setting forth the date as at which the valuation is made, the area and description of the land, and the capital value of the land at that date as determined by him.

(4) Any person to whom any such certificate is given may object to the valuation, by notice in writing delivered to the Valuer-General within one month after the receipt by that person of the certificate. Any such
20 objection shall be heard and determined as if it was an objection under section fourteen of the Valuation of Land Act, 1925; and where a valuation is varied as a result of any such objection the Valuer-General shall give an amended certificate to the person on whose objection the valuation was varied.

See Reprint
of Statutes,
Vol. VII,
p. 1036

(5) Unless it is shown that the valuation to which any such certificate refers has been varied as a result of an objection as aforesaid, the certificate shall for the purposes of this Act be conclusive evidence of the matters therein set forth as aforesaid.

4. (1) Any person or persons who may settle any land as a joint family home as aforesaid may apply in the prescribed manner to the Registrar to register the land as a joint family home under this Act.

Application to
register a
joint family
home.

(2) On receipt of the application the Registrar shall
40 give notice thereof in the prescribed manner.

5. (1) Any person claiming to be a creditor of an applicant, or claiming any estate or interest in the land, may, within three months after the date of the first publication of the notice, lodge with the Registrar a
45 caveat, in the prescribed manner and form, forbidding the granting of the application.

Creditors may
oppose
registration.

(2) On receipt of any caveat within the time limited therefor the Registrar shall cause notice thereof, in the prescribed manner and form, to be served on each applicant, and shall not proceed further with the application until the caveat is withdrawn or removed. 5

(3) Any caveat may be withdrawn by the caveator by notice in the prescribed form.

(4) Where a caveat has been lodged, the applicant or applicants may withdraw the application by notice in the prescribed form, or may summon the caveator to attend before the Supreme Court to show cause why the caveat should not be removed. 10

(5) Upon the hearing of the summons, and on proof of the service thereof, the Court may make such order in the premises, either *ex parte* or otherwise, as to the Court seems meet. 15

(6) Without limiting the generality of the *last preceding* subsection, the Court may order the caveat to be removed as to part of the land comprised in the application, and in any such case the applicant or applicants may amend the application in terms of the order. 20

(7) If, for the space of one month after receipt of notice of the lodging of a caveat or such extended time as the Court on summary application may direct, the caveator is not summoned as hereinbefore provided, the application shall be deemed to have lapsed, and the Registrar shall proceed no further therewith. 25

(8) No order shall be made for the withdrawal of a caveat unless the applicant in respect of whom the caveat is lodged satisfies the Court that he or she can pay and discharge his or her debts and liabilities other than those charged on the land, without recourse to the land proposed to be settled. 30

Registration.

6. (1) 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 that the application has been duly made under this Act, the Registrar shall issue a Joint Family Home Certificate in the prescribed form to the effect that the land to which the application relates is entitled to be settled as a joint family home under this Act, which certificate shall specify the settlor or settlers and the husband and wife on whom the land is settled. 35
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(2) Upon the issue of the Joint Family Home Certificate, the Registrar shall forthwith proceed to register it in the following manner:—

5 (a) Where the land being settled or any part of it is subject to the provisions of the Land Transfer Act, 1915, by recording in the register, and on the duplicate grant, certificate of title, lease, or other instrument evidencing title thereto the following memorandum: “Settled as a
10 joint family home under the Joint Family Homes Act, 1950, on ”:

See Reprint of Statutes, Vol. VII, p. 1162

(b) Where the land being settled or any part of it is subject to the provisions of the Deeds Registration Act, 1908, by registering the certificate
15 in like manner as deeds affecting the land are registered under that Act.

Ibid., p. 1143

7. (1) Upon the registration of a Joint Family Home Certificate as aforesaid—

Effect of registration.

20 (a) The land to which the certificate relates shall become settled as a joint family home under this Act; and

(b) Subject to the provisions of this Act, the
25 husband and wife on whom the land is settled shall become the legal and beneficial owners of the land as joint tenants subject to all mortgages, charges, incumbrances, estates, and interests then affecting the land; and, if the husband and wife are not already registered
30 proprietors of the land as joint tenants, the land shall thereupon vest in them as joint tenants without transfer or conveyance, but subject to all mortgages, charges, incumbrances, estates, and interests then affecting
35 it.

