

**Notes on Bankruptcy & Land Registration in Nova Scotia
For The Canadian Bar Association, Nova Scotia Branch
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General

1. In these notes
 - a. "BIA" means the *Bankruptcy and Insolvency Act*¹;
 - b. "H&M" means *The 2007 Annotated Bankruptcy and Insolvency Act*², the standard BIA reference;
 - c. "legacy judgments" means judgments recorded in a parcel register that predate the registration of that parcel under the *Land Registration Act* - refer to paragraphs 10 and 32;
 - d. "LRA" means the *Land Registration Act*, S.N.S. 2001, c.6 as amended; and
 - e. "protected judgments" are judgments in favour of the Crown (federal or provincial) or a Worker's Compensation Board that are protected by BIA ss.86 and 87 as identified in paragraph 30.

Problems to be addressed

2. Trustees in bankruptcy do not always register their interests in a bankrupt's real property in a timely fashion and sometimes not at all. As well they do not always disclaim unrealizable parcels to their bankrupts before they are discharged as Trustees. Most often this occurs in smaller estates where bankrupts' homes are involved, the Trustees determine that there is little or no realizable equity and the Trustees strive to minimize administration costs. These omissions can lead to significant problems for lawyers and others who deal with a bankrupt's or former bankrupt's real property. The problems occur because either
 - a. the bankrupt remains as the apparent owner of the real estate in the public record when he, she or it is not the owner, or
 - b. the Trustee remains as the registered (or unregistered) owner of unrealizable real property that ought to have been returned to the bankrupt under BIA s.40(1).

Unfortunately, the problems initiated by these omissions are often aggravated by lawyers who are not familiar with BIA.

¹ R.S.C. 1985, c.B-3, as amended.

² Lloyd W. Houlden & Geoffrey B. Morawetz, Thompson * Carswell, Toronto, Canada.

3. A Trustee can prevent most of these problems and better protect its beneficiary creditors by simply
 - a. registering a certified copy of the Receiving Order or Assignment promptly after its appointment against the bankrupt's real estate interests in which there is realizable equity, and
 - b. before its discharge
 - i. returning unrealizable real property to the bankrupt under *BIA* s.40(1), and
 - ii. registering or recording, as appropriate, an order under *BIA* s.40(2) respecting any real property that will remain in the estate after the Trustee is discharged.

A "Trustee Process for Real Estate Interests" is annexed to these Notes.

Registration and recording of interests in real property in Nova Scotia - an overview

4. Nova Scotia is moving from a *Registry Act* real property registration system to a *Land Registration Act* system. To determine the interests in a parcel under the *Registry Act* a searcher must conduct a property search to review documents registered in the Land Registration Office for the district in which the parcel is located - generally for a search period greater than forty years. Under the *LRA* system consolidated current title information about a parcel is maintained in real time on-line in the parcel register for that parcel.
5. Judgments *for the recovery of money* may be recorded in names-based Judgment Rolls for each Registration District. *LRA* s.64(2) states:

"A judgment creditor may record a judgment for the recovery of money in the judgment roll for a registration district."

Under *LRA* s.65(4):

"A judgment recorded in a judgment roll binds and is a charge upon any registered interests of the judgment debtor within the registration district, whether acquired before or after the judgment is recorded, from the date the judgment is recorded until the judgment is removed from the roll."

Judgments which affect *LRA* titles but are not judgments for the recovery of money are registered or recorded in parcel registers according to their legal effect.

6. The *LRA* system "floats on existing law" so there are very few changes in substantive law affecting real property between the two systems - *LRA* simply changes the way in which parties holding interests in real property place notice of those interests in the public record.

7. The process of transferring the registration of a parcel from the *Registry Act* system to the *LRA* system is referred to as "migration".
8. *LRA*, s.46, provides for the compulsory migration of parcels on the occurrence of specified "triggering events" - principally the sale or mortgage of a *Registry Act* parcel. Section 46 works by prohibiting a Registrar of Deeds from accepting specified documents for registration under the *Registry Act* thereby requiring the party with the interest to ensure the parcel is migrated. *LRA* does not specify who is responsible for migration. By common practice vendors migrate their parcels before selling them. However, there is nothing to stop a Trustee who is selling a bankrupt's *Registry Act* registered parcel from making the purchaser responsible for migrating that parcel as a term of their agreement of purchase and sale.
9. The automatic vesting of title in a Trustee on a bankrupt's bankruptcy by operation of law does not trigger migration.
10. On migration, outstanding judgments against the current parcel owner or owners and their predecessors in title are recorded in the parcel register so they will be carried forward and be determinable until released by the judgment creditor, expire or are otherwise released. These are the "legacy judgments" defined above.
11. Using the Property Online system a searcher can readily determine:
 - a. the parcels in which a party has a registered ownership interest - this search may be conducted province-wide or by Registration District, and
 - b. by Registration District - if there are judgments against a party.

POL also permits an inquiry for "All interest holders" that will return parcels in which the name searched has recorded interests as well; this can be a province-wide search. Property search results show whether parcels are registered under the *Registry Act* or *LRA*. The system will not return parcels in which the name searched has a beneficial interest and is not shown as a grantee in the enabling instrument.

Registration and Recording under the Land Registration Act - the new LRA System

12. When we use "*record*" and "*registration*" in the context of *LRA* in these notes we use these terms and variants of these terms as they are used in *LRA*³. Under *LRA*, s.17, changes in ownership - a fee simple estate; a life estate and the remainder interests; and an interest of Her Majesty - are *registered*; changes in other interests are "*recorded*". There is some difference of opinion in the Property Bar whether interests categorized as "*benefits*" or "*burdens*" under *LRA* are *registered* or *recorded*. That difference is not material to these notes.

³ Refer to ss.3(1)(r) and 3(1)(t).

13. Refer to the annexed table "Registering & recording bankruptcy interests" concerning the mechanics of these processes. My thanks to Mark Coffin and Janice McNenly for their assistance with this table; any errors are the author's alone. Special thanks also to Janice McNenly for preparing the sample forms attached to this paper which show how to prepare the necessary forms to effect the registrations and recordings outlined in the table.
14. *BIA* s.74(4) requires Land Registration Office officials to register any bankruptcy order, assignment or other document tendered by or on behalf of a Trustee as follows:
(emphasis added)

"74(4) Every official to whom a trustee tenders or causes to be tendered for registration any bankruptcy order, assignment or other document **shall register it according to the ordinary procedure for registering within the official's office documents relating to real property or immovables.**"

"Registration" as used in this section appears to include *LRA* "recording".

15. Section 30, *LRA*, requires a Registrar to *register* receiving orders or assignments as follows:

"30 A registrar shall accept a certified copy of a receiving order or assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act* (Canada) as a direction to revise a registration as to the ownership of any registered interest of the bankrupt specified by the trustee and shall register the order or assignment."

According to the ordinary procedure under *LRA* a Trustee must *register* instruments that evidence its fee simple interest in a parcel and *record* instruments affecting its non-fee simple interests in a parcel if it elects to put them in the public record.

16. Because *LRA* certifies ownership of fee simple interests in parcels, only authorized lawyers may *register* instruments or orders changing fee simple ownership interests. When *registering* an instrument authorised lawyers certify the legal effect of the instrument to the system which in turn relies on that certification in its certification of the fee simple to the public. An authorized lawyer *registering* an Assignment in Bankruptcy or Receiving Order respecting a bankrupt's fee simple interest in a parcel under *LRA* will have to prepare the *registration* form considering consequential changes in the parcel register to properly show outstanding interests in the parcel. Changes will include, but not be limited to:
 - a. removing unprotected legacy judgments against the bankrupt *recorded* in the parcel register, and
 - b. *recording* in the parcel register protected judgments against the bankrupt found in the Judgment Roll.

Non-fee simple interests in parcels are *recorded* under *LRA*. Recording involves no certification of the interest involved therefore *recording* does not require an authorized lawyer.

Registration under the old *Registry Act* System

17. If a bankrupt's parcel is registered under the *Registry Act* the Trustee must register the Assignment or Receiving Order under the *Registry Act* if it elects to put the Assignment or Receiving Order in the public record. The Trustee will use a *LRA* Form 44 which does not require an authorised lawyer's signature.
18. Until
 - a. the Trustee voluntarily "migrates" the parcel (registers the parcel under *LRA*), or
 - b. a subsequent event like a sale or mortgage "triggers" migration under *LRA* s.46the parcel will remain registered under the *Registry Act*. Paragraphs 50 and 53 discuss triggering events that may occur when a Trustee releases or disclaims its interest in a parcel.

Registration, Recording and Legal Ethics

19. If a lawyer becomes aware that title to an interest in real property is vested in a Trustee as the result of a bankruptcy, the lawyer must not:
 - a. assist any party other than the Trustee to convey the interest;
 - b. migrate the interest to the *LRA* system in the name of any registered owner other than the Trustee; or
 - c. assist any party to acquire the interest except from the Trustee.

Section 21.3 of the Nova Scotia Barristers' Society Legal Ethics Handbook states:

"21.3 The lawyer has a duty not to subvert the law by counseling or assisting in activities which are in defiance of it and has a duty not to do anything to lessen the respect and confidence of the public in the legal system of which the lawyer is a part."

Knowingly participating in any of the above types of fraudulent transfer may result in very serious consequences for the lawyer.

20. If the person receiving an interest vested in a Trustee from someone other than the Trustee is aware of the bankruptcy, it is unlikely that the person's title will be protected – refer to Tim Hill's case comment (cited in paragraph 68.a.) discussing the operation of *LRA* ss.4(4) (fraud) and 20(3) (conditions for enforcement of priority under *LRA*). If the person relied on a lawyer to ensure the person received marketable title to the parcel, the

lawyer may be liable to the person in negligence if he or she was aware of the bankruptcy.

