



## ANALYSIS

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1974, No. 148

**An Act to amend the Joint Family Homes Act 1964**

[8 November 1974]

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

**1. Short Title and commencement**—(1) This Act may be cited as the Joint Family Homes Amendment Act 1974, and shall be read together with and deemed part of the Joint Family Homes Act 1964 (hereinafter referred to as the principal Act).

(2) Except as provided in section 12 (4) of this Act, this Act shall come into force on its passing.

**2. Settlement of additional land**—(1) Section 4 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

“(1) In any case where the husband and wife on whom land is settled as a joint family home are the registered proprietors, or either of them is the registered proprietor, of additional land contiguous to the joint family home, and

the husband and wife or either of them could, on the cancellation of the settlement, resettle under this Act the land originally settled together with the additional land, that additional land may be settled as part of the joint family home without any cancellation of the original settlement.

“(1A) For the purposes of subsection (1) of this section, in determining whether on the cancellation of the settlement the land originally settled together with the additional land could be resettled under this Act, the registered proprietors or registered proprietor of the additional land shall be deemed to be the settlors or, as the case may require, the settlor, of the original settlement.”

(2) The said section 4 is hereby further amended—

(a) By omitting from subsection (3) (as added by section 3 of the Joint Family Homes Amendment Act 1965) the words “settlor of the joint family home is the registered proprietor, or the settlors of the joint family home are the registered proprietors,” and substituting the words “husband and wife on whom the land is settled as a joint family home are the registered proprietors, or either of them is the registered proprietor”:

(b) By omitting from the same subsection the words “settlor or settlors”, and substituting the words “husband and wife or either of them”.

(3) The said section 4 is hereby further amended by adding the following subsection:

“(4) For the purposes of subsection (3) of this section, in determining whether on the cancellation of the settlement the land to which that subsection applies together with the undivided share in the land could be resettled under this Act, the registered proprietors or registered proprietor of the undivided share in the land shall be deemed to be the settlors or, as the case may require, the settlor, of the original settlement.”

**3. Application to register a joint family home—**(1) Section 5 (4) of the principal Act is hereby amended—

(a) By omitting the words “two months”, and substituting the words “3 months”:

(b) By omitting the words “three months”, and substituting the words “6 months”.

(2) Section 5 of the principal Act is hereby further amended by inserting, after subsection (4), the following subsection:

“(4A) The periods of time allowed by subsection (4) of this section for any surviving husband or wife to take all steps necessary to secure the registration of any land may each be extended for a further period by the Supreme Court on the application of that surviving husband or wife and after hearing such of any parties as may be affected by the settlement as the Court thinks necessary; and this power shall extend to cases where any of the said periods of time has already expired:

“Provided that no such extension shall be granted unless the application for extension is made before any disposition of the land by the executor or administrator of the deceased husband or wife, and no such disposition, made without notice that an application to settle the land as a joint family home had been signed, shall be disturbed nor shall any action lie against the executor or administrator by reason of his having made such a disposition.”

**4. Registration of new interest in settled land—Section 7 of the principal Act is hereby amended—**

- (a) By inserting in subsection (1), before the words “the Registrar shall cause a memorandum to be entered”, the words “and (in the case of any application to which section 5 (4) of this Act applies) the surviving husband or wife is still alive,”:
- (b) By omitting from subsection (2) (as added by section 4 of the Joint Family Homes Amendment Act 1965) the words “as joint tenants”, and substituting the words “or either of them”:
- (c) By inserting in the same subsection, before the words “or the survivor of them becomes the registered proprietor”, the words “or either of them”:
- (d) By omitting from paragraph (b) of the same subsection the words “being the date on which the Registrar enters the memorandum in respect thereof”, and substituting the words “which shall be deemed to be the date of settlement of the previous settlement to which the present settlement of a new, substituted, or different estate or interest relates”.

**5. Effect of registration**—(1) Section 9 (2) (d) of the principal Act is hereby amended by inserting, after the first proviso, the following new proviso:

“Provided also that any interest a husband and wife, or either of them, may have in the joint family home or in the proceeds (if any) from its sale, transfer, or other disposition shall, for the purposes of the Insolvency Act 1967, be deemed not to be property within the meaning of that Act:”.