(2) While any Joint Family Home Certificate in respect of any joint family home remains uncanceled the following provisions shall apply:—

40 (a) The husband and wife shall have equal rights in connection with the ownership and possession of the joint family home while they are both living:

(b) On the death of the husband or wife, whichever
45 first occurs, the joint family home shall become the property of the survivor of them, subject to all mortgages, charges, incumbrances, estates, and interests then affecting it:

(c) The husband and wife or the survivor of them may at any time sell, transfer, mortgage, lease, or otherwise dispose of the joint family home:

Provided that, while they are both living, neither of them may sell, transfer, mortgage, lease, or otherwise dispose of his or her undivided estate and interest in the joint family home: 5

(d) Subject to sections *twelve* and *thirteen* of this Act, the estate and interest of the husband and wife or the survivor of them in the joint family home shall continue, personal, absolute, indefeasible, and unaffected while it remains a joint family home notwithstanding any bankruptcy, assignment, judgment, order, mortgage, charge, incumbrance, execution, dealing, matter, or thing which but for this paragraph could directly or indirectly have affected any such estate or interest: 10 15

Provided that nothing in this paragraph shall apply to or affect— 20

(i) Any sale, transfer, mortgage, lease, or disposition validly completed under the *last preceding* paragraph; or

(ii) Any mortgage, charge, incumbrance, estate, or interest to which subsection *four* of this section applies; or 25

(iii) Any mortgage, lease, sale, or disposition by direction of any Court under section *ten*, section *eleven*, or section *fourteen* of this Act. 30

(3) Unless the Joint Family Home Certificate in respect of any land is sooner cancelled, the land shall continue to be a joint family home until the death of the survivor of the husband and wife on whom it is settled. 35

(4) Nothing in this Act shall affect any mortgage, charge, incumbrance, estate, or interest which affected any land settled as a joint family home before the registration of the Joint Family Home Certificate in respect of the land, or any mortgage, charge, incumbrance, estate, or interest in the land created by both the husband and the wife mentioned in the certificate while they are joint owners of the joint family home or created by the survivor of them. 40 45

8. (1) The Registrar may cancel the registration of a Joint Family Home Certificate, as to the whole or any part of the land to which the certificate relates, in any of the following cases:—

Cancellation of registration.

- 5 (a) Where the husband and wife apply, or the survivor of them applies, in the prescribed manner to the Registrar for the cancellation:
- (b) Where the husband and wife have both died:
- 10 (c) Where the husband and wife cease to be joint owners of the land as to which the certificate is cancelled while they are both living or where the survivor of them ceases to be the owner of that land:
- 15 (d) Where the Court so orders under section *eleven* or section *fourteen* of this Act:
- (e) Where the land to which the certificate relates has ceased to be used exclusively for residential purposes, and the husband and wife have both ceased to reside and have their home in a dwellinghouse or in any part of a dwellinghouse on the land, and it is unlikely that they will again take up residence and make their home in a dwellinghouse or in any part of a dwellinghouse on the land or that either of them will do so:
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- 25 (f) Where the certificate should not have been issued.
- (2) No certificate shall be cancelled under paragraph (e) or paragraph (f) of the *last preceding*
- 30 subsection—
- (a) Unless the Registrar has, not less than twenty-eight days before the cancellation of the certificate, given notice, by registered letter addressed to the owner or owners of the joint family home, at the said home or at any other address known to him, of his intention to cancel the registration of the Joint Family Home Certificate:
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- (b) Until every summons to the Registrar to attend before a Magistrate's Court to show cause why the certificate should be cancelled has been finally disposed of by that Court:
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- (c) In contravention of any order of a Magistrate's Court under subsection *four* of this section,

(3) Where a notice is sent by post in the manner prescribed by paragraph (a) of the *last preceding* subsection it shall be deemed to have been given at the time at which the letter would have been delivered in the ordinary course of post. 5

(4) Any owner of a joint family home to whom any such notice has been given may, within twenty-eight days after the service on that owner of the said notice, summon the Registrar to attend before a Magistrate's Court to show cause why the certificate should be cancelled; and the Court may make such order in the premises as it considers just. 10

(5) The cancellation of the registration of any Joint Family Home Certificate shall be effected, in the case of land which is subject to the Land Transfer Act, 1915, by the Registrar causing a memorial of the cancellation of the certificate to be entered in the register against the appropriate title; and, in the case of land which is subject to the Deeds Registration Act, 1908, by the Registrar causing an entry thereof to be made under the proper head or title in the index book in the Deeds Register Office. 15 20

See Reprint
of Statutes,
Vol. VII,
p. 1162

Ibid., p. 1143

Effect of
cancellation.