21. Consider however, the quaere concerning the possible application of estoppel principles in paragraph 47 respecting old and apparently dormant bankruptcies in a chain of title.

Automatic vesting of bankrupt's title in Trustee

22. The bankrupt's interests in real property vest in the Trustee on bankruptcy. This was confirmed to Registrar General Mark Coffin by Elizabeth Lang, Acting Deputy Superintendent, Regulatory Affairs & Compliance, Industry Canada by letter dated May 18, 2007; she wrote:

"... You have asked for clarification as to when and how the vesting provisions of the *Bankruptcy and Insolvency Act* (BIA) apply, as you feel there is some confusion regarding this matter.

It would seem that the reason for this uncertainty is that two very different issues are being confused.

Section 71 of the BIA provides that the assets of the bankrupt vest in the trustee upon the filing of an assignment or the granting of a bankruptcy order. This vesting is automatic.

A trustee must take certain actions, however, if he wants to *register* the estate's interest in certain assets such as real property. Section 74 deals with the requirements/process for registering on title. The fact that a trustee has been appointed does not mean that he is automatically registered on title of assets at the Land Titles office and Section 74 provides that "...bankruptcy orders or assignments may be registered by or on behalf of the trustee...". It is a key duty of a trustee to protect such assets if there is equity for the benefit of the estate by registering his interest. In fact, a failure to do so which results in a loss to an estate may be considered an issue for professional conduct.

Perhaps the commentary in Houlden & Morawetz (2007 Annotated Bankruptcy and Insolvency Act, pg. 448) on this matter is also helpful;

The purpose of registration of the assignment or receiving order is not to vest the bankrupt's interest in real estate in the trustee, since this occurs by virtue of s. 71 (2); rather the purposes are the following: (a) to establish the necessary chain of title from a bankrupt owner to a purchaser; (b) to give notice of the bankruptcy to persons dealing with the property; and (c) to amplify the provisions of s. 70(1) that the documents referred to in the subsection are superceded by a receiving order or assignment.

I trust this resolves your concerns."

BIA s.71 states:

"On a bankruptcy order being made or an assignment being filed with an official receiver, a bankrupt ceases to have any capacity to dispose of or otherwise deal with their property, which shall, subject to this Act and to the rights of secured creditors, immediately pass to and vest in the trustee named in the bankruptcy order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any assignment or transfer."

In *Re Mailman*⁴, Hill, Reg., states at paragraph 7:

"7 By virtue of s. 71(2) of the *Bankruptcy and Insolvency Act* the Bankrupt's interest in these properties vested in the Trustee upon the Bankrupt's assignment."

BIA s.71 is the former s.71(2) as amended by the *Federal Law-Civil Law Harmonization Act, No. 2*⁵. Section 71(2) stated:

"71(2) On a receiving order being made or an assignment being filed with an official receiver, a bankrupt ceases to have any capacity to dispose of or otherwise deal with his property, which shall, subject to this Act and to the rights of secured creditors, forthwith pass to and vest in the trustee named in the receiving order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any conveyance, assignment or transfer."

The amendments do not materially affect the operation of this provision.

23. Under *BIA* s.67(1)(c) the property of the bankrupt divisible among his or her creditors comprises "all property wherever situated of the bankrupt at the date of his bankruptcy or that may be acquired by or devolve on him before his discharge..." This may include fee simple interests or interests less than fee simple - for example, a mortgagee's interest in a third party's property. Note the definition includes property acquired by, or devolved on, the bankrupt before his, her or its discharge.

Trustee receives bankrupt's title

24. The Trustee receives only the bankrupt's interest in the bankrupt's property so the Trustee may receive less than perfect title. In *Trask v. Trask*⁶ the Court held that the husband's Trustee in Bankruptcy took the husband's undivided half interest in the matrimonial home subject to the non-bankrupt wife's right to occupy the matrimonial home. In *Citifinancial Canada East Corp. v. Morrow Estate (Trustees of)*⁷ a Trustee

⁴ 2000 CarswellNS 327 (N.S.S.C.).

⁵ S.C. 2004, c.25, s.44.

⁶ (1997), 166 N.S.R. (2d) 344 (N.S.S.C.).

⁷ 2006 NBQB 132, 21 C.B.R. (5th) 12, 44 R.P.R. (4th) 154, 784 A.P.R. 240, 302 N.B.R. (2d) 240.

was held to take the bankrupt's title subject to an unregistered equitable mortgage of which the Trustee had actual knowledge.

Matrimonial interests

25. A detailed consideration of *Matrimonial Property Act*, "MPA", issues in bankruptcy is beyond the scope of these notes but a few comments are in order. First, the transfer of title on bankruptcy occurs by operation of law and is not a disposition or encumbrance by the bankrupt⁸. Second, where a matrimonial home is involved be careful to fully consider the matrimonial property rights of the bankrupt's spouse in the home. Third, the *MPA*, s.8(3), restriction on disposition of real property without spousal consent applies only to "matrimonial homes".

26. Under *MPA*, s.3(1)

"matrimonial home" means the **dwelling** and real property occupied by a person and that persons spouse as their family residence and in which either or both of them have a property interest other than a leasehold interest.

Under *MPA*, s.2(d) "**dwelling**" includes a house, condominium, cottage, mobile home, trailer or boat occupied as a residence. By definition a parcel without a dwelling on it is not a matrimonial home therefor its transfer does not require the consent of the bankrupt's non-owning spouse.

27. For further information on matrimonial interests refer to

- a. H&M F§4 - Effect of Family Law Acts and Matrimonial Property, and
- b. the MacKeigan/Radford CLE paper noted in paragraph 68.b.

Subject to this Act

28. The phrase "subject to this Act" in *BIA* s.71 has been held to mean that property improperly sold by a bankrupt to an innocent purchaser for adequate consideration is lost to the Trustee under *BIA* s.75⁹ - see the discussion in paragraph 41. It could also refer to other express exclusions under *BIA*, for example, the exclusion from the

⁸ In *Neustaedter v. Neustaedter Estate* (1986), 60 C.B.R. (N.S.) 173, (sub nom. *Neustaedter v. Armitage*) 56 O.R. (2d) 769, 32 D.L.R. (4th) 627 the Ontario Supreme Court in Bankruptcy stated, *inter alia*:

"15 The trustee here did not acquire the husband's interest by way of disposition or encumbrance. The assignment in bankruptcy was not a disposition or encumbrance in the sense of a conveyance, but rather an act of bankruptcy triggering the provisions of s. 50(5) of the *Bankruptcy Act* to vest in the trustee the husband's own interest, whatever it was. The trustee acquired his interest by the general law of bankruptcy reflected in s. 50(5) of the Act, and not by any disposition or encumbrance of the husband."

⁹ H&M, F§59(4) - Subject to the Act, at p.440.

bankrupt's estate of property held by the bankrupt for any other person - *BIA* s.67(1)(a). As confirmed by the A/Deputy Superintendent Regulatory Affairs and Compliance in her May 18, 2007 letter to the Registrar General, above, "subject to this Act" does not mean vesting in the Trustee depends upon the Trustee electing to register the Assignment or Receiving Order - the vesting in the Trustee is automatic.

BIA, LRA & Judgments

29. The "precedence" afforded by bankruptcy over judgments permits a Trustee to convey a bankrupt's real property free of judgments against the bankrupt other than protected judgments noted in paragraph 30. *BIA* s.70(1) states: (emphasis added)

"70. (1) Every bankruptcy order and every assignment made under this Act **takes precedence over** all judicial or other attachments, garnishments, certificates having the effect of judgments, judgments, certificates of judgment, legal hypothecs of judgment creditors, executions or other process against the property of a bankrupt, except those that have been completely executed by payment to the creditor or the creditor's representative, and except the rights of a secured creditor."

BIA s.74(2) provides that the Trustee will be

"...registered as the owner of the real property... or holder of the charge free of all encumbrances or charges mentioned in subsection 70(1)..."

In *Re Ledrew*¹⁰, under section 8 under the heading "What is the Impact of Section 70 of the *BIA* on CRA's Status as a Secured Creditor" following paragraph 26, the Ontario Superior Court of Justice considered the impact of section 70 on Canada Revenue Agency's status as a secured creditor under *BIA* ss.86 and 87. The court stated, *inter alia*, that:

"Counsel for the Trustee has raised the question of whether subsection 70(1) of the *BIA* has any impact on the status of CRA as a secured creditor of LeDrew with a charge against the family home. The only decision on the subject appears to be *Giguère, Re* (1998), 2 C.B.R. (4th) 292 (Que. S.C.) where the court held that an assignment in bankruptcy took precedence over an attachment issued by the Crown against a debtor's property for unpaid income tax. The situation in that case appears to be that the Crown had not registered its claim as a memorial through a land registration system and accordingly, it was described as an "extra judicial attachment". The case is accordingly distinguishable from the case at bar.

Subsection 70(1) of the [ITA] is somewhat difficult to interpret particularly in view of the phrase at the end "and except the rights of the secured creditor". I must conclude, however, that in view of the specific provisions contained in sections 86 and 87 of the *BIA* providing for the registration of Crown claims as secured claims, the more general provision of subsection 70(1) cannot be read so as to override the rights created in the Crown by virtue of sections 86 and 87 of the *BIA*."

¹⁰

[2005] W.D.F.L. 3356, [2005] W.D.F.L. 3355, 13 C.B.R. (5th) 63, 18 R.F.L. (6th) 417.