(2) The second proviso to section 9 (2) (d) of the principal Act (as inserted by subsection (1) of this section) shall apply with respect to any interest that a husband and wife or either of them may have in a joint family home, whether the home is settled before or after the commencement of this Act.

**6. Cancellation of registration**—(1) Section 10 (1) of the principal Act is hereby amended—

(a) By omitting from paragraph (c) the word “joint”, and substituting the words “the legal and beneficial”:

(b) By inserting in the same paragraph, before the word “owner”, the words “legal and beneficial”.

(2) Section 10 of the principal Act is hereby further amended by adding the following subsections:

“(8) Upon the cancellation as aforesaid of a settlement as to any property, that property shall cease to be settled under this Act.

“(9) Except as provided in section 11 of this Act, the cancellation of a settlement as to any property shall not affect any estate or interest of any owner or other person in that property, or any mortgage, charge, or encumbrance over that property at the time of cancellation.”

**7. Vesting of property and proceeds**—(1) The principal Act is hereby amended by repealing section 11, and substituting the following section:

“11. (1) Where the husband and wife on whom property is settled under this Act are both living and the settled property is sold, transferred, or otherwise disposed of, the net proceeds (if any) arising from that sale, transfer, or other disposition shall vest in the husband and wife in equal shares.

“(2) Where the husband and wife on whom property is settled under this Act are both living and have not previously ceased to be the legal and beneficial owners of the property, the property shall, upon the cancellation of the settlement, vest in the husband and wife as tenants in common in equal shares without transfer or conveyance, but subject to all mortgages, charges, encumbrances, estates, and interests affecting the settled property when the settlement is cancelled and, if the husband or the wife only was the settlor, to all obligations incurred pursuant to section 9 (1) (c) of this Act.

“(3) Notwithstanding subsection (1) of this section, if,—

“(a) The husband and wife on whom property is settled under this Act are both living and have sold, transferred, or otherwise disposed of the settled property; and

“(b) Only the husband or the wife was the settlor of the property; or

“(c) The husband and the wife were the settlors of the property as tenants in common in unequal shares; and

“(d) A notice of consent in a form prescribed by regulations made under this Act is signed by both the husband and the wife—

the net proceeds (if any) from the sale, transfer, or other disposition of the settled property shall vest in the settlor or, as the case may require, vest in the settlors in the same proportions as were their respective interests in the property immediately before it was settled.

“(4) Notwithstanding subsection (2) of this section, if, upon the cancellation of a settlement as to any property,—

“(a) The husband and wife on whom the property was settled are both living and have not previously ceased to be the legal and beneficial owners of the property; and

“(b) Only the husband or the wife was the settlor of the property; or

“(c) The husband and the wife were the settlors of the property as tenants in common in unequal shares; and

“(d) A notice of consent in a form prescribed by regulations made under this Act is signed by both the husband and the wife—

the property shall, without transfer or conveyance but subject to all mortgages, charges, encumbrances, estates, and interests affecting the property when the settlement is cancelled, revert in the settlor or, as the case may require, revert in the settlors in the same proportions as if it had not been settled.

“(5) For the purposes of section 6 (2) of the Matrimonial Property Act 1963, a notice of consent under either subsection (3) or subsection (4) of this section shall not of itself constitute an expression of common intention between the husband and the wife who have signed it.”

(2) The principal Act is hereby consequentially amended by substituting the words “vest, revert, or remain vested” for the words “revert or remain vested” in—

- (a) Section 18 (1) (a):
- (b) Section 19 (a).

**8. Portability of registration in certain cases**—The principal Act is hereby amended by inserting, after section 12, the following new section:

“12A. (1) In this section—

“‘Date of disposition’, in relation to the disposition of any land which is settled as a joint family home, means the date on which possession of the land is given and taken in respect of that disposition:

“‘Disposition’, in relation to any land which is settled as a joint family home, means any sale, transfer, conveyance, assignment, or other alienation of that land, whether by agreement or by force of law:

“‘Net proceeds of disposition’ means the consideration for any disposition of land settled as a joint family home less the amount of any costs, expenses, or other payments which are made in association with the disposition and are met from the consideration:

“‘Previous settlement’ means any land settled as a joint family home which is the subject of a disposition where the date of such disposition is relevant in relation to an application to settle other land under subsection (2) of this section.