9. Upon the cancellation of a Joint Family Home Certificate as aforesaid—

(a) The land as to which the certificate is cancelled shall cease to be settled as a joint family home under this Act: 25

(b) If the husband and wife mentioned in the certificate are both living and have not previously ceased to be joint owners of the land as to which the certificate is cancelled, the settlor or settlors of the land shall become the registered proprietor or registered proprietors of the land as if the land had not been settled, subject to all mortgages, charges, incumbrances, estates, and interests affecting the land when the certificate is cancelled; and, where the land is not already vested in the settlor or settlors, it shall thereupon revert in the settlor or settlors without transfer or conveyance, but subject to all mortgages, charges, incumbrances, estates, and interests affecting the land when the certificate is cancelled: 30 35 40

(c) Except as hereinbefore provided, the cancellation of the Joint Family Home Certificate as to any land shall not affect any estate or interest of any owner or other person in, or any mortgage, charge, or incumbrance over, the land when the certificate is cancelled.

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10. (1) In any question between the husband and wife as to any matter affecting a joint family home either party may apply by summons or otherwise in a summary way to any Judge of the Supreme Court, or, if the value of the property in dispute is within the limits of the jurisdiction of an inferior Court, to that Court; and, subject to this Act, the Judge or Court hearing any such application may make such order with respect to the joint family home, and as to the costs of and consequent upon the application, as the Judge or Court thinks fit, or may direct the application to stand over from time to time, and any inquiry touching the matter in question to be made in such manner, as the Judge or Court thinks fit; and may, if either party so requires, hear the application in a private room.

Disputes regarding a joint family home to be decided in a summary way. Cf. Married Women's Property Act, 1908, s. 23 (Reprint of Statutes, Vol. III, p. 862.)

(2) Nothing in this section shall prevent any appeal against any such order.

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11. Where any decree or order is made by a Court of competent jurisdiction for divorce, nullity of marriage, restitution of conjugal rights, judicial separation, or separation, and the decree or order relates to a husband and wife who are joint owners of a joint family home, the Court making the decree or order may, at the same time or thereafter, make such order as it 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 sale or lease of the joint family home and the disposal of any moneys received in consequence of the sale or lease thereof.

Provision for divorce or separation.

12. Nothing in this Act shall prevent any joint family home, or any part thereof, from being taken compulsorily under any Act providing for the compulsory taking of land.

Home not relieved from being taken compulsorily.

Home not
relieved from
certain
liabilities.

13. Nothing in this Act shall relieve any joint family home from any liability which, if this Act had not been passed, would from time to time attach thereto in respect of—

- (a) The erection and maintenance of boundary fences under any Act for the time being in force; or 5
- (b) Burdens and obligations imposed on the joint family home under any Act for the time being in force relating to drainage or water supply or the supply of electricity; or 10
- (c) The payment of rates, taxes, and burdens levied or imposed for the time being on the joint family home under any Act, or authorized to be so levied or imposed by any local authority or other body; or 15
- (d) Liens on the joint family home under the Wages Protection and Contractors' Liens Act, 1939: 15

1939, No. 27

Provided that no sale of any such joint family home shall take place unless and until execution against the goods and other lands of the person primarily liable has been returned unsatisfied. 20

Rights of
creditors where
value of joint
family home
exceeds £2,000.

14. (1) Where the net value of any land settled as a joint family home exceeds two thousand pounds at the date of the application to the Supreme Court under this section, the Supreme Court, on the application of any creditor or assignee in bankruptcy who may benefit in consequence, and after notice has been given to the owner or owners of the joint family home, may— 25

- (a) Direct the cancellation of the registration of 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: 30

Provided that no such direction shall be 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: 35 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 the amount which may be so borrowed shall be at least two thousand pounds less than the net value of the land.

5 (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—

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

(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—

15 (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 and expenses arising out of or incurred in connection with the administration of the
20 sum of two thousand pounds mentioned in paragraph (c) of this subsection after that sum has been set aside as provided in that paragraph; and

25 (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 of two thousand pounds set aside under paragraph (c) of this subsection:

30 (c) In the event of a sale, to set aside out of the balance of the proceeds the sum of two thousand pounds and to hold that sum as hereafter directed in this section:

35 (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.