30. Paul E. Radford discusses deemed trusts, other super priorities and protected judgments in his September 17, 2004 CLE paper¹¹. He lists the following protected judgments at page 9:

"When examining an abstract, one may consider that all judgments registered prior to the bankruptcy of the judgment debtor are discharged as encumbrances on the real property of the judgment debtor by reason of s.70(1) of the BIA, except:

- judgments against a bankrupt who conveyed the property to a third party after the judgments and prior to bankruptcy (*Starratt v. Turner*) (1989) 78 CBR (NS) 83 NSCA);
- judgments in favour of the federal or provincial Crowns or Workers' Compensation Boards which are registered in the Registry of Deeds or land registration office before a petition is filed against a debtor, a debtor makes an assignment, a debtor files a notice of intention to make a proposal or a debtor files a proposal if:
 - the judgment is for amounts owing under the *Income Tax Act* and registered on or after June 18th, 1998 (when s. 223(11.1) of the *Income Tax Act* was proclaimed);
 - the judgment is for amounts owing under the *Excise Tax Act* and registered on or after October 20th, 2000, when s. 316(10.1) of the *Excise Tax Act* was proclaimed;
 - the judgment is for amounts owing under the *Customs Act* and registered on or after November 29, 2001, when s. 97.24(15) of the *Customs Act* was proclaimed; or
 - the judgment is for amounts owing under any other federal or provincial statutes after the date that such statute states the judgment is a secured claim in accordance with s. 86(2) and 87 BIA - this would include most of the statutes creating Crown liens that provide for registration of a memorial - see discussion in section 5 above."

Add to the foregoing list of protected judgments a memorial recorded under section 74 of the *Air Travelers Security Charge Act*, S.C. 2002, c. 9.

31. Lawyers must check the legislation relevant to any Federal Government, Provincial Government and Workers Compensation Board judgments against a bankrupt found in their search to determine if those judgments are protected by *BIA* ss.86 and 87.

¹¹ "Deemed Trusts and Other Super Priorities", The Agony and the Equity of ... Mortgages, September 17th, 2004, Canadian Bar Association Nova Scotia Conference.

32. The Trustee's lawyer will remove legacy judgments against a bankrupt that are not protected judgments from the parcel registers of the bankrupt's *LRA* parcels when registering the Assignment in Bankruptcy or the Receiving Order in those parcel registers - *BIA* ss.70(1) and 74(2).
33. The Trustee's lawyer must review the Judgment Roll for each registration district in which the bankrupt is the registered owner of a parcel. If there are judgments against the bankrupt that are not protected judgments, the lawyer will rely on the precedence afforded the Trustee's interest by *BIA* ss.70(1) and s.74(2) when registering the Trustee as owner of the bankrupt's interest. If the lawyer finds protected judgments against the bankrupt, the lawyer must record those protected judgments in the parcel registers for the parcels in which the bankrupt holds a registered interest. Recording these protected judgments in the parcel registers means they will be found in searches after the Trustee's name replaces the bankrupt's name as the registered owner of the bankrupt's interest in the parcel register.
34. Judgments protected by *BIA* ss.86 and 87 like those listed in paragraph 30 must be dealt with according to their priorities.
35. While a Trustee conveys the bankrupt's real property clear of judgments that are not protected, judgments against the bankrupt are not released by an assignment in bankruptcy; they may continue to have some effect for other purposes. See H&M, page 434, paragraph F§55(5), about the effect of bankruptcy on priorities of judgments:

"(5) - Change in Priorities by Reason of Section 70(1)

Section 70(1) does not say that, as the result of the making of a receiving order or the filing of an assignment, a creditor holding a judgment, execution, *etc.*, loses any priority that the creditor possesses; rather it gives the receiving order or assignment "precedence" over the judgment, execution, *etc.* As a result of s. 70(1), the position of the creditor holding the judgment, execution, *etc.*, is superseded by that of the trustee in bankruptcy but there is no loss of priority: *Re Nishi Industries Ltd.*, 28 C.B.R. (N.S.) 261, [1978] 6 W.W.R. 736, 91 D.L.R. (3d) 321 (C.A.). Hence, if prior to bankruptcy, an execution creditor has priority over a secured creditor, that priority will not be eradicated by the bankruptcy, nor will the priority of the secured credit be improved or altered by the bankruptcy: *Re Nishi Industries Ltd.*, *supra*. The trustee in bankruptcy will be entitled to the priority possessed by the execution creditor."

Lawyers may prefer to err on the side of caution when dealing with judgments in the Judgment Roll. It is safer to simply rely on the statutory precedence afforded by *BIA* s.70(1) when recording an Assignment or Receiving Order and not cancel unprotected judgments recorded in the Judgment Roll against a bankrupt. Leaving these judgments in the Judgment Roll will not affect the disposition of the bankrupt's real property free of those judgments and may preserve third party priorities.

36. Subject to s.178(1), *BIA* s.178(2) releases the debts of the bankrupt upon his, her or its discharge. I am grateful to W. Augustus Richardson, Q.C., for his observation in

personal communication that unprotected judgments against a bankrupt, including *Starratt v. Turner* judgments, may become unenforceable after the bankrupt's discharge unless the underlying debt is preserved by *BIA* s.178(1). He cited *Franklin v. Schultz* [1967] 2 O.R. 149, 62 D.L.R. (2d) 643 in which the Ontario Court of Appeal held that a sheriff

"...could no longer, for the realization of a judgment debt which had ceased to exist, sell either lands which the bankrupt had continued to own down to the date of his bankruptcy or lands which the bankrupt had, after the writs of *fi fa* came into the sheriff's hands but before the bankruptcy, conveyed to a third party."

The Court based its decision on s.135(2) of the *Bankruptcy Act* (now *BIA* s.178(2)) which provided that an order of discharge releases the bankrupt from all claims provable in bankruptcy other than those specified in s.135(1)(now *BIA* s.178(1)).

Registration and Recording under BIA

37. *BIA* s.74 provides for registration of Assignments, Receiving Orders and Caveats as follows:

74. (1) Every bankruptcy order, or a true copy certified by the registrar or other officer of the court that made it, and every assignment, or a true copy certified by the official receiver, may be registered by or on behalf of the trustee in respect of the whole or any part of any real property in which the bankrupt has any interest or estate, or in respect of the whole or any part of any immovable in which the bankrupt has any right, in the registry office in which, according to the law of the province in which the real property or immovable is situated, deeds or transfers of title and other documents relating to real property, an immovable or any interest or estate in real property or any right in an immovable may be registered.

(2) If a bankrupt is the registered owner of any real property or immovable or the registered holder of any charge, the trustee, on registration of the documents referred to in subsection (1), is entitled to be registered as owner of the real property or immovable or holder of the charge free of all encumbrances or charges mentioned in subsection 70(1).

(3) If a bankrupt owns any real property or immovable or holds any charge registered in a land registry office or has or is believed to have any interest, estate or right in any of them, and for any reason a copy of the bankruptcy order or assignment has not been registered as provided in subsection (1), a caveat or caution may be lodged with the official in charge of the land registry by the trustee, and any registration made after the lodging of the caveat or caution in respect of the real property, immovable or charge is subject to the caveat or caution unless it has been removed or cancelled under the provisions of the Act under which the real property, immovable, charge, interest, estate or right is registered.

(4) Every official to whom a trustee tenders or causes to be tendered for registration any bankruptcy order, assignment or other document shall register it

according to the ordinary procedure for registering within the official's office documents relating to real property or immovables. R.S., 1985, c. B-3, s. 74; 1997, c. 12, s. 70; 2004, c. 25, s. 47.

38. *BIA* s.74 permits, but does not require, a Trustee to register or record its interest in a bankrupt's real property. This may be done by registering the Assignment or Receiving Order (or by certified copies of either). For *Registry Act* parcels this will be done with a Form 44. For *LRA* parcels any document evidencing the trustee's vested ownership of the bankrupt's fee simple interest in the real property must be registered using a Form 24. The Trustee may record documents evidencing its non-fee simple interests in *LRA* parcels using Form 26.
39. Registration simply puts notice of the Trustee's interest on the public record to protect its beneficiary creditors from unauthorized dispositions by the bankrupt as apparent owner¹². As stated above in her letter of May 18, 2007 to Registrar General, Mark Coffin, Elizabeth Lang, Acting Deputy Superintendent, Regulatory Affairs & Compliance, Industry Canada, citing H&M, page 448, states:

"The purpose of registration of the assignment or receiving order is not to vest the bankrupt's interest in real estate in the trustee, since this occurs by virtue of s. 71 (2); rather the purposes are the following: (a) to establish the necessary chain of title from a bankrupt owner to a purchaser; (b) to give notice of the bankruptcy to persons dealing with the property; and (c) to amplify the provisions of s. 70(1) that the documents referred to in the subsection are superceded by a receiving order or assignment."

Registration, as noted, is essential, to establish the necessary chain of title in the public record.

A prudent Trustee registers or records its realizable interests promptly

40. For a recent Nova Scotia example of problems that can arise when a Trustee does not promptly register its realizable interest in real property and lawyers are not mindful of *BIA* s.71 see *Re LeBlanc*¹³, Tim Hill's case comment cited in paragraph 68.a. and the attached summary of that case.
41. If a Trustee fails to register its interests in real estate promptly it will be much easier for a bankrupt to improperly sell or mortgage his, her or its apparent interests to third parties. If a Trustee does not register or record its interests, *BIA* s.75 will prevent the Trustee from recovering an improperly sold or mortgaged property from innocent purchasers. A Trustee's failure to register which results in a loss to an estate may result in the Trustee being liable in negligence for the losses to its beneficiary creditors. Also, as noted by Ms. Lang of Industry Canada, above, "...failure to register which results in a loss to an estate may be considered an issue for professional conduct."

¹² *Supra* note 4 at para. 8.

¹³ (2007), 250 N.S.R. (2d) 225, 2007 NSSC 18, 27 C.B.R. (5th) 299, 796 A.P.R. 225, (Cregan, Reg.).

42. *BIA* s.75 does not license or permit a bankrupt to sell or mortgage the assets in his, her or its estate in bankruptcy. Quite the opposite is true. Such a sale or mortgage is contrary to s.71 and is an offence under s.198. In *Re Laramie*¹⁴ bankrupts were convicted of an offence under s.198 of *BIA* after mortgaging their estates' lands.