“(2) Where, within 6 months after the date of disposition of any land settled as a joint family home, the husband and wife on whom the land was settled or, if the husband or the wife had died before that date, the survivor of them on whom the land was settled, apply in the prescribed manner

to the Registrar to register the settlement of other land as a joint family home, and, if the Registrar is satisfied that the relevant conditions have been complied with, then, subject to this section, the Registrar shall cause a memorandum to be entered on the appropriate instruments of title as prescribed in section 7 (1) of this Act in the manner so prescribed, except that the memorandum shall specify—

“(a) The husband and wife or, as the case may require, the survivor of them, on whom the land is settled; and

“(b) The date on which the memorandum is entered; and

“(c) The date on which the previous settlement was cancelled; and

“(d) The effective date of the settlement, which shall be deemed to be the date of settlement of the previous settlement.

“(3) All the provisions of this Act, except section 3 (1) (b) and section 5 (5), shall apply with respect to any application to the Registrar made under subsection (2) of this section.

“(4) Subject to subsection (3) of this section, all the provisions of this Act shall apply to any memorandum entered by the Registrar pursuant to subsection (2) of this section as if it were entered by him pursuant to section 7 (1) of this Act, except that—

“(a) Where the land to which the application relates is settled on the survivor of the husband and wife on whom the previous settlement was settled, the provisions of this Act shall where necessary be modified accordingly:

“(b) Where, for the purposes of this Act, any period of time is to be calculated from the effective date of settlement of any land settled under this section, that period shall be calculated without regard to any period that may elapse between the date of the cancellation of the previous settlement and the date specified on the memorandum pursuant to subsection (2) (b) of this section.

“(5) For the purposes of subsection (2) of this section, the relevant conditions shall be—

“(a) That the disposition of the land settled as a joint family home was for a fully adequate consider-

ation in money or money's worth payable to the persons or person on whom the land was settled; and

- “(b) If as at the date of disposition any of those persons was not an undischarged bankrupt, that the share of each of those persons in the net proceeds of disposition was not intermingled with any other property and was applied, or, as the case may require, a sufficient equal part of each share was applied, in or towards the acquisition of the land for which the application to settle is being made; or
- “(c) If as at the date of disposition any of those persons was an undischarged bankrupt, that—

“(i) The share of that undischarged bankrupt in the net proceeds of disposition was, as soon as practicable after the date of disposition, given to the Official Assignee of the property of the bankrupt to be applied in accordance with subsection (6) of this section; and

“(ii) The share (if any) of the undischarged bankrupt's spouse (if any) in the net proceeds of disposition were dealt with as provided in paragraph (b) of this subsection.

“(6) Notwithstanding anything to the contrary in the Insolvency Act 1967, no part of any net proceeds of disposition given to the Official Assignee of an undischarged bankrupt pursuant to subsection (5) (c) (i) of this section shall, at the time when it was so given, form part of the estate of the bankrupt as administered by the Assignee, but shall be invested by the Assignee in some savings bank or banks and, at the request of the undischarged bankrupt, shall, together with any interest thereon, be applied, or a sufficient part of such net proceeds of disposition and interest shall be applied, in or towards the acquisition of the land for which the application to settle is being made.

“(7) For the purposes of subsection (6) of this section, an Official Assignee shall not apply a greater amount of any net proceeds of disposition and interest towards the acquisition of any land than the amount so applied by the spouse (if any) of the undischarged bankrupt pursuant to subsection (5) (b) of this section.

“(8) Any net proceeds of disposition, and any interest thereon, remaining in the hands of an Official Assignee at the expiry of the period of 6 months after the date of dis-

position of the land to which those net proceeds relate shall form part of the estate of the undischarged bankrupt to whom those net proceeds would otherwise belong.”