(3) The said sum of two thousand pounds which is set aside under paragraph (c) of the *last preceding* subsection shall be held by the trustees upon trust—

40 (a) To set aside for each of the persons on whom the land was settled the portion of that sum to which that person would have been entitled if the sale had occurred following a cancellation of the Joint Family Home Certificate under

paragraph (a) of subsection *one* of section *eight* of this Act and while the land was vested in the person or persons in whom it would re-vest or remain vested on the cancellation of the certificate:

(b) To pay out of the money set aside under this subsection for each person all costs and expenses arising out of or in connection with the administration of that money after it has been set aside under paragraph (c) of the *last preceding* subsection: 5 10

(c) To pay or transfer the balance of the money set aside under this subsection for each person and any investments representing that balance or any part of that balance to that person or, if that person so directs, to the other person on whom the land was settled: 15

Provided that, if the person entitled to that balance and to the investments so directs, the trustees shall postpone the payment or transfer thereof during such period or periods as that person directs, and shall from time to time invest any money forming part of that balance in their names in such manner as that person may direct. 20 25

(4) While any money which is set aside by trustees for any person under the *last preceding* subsection is held by the trustees—

(a) The money and investments shall not pass by bankruptcy, or be liable to be seized, attached, or taken in execution by process of law; and 30

(b) The money and investments or any part thereof may be given by the person for whom the money and investments are held to the other person on whom the land was settled notwithstanding that the gift may defeat the claims of creditors of the donor. 35

(5) The said balance of the money borrowed or of the proceeds of sale shall be held by the trustees upon trust— 40

(a) To set aside for each of the persons on whom the land was settled the portion of that balance to which that person would have been entitled if the mortgage or sale had occurred following a cancellation of the Joint Family 45

Home Certificate under paragraph (a) of subsection *one* of section *eight* of this Act and while the land was vested in the person or persons in whom it would revest or remain vested on the cancellation of the certificate:

5 (b) To apply the money set aside for each person in payment of such of the debts of that person as the Court may specify:

(c) To pay the balance of the money set aside for each person to that person.

10 (6) On directing any such cancellation, mortgage, or sale the Court may give also all necessary or proper consequential directions.

(7) For the purposes of this section the net value of
15 any land shall be ascertained by deducting from the amount of the capital value of the land within the meaning of the Valuation of Land Act, 1925, the amount by which the Supreme Court considers that value is reduced by reason of mortgages, charges, and incumbrances over
20 the land.

(8) It shall be the duty of the Valuer-General, on the application in the prescribed manner of the owner or owners of any land which is settled as a joint family home or of any person entitled to make an application to the
25 Court under this section in respect of any such land, and on payment of such fee as may be required by the Valuer-General, to make a valuation of the land or of any part thereof at such date as the applicant or applicants may specify, and to give to the applicant or
30 applicants a certificate setting forth the date as at which the valuation is made, the area and description of the land to which the certificate relates, and the capital value of the land within the meaning of the Valuation of Land Act, 1925.

(9) Where the applicant for the certificate is not an
35 owner of the land, the Valuer-General, when giving the certificate to the applicant, shall give a like certificate to the owner or owners of the land; and may do so by sending it by post in a registered letter addressed to the
40 owner or owners of the land at the joint family home. Where any such certificate is sent by post as aforesaid it shall be deemed to have been received by the owner or owners of the land at the time at which the letter would have been delivered in the ordinary course of post.

See Reprint
of Statutes,
Vol. VII,
p. 1030

(10) Any person to whom any such certificate is given may object to the valuation, by notice in writing delivered to the Valuer-General within one month after that person receives or is deemed to receive that certificate. Any such objection shall be heard and determined as if it was an objection under section fourteen of the Valuation of Land Act, 1925; and, where a valuation is varied as a result of any such objection, the Valuer-General shall give an amended certificate to each person to whom he gave the original certificate. 5

See Reprint
of Statutes,
Vol. VII,
p. 1036

(11) Unless it is shown that the valuation to which any such certificate refers has been varied as a result of an objection as aforesaid, the certificate shall for the purposes of this section be conclusive evidence of the matters therein set forth as aforesaid. 10

15. (1) The following dispositions of property shall be deemed not to be gifts within the meaning of Part IV of the Death Duties Act, 1921:— 15

Exemptions
from gift
duty.
Ibid., p. 376

(a) Any settlement of land as a joint family home: 20

(b) Any reversion of the land upon the cancellation of a Joint Family Home Certificate: 20

(c) Any repayment by a joint owner of a joint family home of any money which was charged by mortgage or otherwise on the joint family home when it was settled as such, or any payment made by any such joint owner for the purpose of improving the joint family home: 25

Provided that, where any repayment or payment to which the foregoing provisions of this paragraph apply would have been a gift if it had been made immediately before the settlement and the Joint Family Home Certificate in respect of the joint family home is subsequently cancelled under paragraph (a), paragraph (d), paragraph (e), or paragraph (f) of subsection one of section eight of this Act while the husband and wife are both living, the repayment or payment shall be deemed to become a gift upon the cancellation of the certificate, except to the extent to which the person benefitting thereby recoups the amount repaid or paid to the person who made the repayment or payment forthwith upon the cancellation of the certificate: 30 35 40 45