It would be good practice to record the assignment or receiving order in the Judgment Roll

43. It would be good practice to simultaneously *record* (Form 48B) the Assignment or Receiving Order in the Judgment Roll when *registering* it under *LRA* or the *Registry Act*. This recording will involve no additional recording fee. *Recording* the Assignment or Receiving Order in the Judgment Roll will give early notice of the bankruptcy to searchers and others. Early recording may also "catch" a bankrupt's undisclosed interest in
- a. parcels acquired by the bankrupt during the bankruptcy but after the original statement of affairs,
 - b. parcels in which the bankrupt has a beneficial interest not shown in the parcel register or Grantee indices, and
 - c. parcels missed by a Trustee's initial search for a bankrupt's real property.

Parties acquiring interests in parcels will normally do a title search; that search will include a search for judgments against the owner. An Assignment or Receiving Order recorded against the bankrupt in the Judgment Roll will warn the searching party to determine if the Trustee has an interest in any parcel which the bankrupt is attempting to transfer. Recording in the Judgment Roll may also save potential judgment takers the cost of obtaining fruitless judgments.

Trustee cannot divest by inaction or oral abandonment

44. A Trustee cannot divest itself of an interest in real estate by mere inaction or by an oral abandonment. H&M C§16 - Disclaimer of Property, p.64, states: (emphasis added)

"Section 20 permits the trustee, with the permission of the inspectors, to divest all or part of the trustee's right, title or interest in any real property of the bankrupt by a notice of quit claim or disclaimer. **A trustee cannot divest itself of an interest in real estate by mere inaction or by an oral abandonment.** The quit claim or disclaimer must be Approved by the inspectors: [cites authorities]"

¹⁴ (2001), 25 C.B.R. (4th) 268 (Alta. Q.B.).

In *Re Mailman*¹⁵, Hill, Reg., states:

"7 By virtue of s. 71(2) of the *Bankruptcy and Insolvency Act* the Bankrupt's interest in these properties vested in the Trustee upon the Bankrupt's assignment. While s. 20(1) of the *Bankruptcy and Insolvency Act* allows a Trustee to divest the Trustee's interest in real property by a notice of quit claim or disclaimer, **the Trustee cannot divest himself of an interest in real estate simply by inaction:** *Jones v. McClean* (1931), 12 C.B.R. 238, [1931] 1 W.W.R. 315, 39 Man. R. 321, [1931] 2 D.L.R. 244 (Man. C.A.)."

Neither the discharge of the Trustee nor the discharge of a bankrupt reverts property in the bankrupt

45. The bankrupt's property vests in the Trustee until:

- a. the Trustee transfers the property
 - i. with the Inspectors' permission, by sale under *BIA* s.30,
 - ii. with the Inspectors' permission, by release of the Trustee's interest under *BIA* s.20,
 - iii. with the Inspectors' permission, by release of the Trustee's interest to the bankrupt where the property is incapable of realization¹⁶, or
 - iv. as directed by court order issued under *BIA* s.40(2); or
- b. the interest is expressly released by operation of other *BIA* provisions.

The Trustee may not need the Inspectors' permission to sell or release a bankrupt's property in Summary Administrations¹⁷.

¹⁵ *Supra* note 4 at para. 7.

¹⁶ "40. (1) With the permission of the inspectors, any property of a bankrupt found incapable of realization shall be returned to the bankrupt prior to the trustee's application for discharge."

¹⁷ Consent of the Inspectors may not apply in Summary Administrations. See *BIA*, ss.49(6) and 155 - Paul E. Radford, "Bankruptcy: Effects on Judgments and Priorities in a Title Search", 1996 Real Estate Conference and Workshop, The Continuing Legal Education Society of Nova Scotia, April 12, 1996, at page 3. But consider *Re Mailman*, *supra*. note 3 at para. 10 as to whether a Court order may be required absent inspectors:

"10 Firstly, the Bankrupt's interest in the two properties is already vested in the Trustee. The Trustee can take whatever steps the Trustee deems appropriate to realize on the Estate's interest in the properties. **If the Trustee is to sell that interest, either to the Bankrupt or to his spouse, there being no Inspectors, the Trustee will need to obtain Court approval. ...** The other alternative for the Trustee is obviously to proceed to obtain an order for partition and sale of the properties."

46. Neither the discharge of the Trustee nor the discharge of the bankrupt reverts any estate property in the bankrupt - H&M C§71, p.116. See *Re Mailman*¹⁸, *Re Marino*¹⁹ and *Re Johnson*²⁰. As neither type of discharge transfers any property interest neither discharge is registerable or recordable as an "interest" (see *LRA* s.3(1)(g)) in real property except as stated in paragraph 61. The *LRA* system could help prevent problems arising from recorded discharges by restricting their recording to those situations noted in paragraph 61.

Estoppel

47. A Trustee may be prevented from dealing with a parcel by estoppel as in *Re Johnson* and *Re Morino*. See also *Re Shelson*²¹. Estoppel did not apply in *Re Dovgala*²² or *Household Realty Corp. v. Davis*²³.

Quaere. If a lawyer dealing with a parcel learns of an unregistered bankruptcy affecting the parcel and that bankruptcy is both

- i. several years old, and
- ii. apparently dormant,

may the lawyer rely on estoppel vis-a-vis the Trustee without obtaining a release from the Trustee or a court order? Does the length of time since the bankruptcy affect this exercise of professional judgment? What if the discharged bankrupt has sold, mortgaged or otherwise dealt with the parcel since the bankruptcy? Of what effect is the practice of some Trustees in not registering assignments or receiving orders or providing disclaimers to bankrupts when unrealizable parcels have been involved?

¹⁸ *Supra* note 4, at para. 12.

¹⁹ (2004), 2 C.B.R. (5th) 290, 189 O.A.C. 14, (*sub nom. Deloitte & Touche LLP v. Marino*) 72 O.R. (3d) 274 (Ont. C.A.).

²⁰ (2006), 250 N.S.R. (2d) 45, 2006 NSSC 384, 28 C.B.R. (5th) 150 (N.S. S.C.).

²¹ (2004), 184 O.A.C. 161, 236 D.L.R. (4th) 591, 70 O.R. (3d) 17, 4 C.B.R. (5th) 76 (C.A.).

²² (2005), 14 C.B.R. (5th) 182 (Ont.S.C.J.).

²³ (2007), ONCA 283, 222 O.A.C. 320, 30 C.B.R. (5th) 269.

Trustee's duty to return unrealizable property to bankrupt or obtain a *BIA* s.40(2) order

48. Trustees may determine that certain real property interests in a bankrupt's estate cannot be realized²⁴. H&M, C§71 Disclaimer of Property, p.116, states that:

"In order for property to be incapable of realization, the trustee must first make necessary and proper attempts to realize upon the assets..."

Under *BIA* s.40(1) the Trustee may release or disclaim its interest in a bankrupt's registerable and recordable interests in real property with the permission of the Inspectors²⁵.

49. ***BIA* s.40 requires the Trustee to return unrealizable property to the bankrupt prior to the Trustee's application for discharge or to obtain an order respecting the property.** There can be serious problems if the Trustee does not meet this obligation:
- a. Section 71 of *BIA* prevents the bankrupt from dealing with the property until the Trustee disclaims the property to the bankrupt; the bankrupt may be in limbo indefinitely - *e.g.* no sale, no mortgages.
 - b. Subject to the possible application of estoppel principles, the bankrupt is at risk of the Trustee selling the estate property indefinitely. Refer to paragraph 47, for estoppel references.
 - c. If the Trustee is discharged before it disclaims the property to the bankrupt or realizes on the property, the bankrupt may have to
 - i. negotiate with, or
 - ii. bring an action against

the Trustee to obtain the disclaimer to which he or she may be entitled. For example, this author knows of one situation in which a Trustee neither registered the Assignment in Bankruptcy nor conveyed to the bankrupts their matrimonial home property after selling them the equity of redemption before the Trustee was discharged. After their discharge the then former bankrupts sought to mortgage their home. As the Trustee still held title, albeit unregistered, the former bankrupts had to have the discharged Trustee reappointed so it could convey the parcel to them. This process cost the former bankrupts about \$1,000 in Trustee fees. It is this author's view that the cost of reappointment for this purpose ought

²⁴ Directive No. 22 (Pre-1992) Realization of Estate Assets (Still Active) published by the Office of the Superintendent of Bankruptcy Canada outlines the Superintendent's position about Trustees' duties to realize estate assets.

²⁵ *Supra* note 17 at page 3.

to have been borne by the Trustee for its failure to return the unrealizable property before its discharge as required by *BIA*.

50. It is also this author's view that there is no issue with the Trustee, before its release, providing the bankrupt with a certified copy of the Assignment or Receiving Order, a Trustee's deed or disclaimer for unrealizable property and a clear instruction to have a lawyer register both as quickly as possible. This may save the Trustee from becoming involved in the migration of a *Registry Act* parcel apart from consenting to the migration and swearing a *LRA* Form 5 as registered owner. If the bankrupt then fails to register his, her or its title it is the bankrupt's responsibility.

Release or Disclaimer of *Registry Act* parcels may trigger *LRA* migration

51. Migration is required when a Trustee releases its fee simple interest in a parcel that is registered under the *Registry Act* to a party without consideration but the transferee assumes an outstanding mortgage against the parcel. The attached copy of the Registrar General's email sent to lawyers - *Gift of encumbered parcels -- conversion trigger* - dated April 16, 2004 explains the reasons for this position. However, at the CBANS Continuing Legal Education meeting about *BIA* on October 18, 2007 the Registrar General stated that a disclaimer to a bankrupt subject to a mortgage to which the bankrupt was already a party would not be considered an "assumption" thus would not trigger a migration.
52. Migration is required when a Trustee releases its fee simple interest in a parcel that is registered under the *Registry Act* to a party (including a bankrupt) and the deed transfer tax affidavit discloses that the transfer is made for a sale price or value.
53. Migration is not required when a Trustee releases its interest in a parcel that is registered under the *Registry Act* to a party without consideration and there is no mortgage against the parcel.