**9. Rights of creditors—**(1) Section 16 of the principal Act (as amended by section 4 of the Joint Family Homes Amendment Act 1968) is hereby further amended—

- (a) By omitting from the proviso to subsection (1) (a) the words “eight thousand dollars”, and substituting the words “the specified sum”:
- (b) By omitting from the proviso to subsection (1) (b) the words “eight thousand dollars”, and substituting the words “of the specified sum”:
- (c) By omitting from subsection (2) (a) the words “eight thousand dollars”, and substituting the words “the specified sum”.

(2) The said section 16 is hereby further amended by adding the following subsections:

“(5) In this section and in section 17 (1) (c) of this Act, the expression ‘the specified sum’ means \$10,000 or such greater amount as the Governor-General by Order in Council may, for the time being, prescribe as the specified sum.

“(6) No Order in Council under subsection (5) of this section shall come into force within 2 years of the coming into force of any other Order in Council made under that subsection.”

(3) Section 16 (2) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraphs:

- “(b) Within 2 years of the date of the application, the husband and wife have, or either of them has,—
  - “(i) Expended or provided more than \$1,000 in total in erecting buildings on or otherwise improving the settled land; or
  - “(ii) Acquired, or provided any money to acquire, any additional, new, substituted, or different estate or interest in the settled property; or
- “(c) Within 2 years of the date of the application, the husband and wife have, or either of them has, repaid or provided the money to repay any mortgage, charge, or encumbrance secured over the settled property in excess of the amount which

that husband and wife or either of them is obliged to pay in accordance with the terms of the mortgage, charge, or encumbrance:

“Provided that, where the Supreme Court, having regard to the nature of the security and all other relevant circumstances, is satisfied that the terms of any mortgage, charge, or encumbrance so repaid are unusual in that they give rise to a reasonable inference that they have been arranged to defeat, or to attempt to defeat, the rights of any creditor or creditors, the Court may accept an application made under subsection (1) of this section.”

(4) Section 16 (3) of the principal Act is hereby amended by repealing paragraph (a) and paragraph (b), and substituting the following paragraphs:

“(a) The amount of the sums which, within 2 years of the application to the Supreme Court under this section, the husband and wife have, or either of them has, expended or provided in erecting buildings on or otherwise improving the settled land, except—

“(i) So much thereof as has been borrowed on the security of any mortgage, charge, or encumbrance to which paragraph (b) of this subsection relates; or

“(ii) Where there has been no such borrowing, the first \$1,000 of the sums so expended or provided; and

“(b) The amount of the sums which, within that period, the husband and wife have, or either of them has,—

“(i) Expended in repaying or provided to repay any mortgage, charge, or encumbrance secured over the settled property in excess of the amount which that husband and wife or either of them is obliged to pay in accordance with the terms of the mortgage, charge, or encumbrance:

“Provided that all sums so repaid or provided shall be taken into account if, by reason of the proviso to subsection (2) (c) of this section, the Supreme Court accepts an application made under subsection (1) of this section and directs a mortgage or sale of the settled property; and

“(ii) Expended or provided in acquiring any additional, new, substituted, or different estate or interest in the settled property.”

**10. Disposition of proceeds of sale or mortgage**—Section 17 (1) (c) of the principal Act (as amended by section 4 of the Joint Family Homes Amendment Act 1968) is hereby further amended by omitting the words “sum of eight thousand dollars”, and substituting the words “specified sum (as defined in section 16 (5) of this Act)”.

**11. Exemptions from gift duty**—(1) The principal Act is hereby further amended by repealing section 21, and substituting the following section:

“21. (1) The following dispositions of property shall not constitute dutiable gifts for the purposes of the Estate and Gift Duties Act 1968:

“(a) Subject to subsection (2) of this section, any settlement:

“(b) Upon the cancellation of a settlement under paragraph (a), paragraph (c), paragraph (d), paragraph (e), or paragraph (f) of section 10 (1) of this Act while the husband and wife are both living,—

“(i) Any vesting of the property in the husband and wife as tenants in common in equal shares:

“(ii) Any vesting of the net proceeds of the sale, transfer, or other disposition of the property in the husband and wife in equal shares:

“(iii) Any vesting of the net proceeds of the sale, transfer, or other disposition of the property in the sole settlor or, as the case may require, in the settlors pursuant to section 11 (3) of this Act:

“(iv) Any reversion of the property in the sole settlor or, as the case may require, in the settlors pursuant to section 11 (4) of this Act:

“(c) Any release or repayment by a joint owner of a joint family home of any money which was charged on the settled property or any part of it at the time of settlement, or any payment made by any such joint owner for the purpose of

improving the joint family home, or of acquiring any additional, new, substituted, or different estate or interest in the joint family home.