5 Provided also that the foregoing provisions
of this paragraph shall not apply to any pay-
ment made for the purpose of improving the
joint family home to the extent that the
amount of that payment, when added to the
amount of all other payments made for that
purpose and to the amount of the capital value
within the meaning of the Valuation of Land
Act, 1925, of the joint family home at the date
10 of the settlement exceeds four thousand
pounds:

See Reprint
of Statutes,
Vol. VII,
p. 1030

15 (d) Any payment made by either joint tenant of a
joint family home forthwith upon the cancella-
tion of a Joint Family Home Certificate
under paragraph (a), paragraph (d), para-
graph (e), or paragraph (f) of subsection *one*
of section *eight* of this Act to recoup the other
joint tenant, without interest, any amount
which would become a gift under the first
20 proviso to the *last preceding* paragraph if it
were not recouped:

25 (e) Any payment, made with the consent of both
joint tenants of a joint family home out of any
money derived from the sale, transfer,
mortgage, lease, or other disposition of the
joint family home and forthwith upon the
receipt of the money by the joint tenants,—

30 (i) To any settlor of the joint family home
of any amount which the settlor would have
been entitled to receive if the settlor had
retained the interest in the joint family home
to which he or she was entitled immediately
before the settlement and if the money so
derived had been applied in the first instance
35 to recoup the joint tenants, without interest,
any amounts contributed by either or both of
them to repay any money which was secured
by mortgage or otherwise on the joint family
home when it was settled as such or to pay for
improvements to the joint family home; or

40 (ii) To either joint tenant of any amount
required to recoup that joint tenant, without
interest, any amount contributed by that joint

tenant to repay any money which was secured by mortgage or otherwise on the joint family home when it was settled as such or to pay for improvements to the joint family home.

(2) Except as provided in the *last preceding* subsection, where any person who is or has been a joint tenant of a joint family home receives any money which arises from the sale, transfer, mortgage, lease, or other disposition of the joint family home, any amount which that person receives in excess of the amount to which that person would have been entitled if the land had not been settled as a joint family home shall be deemed to be a gift within the meaning of Part IV of the Death Duties Act, 1921, to that person from the other joint tenant, unless that person forthwith restores the amount of the excess to the other joint tenant.

16. Where any joint tenant of any joint family home dies during the lifetime of the other joint tenant—

(a) The succession within the meaning of the Death Duties Act, 1921, of the surviving joint tenant in the estate of the deceased joint tenant shall not include the interest to which the surviving joint tenant is entitled as successor to the joint family home except to the extent that the value of that interest exceeds two thousand pounds; and

(b) No estate or succession duty shall be payable in that estate in respect of that interest to the extent that it is excluded from that succession.

17. No stamp duty under the Stamp Duties Act, 1923, shall be payable in respect of—

(a) Any application to the Registrar to register any land as a joint family home:

(b) Any application to the Registrar to cancel the registration of a Joint Family Home Certificate as to any land:

Provided that, where the application is made under paragraph (a) of subsection *one* of section *eight* of this Act and the value of the land (as determined for the purposes of the Stamp Duties Act, 1923) exceeds four thousand pounds at the date of the application, *ad valorem* stamp duty under section seventy-nine of that Act shall be payable on the application which shall be deemed to be an

Exemptions
from death
duty.

See Reprint of
Statutes, Vol.
VII, p. 354

Exemptions
from stamp
duty.

Ibid., p. 402

instrument of conveyance, and that duty shall be computed on only such portion of that value as is in excess of four thousand pounds:

(c) Any Joint Family Home Certificate:

5 (d) Any declaration for the purposes of this Act.

18. (1) The Governor-General may from time to time, by Order in Council, make regulations for any purpose for which regulations are contemplated by this Act, and may make all such other regulations as may in his opinion be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof. Regulations.

15 (2) Without limiting the general power hereinbefore conferred, it is hereby declared that regulations may be made under this section for all or any of the following purposes:—

(a) Prescribing the forms to be used for the purposes of this Act:

20 (b) Prescribing the method of registration under this Act:

(c) Prescribing the fees to be paid on applications to the Registrar under this Act.

(3) All regulations made under this Act shall be laid before Parliament within twenty-eight days after the date of the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-eight days after the commencement of the next ensuing session.