Status of Trustee under *BIA* ss.40 & 41 before and after its discharge

54. In *Re Marino* the Court set forth the applicable provisions of *BIA* at paragraph 2:

"2 The provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("the Act") are relevant in the following order, with emphasis added:

71.(2) On a receiving order being made or an assignment being filed with an official receiver, **a bankrupt ceases to have any capacity to dispose of or otherwise deal with his property, which shall**, subject to this Act and to the rights of secured creditors, forthwith pass to and **vest in the trustee** named in the receiving order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any conveyance, assignment or transfer.

74.(2) **Where a bankrupt is the registered owner** of any land or charge, **the trustee**, on registration of the documents referred to in subsection (1), is

entitled to be registered as owner of the land or charge free of all encumbrances or charges mentioned in subsection 70(1).

40.(1) **With the permission of the inspectors, any property of a bankrupt found incapable of realization shall be returned to the bankrupt prior to the trustee's application for discharge.**

(2) **Where a trustee is unable to dispose of any property as provided in this section, the court may make such order as it may consider necessary.**

41.(10) Notwithstanding his **discharge, the trustee remains the trustee** of the estate for the performance of such **duties** as may be **incidental** to the full administration of the estate.

37. **Where the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the court** and the court may confirm, reverse or modify the act or decision complained of and make such order in the premises as it thinks just.

41.(11) The court, on being satisfied that there are assets that have not been realized or distributed, may, on the application of any interested person, appoint a trustee to complete the administration of the estate of the bankrupt, and the trustee shall be governed by the provisions of this Act, in so far as they are applicable."

55. The court then considered the effect of *BIA* ss.40 and 41. It stated that: (Emphasis added)

"20 After discharge as Mrs. Marino's trustee, Deloitte & Touche continued in its position only for "such duties as may be incidental to the full administration of the estate" (s. 41(10)). If realization of the property was more than "incidental" to the administration of this estate, or if a court was satisfied that assets of the bankrupt remained unrealized or undistributed, the trustee could seek re-appointment as a trustee to complete the estate's administration (s. 41(11)). No such relief was or has been requested.

21 **Absent any application for re-appointment, and even though the property vested in the trustee, the trustee had no authority to deal with it unless such dealing was "incidental" to the administration of Mrs. Marino's estate.**

22 **The sale of Mrs. Marino's interest in the home was not, however, merely incidental to the administration of her estate. On the facts, Mrs. Marino's interest in the home was her only asset of any significance: it was her estate. Accordingly, the trustee had no authority to make a claim against Mrs. Marino's interest in the home.**

...

24 The trustee's claim against Mr. Marino's interest is different from its claim against Mrs. Marino's interest because the trustee had not been discharged with respect to Mr. Marino's bankruptcy, although it had applied for discharge. Accordingly, with respect to Mr. Marino's estate, the trustee was not restricted to "incidental" duties, as it was with respect to Mrs. Marino's estate (s. 41(10))."

56. Based on *Marino* a discharged Trustee holding title to a parcel as the only significant estate asset will have no power to convey the parcel until the Trustee is reappointed²⁶.

Caveats

57. Caveats are a form of notice used for registering certain interests in real property in some Torrens land registration jurisdictions. Presumably caveats are referred to in *BIA* s.74(3) to accommodate the Torrens land registration regimes in those provinces and territories. For example, the Alberta Land Titles Procedures Manual, Procedure # CAV-1 Caveats, dated February 2, 2006, lists assignments in bankruptcy as one of many interests which may be recorded using a "caveat". As discussed in paragraph 60 "caveats" in Nova Scotia generally refers to mere notices of claims that do not meet the definition of "instrument" under *LRA* so are neither registerable or recordable. There is no form of caveat prescribed by either the *Registry Act* or *LRA* under which one might register or record a bankrupt's Assignment or Receiving Order.
58. *BIA* s.74(3) must be read with *BIA* s.74(4) which requires land registration officials to register any bankruptcy order, assignment or other document **according to the ordinary procedure for registering within the official's office**. In Nova Scotia prescribed forms are used to register or record interests in land rather than caveats. If a caveat under *BIA* (if such exists in Nova Scotia) is to be put in the public record in Nova Scotia it would be registered or recorded under *LRA* according to its legal effect or registered under the *Registry Act* for *Registry Act* parcels.
59. In *Re Johnson*²⁷, decided in 2006, the Registrar stated:

"18 The usual practice in Nova Scotia is where a bankrupt continues to have possession of the home and arrangements have not been made whereby the bankrupt can obtain the release of the trustee's interest, or have been made and the bankrupt has neglected to comply with them, **the trustee will after the passage of a reasonable time apply to the court to obtain its discharge and for permission to maintain a caveat on the property**. If the bankrupt does not appear or appears but does not object, the application is normally granted. The caveat stays in place until the bankrupt's circumstances (such as the need to refinancing) change and the matter is brought to a head with the terms of the lifting of the caveat either settled by agreement or by the court. In substance this is what is before the court in this application."

²⁶ *Supra* note 19 at paras. 20-22.

²⁷ *Supra* note 20 at para. 18.

This passage appears to relate to orders issued under *BIA* s.40(2). An Order under *BIA* s.40(2) respecting a *LRA* registered parcel will be

- a. *registered* if it orders a change in registered fee simple ownership, and
- b. *recorded* if it permits the Trustee to be discharged without first disposing of the real property involved or otherwise affects the Trustee's ability to deal with the parcel.

An order under *BIA* s.40(2) respecting a *Registry Act* parcel will be registered under that Act using a Form 44. If the Trustee has already registered the Assignment or Receiving Order under the applicable Act it is the registered owner of the parcel and requires no further registration or recording to evidence its ownership of the parcel. If the Assignment in Bankruptcy or Receiving Order is not already registered, the Trustee must register it before the *BIA* s.40(2) order is registered or recorded to establish the chain of title or to make current the parcel register that is to be amended by the order.

60. Do not confuse "caveats" of the *BIA* s.74(3) nature with notices of mere claims. In Nova Scotia neither the *Registry Act* nor *LRA* provide for registration or recording of "caveats" purporting to give notice of "mere claims". A title examiner must look at the substance of the instrument not the "caveat" label when determining its legal effect for *registration or recording*. Outside the *BIA* context in Nova Scotia, a caveat is not considered to be an interest in land²⁸. In *Blades and Quinlan v. Atwood*²⁹ the Court held at paragraphs 31 and 32:

"31. A document in the nature of a caveat therefore is a registered statutory declaration in which the declarant goes beyond a mere recitation of facts and gives notice of an action respecting real property rights, actually begun or merely contemplated, or of a claim, for the purpose of warning off potential purchasers of land by fixing them with notice of the action or claim. If permitted to stand as notice relevant to a purchaser under s. 17 of the *Registry Act*, the statutory declaration would have the practical effect of an injunction or an attachment order, interfering with the rights of property owners without the safeguards of the proper procedures. It would be available unilaterally and might remain in effect indefinitely. Despite its outward resemblance to a proper statutory declaration, it is not an instrument changing or affecting title to land, or a recordable document within the purview of the *Registry Act*.

32. Because such documents are held to be without force and effect, and may be liable to be struck from the records of the Registry of Deeds, it follows that they are not notice of any facts they might contain."

²⁸ *Church v. Forbes and Church* (1983), 60 N.S.R. (2d) 211 (Hall, J.).

²⁹ (1990), 95 N.S.R. (2d) 348 (Freeman, L.J.S.C.).

Recorded Discharges of Bankruptcy

61. A Discharge of Bankruptcy, a "Discharge", does not transfer any interest in a bankrupt's property as "interest" is defined in *LRA* s.3(1)(g). For that reason a Discharge is not properly registerable or recordable under *LRA* unless used
 - a. to release an unprotected legacy judgment in a parcel register when appropriate (paragraph 32),
 - b. to evidence the bankruptcy in the Judgment Roll (paragraph 43)
 - i. as notice that earlier unprotected judgments against the bankrupt were superseded by the bankruptcy, or
 - ii. perhaps, to put the date of discharge on record so searchers will know that property acquired by, or devolving on, the former bankrupt after that date did not vest in the Trustee as part of the former bankrupt's estate in bankruptcy.
62. Again with thanks to W. Augustus Richardson, Q.C., the owner of a parcel subject to an unprotected "*Starratt v. Turner* judgment" could consider recording the judgment debtor's Discharge as a vehicle to remove that judgment from the parcel register. This may be justified by *Franklin v. Schultz* (paragraph 36 above) if the underlying debt was released by *BIA* s.178(2) on the bankrupt's discharge.
63. **Cautions.**
 - a. *Recording* a Discharge in a parcel register in the belief that the *recording* will return an interest to the bankrupt may backfire. The recording transfers no interest to the former bankrupt but it will give title searchers notice of the Trustee's ownership of the interest on the bankruptcy³⁰.
 - b. Do not rely on a previously registered discharge of bankruptcy as evidence that the Trustee has released its interest in the parcel to the bankrupt. As Tim Hill states in his case comment on *Re Leblanc* noted in paragraph 68.a.:

"It may well be that a Trustee is just sitting on the estate's interest in the property, expecting to be paid when it is conveyed or mortgaged. Do not get caught relying on a discharge order. Make the call and get the disclaimer or a Quit Claim Deed."

Some debts survive bankruptcy

64. *BIA* s.178(1) lists debts that are not discharged by bankruptcy. These will not affect title to a bankrupt's real property conveyed by the Trustee during its administration of the bankrupt's estate. These may preserve the foundation of a "*Starratt v. Turner*

³⁰ Consider the quacre in paragraph 47.

judgment" as the debt upon which the judgment is based is not released on the bankrupt's discharge as was the debt in *Franklin v. Schultz*. Protected judgments will also survive a discharge from bankruptcy.