“(2) Subsection (1) (a) of this section shall not apply to any settlement where—

“(a) The husband and wife on whom the property is settled have, prior to the date of the settlement, been the joint tenants under this Act of any other settled property the settlement of which has been cancelled; and

“(b) The Commissioner of Inland Revenue is not satisfied that—

“(i) The husband and wife contributed in substantially equal shares towards the purchase of the present settled property; or

“(ii) If the husband and wife did not contribute in substantially equal shares, the contribution made by each spouse was equivalent to, or in the same proportion as, the share or interest to which each spouse was entitled on the cancellation of the previous settlement or, where there has been more than one such previous settlement, of the immediately preceding settlement.”

(2) Subsection (2) of section 21 of the principal Act (as inserted by subsection (1) of this section) shall apply with respect to any settlement under the principal Act where the settlement of any immediately preceding settlement is cancelled on or after the commencement of this Act.

**12. Exemption from estate duty**—(1) Section 22 (1) of the principal Act (as amended by section 3 of the Joint Family Homes Amendment Act 1972) is hereby further amended—

(a) By omitting the words “be deemed not to form part of”, and substituting the words “not be included in”:

(b) By omitting the words “Estate and Gift Duties Act 1955 unless it exceeds \$12,000, in which case it shall be deemed not to form part of that dutiable estate to the extent of \$12,000”, and substituting the words “Estate and Gift Duties Act 1968”.

(2) Section 22 of the principal Act is hereby further amended by omitting from subsection (2) the words “Estate and Gift Duties Act 1955”, and substituting the words “Estate and Gift Duties Act 1968”.

(3) The said section 22 is hereby further amended by adding the following subsection:

“(3) For the purposes of the Estate and Gift Duties Act 1968, where, under subsection (1) of this section, a beneficial interest in any settled property is not included in the dutiable estate of a deceased joint tenant (in this subsection referred to as the deceased), the allowable debts of the deceased shall not include the amount of any debt of the deceased which is owing under any mortgage, charge, or encumbrance affecting the settled property:

“Provided that in any case where the terms of the mortgage, charge, or encumbrance provide that other property as well as the settled property is also security for the debt, the debt may be an allowable debt to the extent of an amount calculated in accordance with the following formula:

$$\frac{a}{b} \times c$$

where—

- a is the value of that other property to the extent that it or any part of it is included in the dutiable estate of the deceased; and
- b is item ‘a’ of this formula together with—
  - “(i) The value (as determined in the same manner as the value of land is determined under the Estate and Gift Duties Act 1968) of the settled property; and
  - “(ii) The value (as ascertained in the same manner as the value of property is ascertained under the Estate and Gift Duties Act 1968) of any other property which is also security for that debt; and
- c is the amount of the debt.”

(4) Subsections (1) and (3) of this section shall be deemed to have come into force on the 30th day of May 1974, and shall apply to the estate of any joint tenant of a joint family home who, dying in the lifetime of the other joint tenant, has died or dies on or after that date.

**13. Consequential repeals and amendment—**(1) The following enactments are hereby consequentially repealed—

- (a) Section 4 of the Joint Family Homes Amendment Act 1968:
- (b) So much of the Fourth Schedule to the Estate and Gift Duties Act 1968 as relates to the Joint Family Homes Act 1964:

(c) Section 3 of the Joint Family Homes Amendment Act 1972.

(2) Section 65 (4) of the Unit Titles Act 1972 is hereby consequentially amended by inserting, after the expression "1965", the words "and amended by section 4 of the Joint Family Homes Amendment Act 1974".

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This Act is administered by the Department of Justice.

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