Joint tenancy is severed by bankruptcy

65. If a joint tenant becomes bankrupt his, her or its joint tenancy in a parcel is severed³¹.
66. If the bankrupt later recovers his or her half interest it will be as a tenant-in-common with the other co-owner(s). If the co-owners do not re-establish their joint tenancy an unintended probate or administration may result on the death of the first co-owner to die. That deceased owner's estate will not be able to transfer the deceased's interest in the parcel under *LRA*³² without the probate or administration of his or her estate.

POL *LRA* resources

67. The following Land Registry Client Resource Material 2007 (On-line POL resource) materials may be of interest:
 - a. How to Migrate a Parcel Subject to an Assignment in Bankruptcy,
 - b. Assignments on AFR's,
 - c. Land Registration Act Directive,
 - d. Policy and Procedures for Lawyers and Surveyors, March 2006 under the heading "Assignments in Bankruptcy" (this section is under review by the Registrar General)
 - e. Form #5 Guideline,
 - f. Instrument Types and Associated Forms For LR Documents, and
 - g. How To Show Certain Interests On The AFR.

³¹ *Re White* (1928), 8 C.B.R. 544, 33 O.W.N. 255, [1928] 1 D.L.R. 846 (Ont. S.C.) at paragraph 14:

"14 The conclusion I have come to is that there is no survivorship in a joint tenancy, except upon the death of one of the joint tenants, and the assignment for the benefit of creditors by the debtor operated as a severance of the joint tenancy, and upon the severance each of the parties to the joint deed became owners of an undivided one-half interest in the severed property, and the one-half interest of the debtor vested in the trustee as property belonging to the debtor within the meaning of The *Bankruptcy Act*, subject to the payment of one half of whatever encumbrances there may have been registered against the property."

³² ss.24-26.

Other resources

68. The following CLE resources are available at the Nova Scotia Barristers' Society website (<http://www.nsbs.org/dbtw-wpd/qsets/2dsources1qbe.htm>) under Library Services, Secondary Sources:
- a. Hill, Tim, *Leblanc (Re)*, 2007 NSSC 18, 27 C.B.R. (5th) 299, 796 A.P.R. 225, 250 N.S.R. (2d), 2007 Carswell 27 (Registrar): a case comment (July 2007), in Nova Scotia Law News vol. 32 no. 3 p. 160.
 - b. MacKeigan, Robert G., Q.C., and Radford, Paul E, "Conveyancing Standards of Practice: 3.11 and 3.14" (Speaking notes for presentation to the Nova Scotia Real Estate Lawyers Association, Real Estate Practice Seminar Series, February 2003).
 - c. Paul E. Radford, "Bankruptcy: Effects on Judgments and Priorities in a Title Search" (Paper presented to The Continuing Legal Education Society of Nova Scotia 1996 Real Estate Conference and Workshop, April 12, 1996).
 - d. J. Craig McCrae, "Buying Commercial Property from a Receiver or Trustee" (Paper presented to The Continuing Legal Education Society of Nova Scotia conference, Real Estate, October 9, 1992).
69. Refer to Practice Standard 3.11 Bankruptcy and Receivership, Professional Standards Real Property Transactions in Nova Scotia, Nova Scotia Barristers' Society.
70. The attached Bankruptcy & Real Property (*LRA*) diagram summarizes the *BIA* processes for real property.

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BIA Case Study: *Re LeBlanc* 2007 NSSC 18, January 18, 2007

1. 2004-06-15: Bankrupt "B" made assignment in bankruptcy, Trustee "T" was appointed B's trustee in bankruptcy:
 - a. B's Debts included \$5,000 owed to his Uncle "U"; and
 - b. B's assets included two wood lots registered under the *Registry Act*.
2. 2004-07-08: U filed a proof of claim with T asserting a claim of \$5,000 secured as to \$3,500.
3. 2005-03-03: T disallowed U's claim for the security - no proof provided by U.
4. 2005-03-16: T received appraisal of wood lots stating value to be \$10,000.
5. 2005-03-23: T wrote B offering to sell the two wood lots to B for \$10,000 inviting B to contact T to make payment arrangements. B did not respond.
6. 2005-04-15: B was granted an absolute discharge from bankruptcy.
7. 2006-05-08: B deeded the two wood lots to U for \$8,200 - a \$5,000 credit for B's debt to U and the remainder in cash.
8. 2006-05-09: lawyer "L" completed migration of the two wood lots **in B's name** under the *Land Registration Act*. The Registrar states that "Both the solicitor for [U] and the solicitor for [B] in making the conveyance according to evidence submitted knew of his bankruptcy." The Registrar states "This raises the question whether the migration and conveyance were proper." As neither the uncle nor the solicitors were before the Registrar, the Registrar wrote: "Accordingly, I make no comment as to whether the Trustee may have a remedy against them."
9. 2006-05-17: L registered the deed from B to U under a Form 24 certified by L. The LRO revised the registered owner of the two wood lots from B to U.
10. 2006-05-18: T lodged a certified copy of B's Assignment in Bankruptcy for *recording* with the LRO under a Form 26 signed by T. (T explained the 23 month delay between the date of the Assignment and the date of its recording by telling the Registrar: "These things take time".)
11. 2006-05-18 the LRO *registered* T as an owner of one of the two wood lots under the Form 26 submitted for *recording* and recorded the Assignment in the other parcel register. Now both U and T are shown as owners of the two wood lots under the deed to U and the Assignment in one parcel register.
12. 2007-01-18: On T's application the Registrar, under *BIA* s.180(1), annulled B's discharge providing that B will be entitled to a discharge upon paying T \$5,700 at \$200 per month. The Registrar gave B the benefit of the doubt when calculating the loss "...because the Trustee could have avoided the problem by being more diligent in its responsibilities to protect its title..." The Registrar does not comment further on T's failure to record the Assignment promptly after its appointment.
13. B has improperly dealt with the wood lots contrary to *BIA* s.71. U, by his knowledge of the bankruptcy, cannot claim protection for his purchase under *BIA* s.75. Quære the solicitors' positions arising from their involvement in the migration and transfer of the parcels if the Registrar's comment about their knowledge of the bankruptcy is correct. T exposed itself to a possible claim for a deficiency from its beneficiaries and to professional conduct action by Industry Canada. The LRO *registered* an Assignment submitted under a Form 26 for *recording*.
14. Consider how easily this situation could have been prevented if either T had registered B's Assignment under the *Registry Act* promptly after its appointment as Trustee or the solicitors, *if* they knew of the bankruptcy, had approached the Trustee for a release before assisting their clients to migrate then transfer the two wood lots.

Registering & recording bankruptcy interests (Revised October 25, 2007 to include LRA/POL update)

Sample forms prepared by Janice McNenly are annexed for your assistance.

"Conveyance" includes "releases", "quit claims", "disclaimers" and other instruments of transfer under BIA.

Document to be registered / recorded	Instrument Type	Form
To <i>register</i> the bankrupt's fee simple interest in a LR registered parcel in the Trustee's name under the Assignment in Bankruptcy or Receiving Order ("A/RO").	Assignment of Bankruptcy (110) LRO codes as Assignment of Bankruptcy re Judgment Roll (729)	Form 24. Qualifier will be "Trustee". Remove unprotected legacy judgments against the bankrupt from the parcel register - BIA, ss.70 & 74(2). See the first sample form. Simultaneously use Form 48B to <i>record</i> the A/RO in the Judgment Roll. See the second sample form.
To <i>register</i> the bankrupt's fee simple interest in a <i>Registry Act</i> registered parcel in the Trustee's name under the A/RO.	LRO codes as Assignment of Bankruptcy (110) LRO codes as Assignment of Bankruptcy re Judgment Roll (729)	Form 44 Simultaneously use Form 48B to <i>record</i> the A/RO in the Judgment Roll. See the second sample form.
To <i>record</i> the bankrupt's non-fee simple interest in a third party's LR registered parcel in the Trustee's name under the A/RO - e.g. a mortgagee's interest.	Assignment of Bankruptcy re Non Fee Simple (448)	Form 26. See the third sample form. This is similar to assigning a mortgage. Under Interest Holder Name, instruct the LRO to change the bankrupt's name to "Interest Assigned". This retains the original interest in the parcel register. Next, instruct the LRO to add the Trustee's name as owner with qualifier "Trustee". The A/RO enables this interest.
To <i>record</i> the bankrupt's non-fee simple interest in a third party's <i>Registry Act</i> registered parcel in the Trustee's name under the A/RO.	LRO codes as Assignment of Bankruptcy re Non Fee Simple (448)	Form 44. No new registration is required if the A/RO is already registered under the <i>Registry Act</i> . Find these non-fee simple interests with an "All interest holders" Grantee search of the bankrupt's name.
To <i>record</i> a discharge of bankruptcy in the parcel register of a LR registered parcel to remove legacy judgments.	Judgment Removal from Register - No Satisfaction (728)	Form 48A. Do not remove legacy judgments against the bankrupt that are protected by BIA ss.86 &87 - see BIA, ss.70 & 74(2). N.B. Discharges of bankruptcy may be used to discharge legacy judgments. They should not be recorded to give notice of the bankruptcy because they neither release a Trustee's ownership of a parcel to the bankrupt nor convey any "interest" in a parcel as "interest" is defined under LRA s.3(1)(g). Only "interests" and "prescribed contracts" may be recorded. To put the discharge "on record" record it in the Judgment Roll - see the next row.
To <i>record</i> a discharge of bankruptcy in the Judgment Roll as notice of the bankruptcy.	LRO codes as Discharge of Bankruptcy re Judgment Roll (730).	Form 48B. See fourth sample form. This will alert searchers to determine the effect of the bankruptcy on any judgments recorded against the bankrupt in the Judgment Roll.

To record an order made under BIA in the parcel register of a LR registered parcel registered in the Trustee's name where that order does not transfer a fee simple interest. As these are not judgments for the recovery of money they are not recorded in the Judgment Roll - <i>LRA</i> , s.65(1).	Order (Not Transferring / Not Judgment) (412)	Form 26. N.B. If an order under <i>BIA</i> s.40(2) permits the Trustee to hold its interest in the parcel beyond the Trustee's discharge, determine whether the Trustee must be reappointed before dealing with the parcel again - <i>BIA</i> s.41(10), <i>Re Marino</i> (para 54 of this paper).
To <i>record</i> an order made under BIA in the parcel register of a LR registered parcel not registered in the Trustee's name where that order does not transfer a fee simple interest. As these are not judgments for the recovery of money they will not be recorded in the Judgment Roll - <i>LRA</i> , s.65(1).	Assignment of Bankruptcy (110) Order (Not Transferring / Not Judgment) (412)	Form 24. First, the Trustee must <i>register</i> the A/RO in the parcel register - <i>LRA</i> s.30 & <i>BIA</i> , s.74(2) - to establish the chain of title into the Trustee per the ordinary procedure for registering under <i>LRA</i> - <i>BIA</i> , s.74 (4). Form 26. Now the Trustee may record the order.
To <i>record</i> an order made under BIA respecting a parcel registered under the <i>Registry Act</i> .	LRO codes as Order (Not Transferring / Not Judgment) (412)	Form 44.
To <i>register</i> a conveyance of an LR registered parcel <i>registered</i> in the Trustee's name from the Trustee to another under <i>BIA</i> ss. 20, 30 or 40(1).	Deed (101)	Form 24. See the fifth sample form.
To <i>register</i> a conveyance of an LR registered parcel <i>not registered</i> in the Trustee's name from the Trustee to another under <i>BIA</i> ss. 20, 30 or 40(1).	Assignment of Bankruptcy (110) Deed (101)	Form 24. First, the Trustee (or the bankrupt) must <i>register</i> the A/RO to establish the chain of title into the Trustee. See the fifth sample form. Form 24. The Trustee or bankrupt may then register the conveyance.
To record a transfer of a non-fee simple interest in a LR registered parcel by the Trustee.	Deed (101)	Form 26. See the sixth sample form.
To <i>register</i> a conveyance of a Registry Act registered parcel under <i>BIA</i> ss. 20, 30 or 40(1) when the A/RO has been registered under the <i>Registry Act</i> .	LRO codes as Deed (101)	Form 44. *Refer to the Caution below.
To <i>register</i> a conveyance of a Registry Act registered parcel under <i>BIA</i> ss. 20, 30 or 40(1) when the A/RO has not been registered under the <i>Registry Act</i> .	LRO codes as Assignment of Bankruptcy (110) LRO codes as Deed (101)	Form 44. The Trustee (or the bankrupt) must first register the A/RO under the <i>Registry Act</i> to change the registered owner to the Trustee. Form 44. Then the Trustee or bankrupt may register the conveyance under the <i>Registry Act</i> . *Refer to the Caution below.
*Caution - consider the Registrar General's Email to Lawyers- Gifting of Encumbered Parcels- Conversion Trigger dated April 16, 2004 which states that parcels conveyed subject to an encumbrance to be assumed by the grantee must be migrated. The Registrar General stated on October 18, 2007 that this will not apply to transfers from a Trustee to a bankrupts when the bankrupt is a party to the mortgage and there is no other consideration paid to the Trustee by the bankrupt.		

Registrar General Email sent to Lawyers - 4/16/04 11:07AM

Subject: Gifting of encumbered parcels--conversion trigger

Dear Eligible Lawyers:

We have received a question on conversion of parcels that are gifted but are subject to a mortgage and thought that the answer would be of interest to you all.

The scenario is this. The grantor is gifting a parcel, subject to a mortgage that is being assumed by the grantee. No money is changing hands on the transfer, and there is no advance of mortgage monies or increase of mortgage principal.

Question: Is this transaction considered a trigger under the new land registration system requiring the parcel to be converted?

Answer: Yes, even though the transfer is exempt from deed transfer tax and was gifted to the new owner, it is made for valuable consideration as defined under the MGA and therefore must be converted to the new land registration system under the LRA "transfer for value trigger".

Discussion: Subsection 37(2) of the LRA is the transfer "trigger". It states:

Subject to Section 46, any person who has, for valuable consideration, acquired the ownership of a parcel that is not registered pursuant to this Act shall apply to the registrar of the district in which the parcel is situated to have the title to the parcel registered pursuant to this Act.

Clause 46(1)(a), in turn, says:

A registrar of deeds shall not accept for recording pursuant to the Registry Act any transfer of an equitable or legal title of a fee simple estate, life estate or remainder interest that the affidavit filed pursuant to the Municipal Government Act discloses is made for valuable consideration. [emphasis added]

The LRA therefore uses the MGA and its Affidavit of Value as the measure of whether a parcel is conveyed for valuable consideration.

The MGA, at clause 3(bk)(iii) says:

"sale price" or "value" means the entire consideration for the sale of the property and, without restricting the generality of the foregoing, includes outstanding obligations or accounts cancelled, assumed or satisfied. [emphasis added].

The MGA, at clause 101(2)(c), says:

The grantee shall file an affidavit made by the grantee or by someone having full knowledge of the facts setting out the sale price of the property with full details of the

consideration, including the amount of any lien or encumbrance subject to which the transfer was made [emphasis added].

Therefore, the amount of the assumed mortgage must be disclosed in the affidavit of value--it is part of the consideration.

Whether the transfer is made for valuable consideration as defined in the MGA is a separate issue from whether the transaction is exigible for deed transfer tax purposes. Clause 109(1)(c)(i) exempts the transaction from transfer tax when it says:

Where a deed transfers property by way of gift, notwithstanding that the deed transfers property subject to an encumbrance, including a mortgage or a tax lien, and the grantee assumes the amount of the encumbrance, including interest and expenses, it is exempt from deed transfer tax.

Thus, even though the transfer is exempt from deed transfer tax and was gifted to the new owner, it is made for valuable consideration as defined under the MGA and therefore must be converted to the new land registration system under the LRA "transfer for value trigger".

C.A. Mark Coffin
Registrar General of Land Registration
1505 Barrington St.
9 South Maritime Centre

N:\HotDocs\Bankruptcy Notes 01.WPT

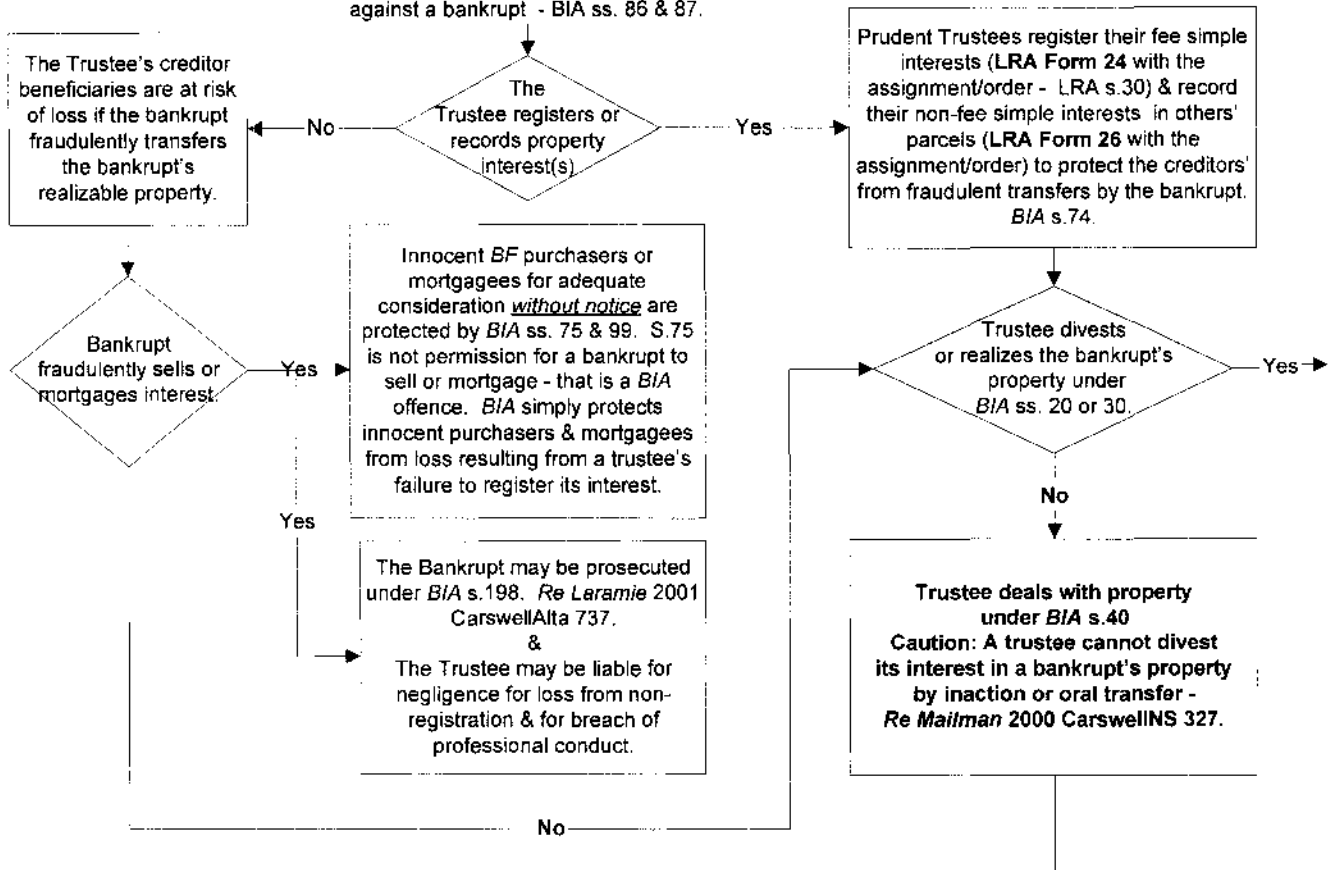
Bankruptcy & Real Property (LRA)

Title to a bankrupt's property automatically vests in the Trustee by operation of law when the bankruptcy order is issued or the assignment is filed with the Official Receiver. After this the bankrupt cannot deal with that property - BIA, s.71. "Property" is defined in BIA s.67(1)(c).

Garth C. Gordon, Q.C.
2007-10-09
(Revision 8)

Bankruptcy severs joint tenancies at common law.

Bankruptcy does not supersede all judgments against a bankrupt - BIA ss. 86 & 87.



With the permission of the inspectors, any property of a bankrupt found incapable of realization shall be returned to the bankrupt prior to the trustee's application for discharge. - BIA s.40(1) (subject to s.40(2)). A Trustee must first make reasonable effort to realize assets. Return of asset is effected by a notice of quit claim or renunciation - BIA s.20; e.g. O'Brien's Encyclopedia of Forms, Commercial & General, Volume 1, Form 15A:45. BIA s.37, may provide recourse for the bankrupt if the Trustee fails to return the unrealizable property to the bankrupt.

Neither the discharge of the bankrupt nor discharge of the Trustee returns property to the bankrupt; estoppel may prevent the Trustee from realizing the property: Re Marino, 2004 CarswellOnt 3084; Re Johnson, 2006 CarswellINS 578.

Caution: a discharge of a bankrupt or a "caveat" shown in a parcel register is notice of a prior bankruptcy to potential interest takers. Unless the Trustee has quit claimed or disclaimed its interest in the parcel by registered (for the fee simple) or recorded (for other interests) instrument, the interest taker' may acquire no interest in the parcel. In this circumstance a cautious lawyer should, as appropriate for the interest, ensure that a quit claim or disclaimer from the Trustee is registered or recorded before proceeding.

The lawyer should re-establish joint tenancy among the property owners if required.

BIA s.71 vests bankrupt's property in Trustee on bankruptcy.

Find realty interests. Per Statement of Affairs / Property Online search for bankrupt's real estate interests.

The POL search will also determine the system under which the Trustee's ownership must be registered.

Are realty interests found?

End

No

Yes

Trustee determines value of interests

Trustee determines competing interests - e.g. secured interests, protected judgments.

Assess - is interest realizable?

No - Trustee may register / record its interest

Yes

Trustee should **Register** its title immediately under the correct system & in the Judgment Roll.

Released
BIA s.20

Parcel will be released or returned

Returned
BIA s.40(1)

Is title migrated under LRA?

No

If the interest is a fee simple interest being released
a) for consideration,
or
b) subject to a mortgage
the parcel must be migrated before the transfer is registered. Trustees may place this burden on the transferee.

Yes

If returned to bankrupt without consideration migration is not required.

Migration is not required if parcel is subject to a mortgage to which the bankrupt is a party.

No

Repeat until all the bankrupt's realty interests are transferred or are subject to a recorded BIA s.40(2) order.

Yes if interest is Fee Simple

Is title migrated under LRA?

No

Migrate title to Land Registration Act for sale.

Yes

Will Trustee sell its interest before its discharge?
BIA s.30

Yes if interest is not fee simple

No

Trustee completes sale
BIA s.30.
Interest is Transferred.

Trustee register / record **BIA s.40(2)** order to continue interest after discharge for later Transfer.

Trustee releases interest per **BIA s.20.**
Interest is Transferred.

Trustee returns interest to bankrupt per **BIA s.40(1).**
Interest is Transferred.

The trustee may transfer this task to the purchaser in the agreement of sale.

Has Trustee transferred realty interests or recorded **BIA s.40(2)** order?

Yes

The Trustee is discharged

Process Summary

Find realty interests,
Assess realty interests,
Register the Trustee's title and
Transfer before Trustee is discharged.

**Assignment of Bankruptcy (fee simple) &
Removal of a Legacy Judgment for LR Parcel**

Form 24

Purpose: to request or direct a revision of title and Certificate of Legal Effect

For Office Use

Registration district:	Halifax
Submitter's user number:	1234
Submitter's name:	Joe Lawyer

In the matter of Parcel Identification Number (PID)

PID 12345678	
PID	

(Expand box for additional PIDs. Maximum 9 PIDs per form)

The following additional forms are being submitted simultaneously with this form and relate to the attached document: *(check appropriate boxes, if applicable)*

- ☐ Form 24(s)
- ☐ Form 8A(s)
- ☐ This Form 24 creates or is part of a subdivision or consolidation

TAKE NOTICE THAT a revision of the registration of the above-noted parcel(s), is hereby requested or directed, as set out below.

AND FURTHER TAKE NOTICE THAT the attached document is signed by attorney for a person under a power of attorney, and the power of attorney is (select one or more)

- ☐ recorded in the attorney roll
- ☐ recorded in the parcel register
- ☐ incorporated in the document
- ☒ no power of attorney applies to this document

(Select all appropriate boxes)

☒ The following registered interests are changed in the parcel's registration

Instrument type	Assignment of Bankruptcy
Interest holder and type to be removed (if applicable)	Joseph Green – Fee Simple
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g. estate of, executor, trustee, personal representative) (if</i>	Pricewaterhousecoopers Inc (Qualifier – Trustee) as Fee Simple

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applicable)	
Mailing address of interest holder to be added (if applicable)	4444 Main Street Halifax, NS B4F 3G4
Manner of tenure (if applicable)	Not Applicable
Description of mixture of tenants in common and joint tenancy (if applicable)	N/A
Access type to be removed (if applicable)	N/A
Access type to be added (if applicable)	N/A
Percentage or share of interest held (<i>for use with tenant in common interests</i>)	N/A
Non-resident (to qualified solicitor=s information and belief) (<i>Yes/No?</i>)	No
Reference to related instrument in parcel register (if applicable)	N/A
Reason for removal of interest (<i>For use only when interest is being removed by operation of law</i>) Instrument code: 443	N/A

- ☐ The following tenant in common interests that appear in the section of the parcel register labelled A Tenants in Common not registered pursuant to the *Land Registration Act* are to be removed because the interests are being registered (*insert names to be removed*):

- ☐ I have searched the judgment roll with respect to this revision of the registered interest and have determined that it is appropriate to add the following judgment(s) or judgment-related documents to the parcel register, in accordance with the *Land Registration Act* and *Land Registration Administration Regulations*:

Instrument type	
Interest holder name and type to be added	
Interest holder mailing address	
Judgment Roll reference	

- ☐ The following benefits are to be added and/or removed in the parcel's registration:

Instrument type	
Interest holder and type to be removed (if applicable)	
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g. estate of, executor, trustee, personal representative) (if applicable)</i>	
Mailing address of interest holder to be added (if applicable)	
Servient tenement parcel(s) (<i>list all affected PIDs</i>):	
Reference to related instrument in names-based roll/parcel register (if applicable)	
Reason for removal of interest (<i>for use only when interest is being removed by operation of law</i>) Instrument code: 443	

- ☐ The following burdens are to be added and/or removed in the parcel's registration:

Instrument type	
Interest holder and type to be removed (if applicable)	
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g. estate of, executor, trustee, personal representative)(if applicable)</i>	
Mailing address of interest holder to be added (if applicable)	
Reference to related instrument in names-based roll/parcel register (if applicable)	

Reason for removal of interest <i>(for use only when interest is being removed by operation of law)</i> Instrument code: 443	
--	--

X The following recorded interests are to be added and/or removed in the parcel's registration:

Instrument type	Judgment
Expiry date (if applicable)	N/A
Interest holder and type to be removed (if applicable)	Irving Oil Limited – Judgment Creditor
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g. estate of, executor, trustee, personal representative)(if applicable)</i>	N/A
Mailing address of interest holder to be added (if applicable)	N/A
Reference to related instrument in names-based roll/parcel register (if applicable)	Judgment: 4876/333, Doc #3322 Year: 2003.
Reason for removal of interest <i>(for use only when interest is being removed by operation of law)</i> Instrument code: 443	N/A

☐ I request that the following textual qualifications on the registered interest in the above-noted parcel be changed:

Textual qualification on title to be removed <i>(insert any existing textual description being changed, added to or altered in any way)</i>	
Textual qualification on title to be added <i>(insert replacement textual qualification)</i>	
Reason for change to textual qualification <i>(for use only when no document is attached)</i> Instrument code: 838	

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- ☐ I request that the following information about the occupier of the parcel, which is owned by the Nova Scotia Farm Loan Board, be changed (*insert n/a if not applicable*)

Name and mailing address of occupier to be removed	
Name and mailing address of occupier to be added	

Certificate of Legal Effect:

I certify that it is appropriate to make the above-noted changes to the parcel register(s) for the indicated PIDs.

Certified at Dartmouth, in the County of Halifax, Province of Nova Scotia, on November 14, 2007.

Signature of authorized lawyer

Name _____

Address _____

Phone _____

Email: _____

Fax: _____

- ☐ This document also affects non-land registration parcels. The original will be registered under the *Registry Act* and a certified true copy for recording under the *Land Registration Act* is attached.

April 3, 2007

Assignment of Bankruptcy (Judgment Roll) for LR or Traditional Parcel

Form 48B

Purpose: To record a judgment-related document (documents other than judgments or partial or full discharges) in the judgment roll and parcel register, if applicable

For Office Use

Registration district:	Halifax
Submitter's user number:	1234
Submitter's name:	Joe Lawyer

(Select the applicable box(es). One option for recording in the judgment roll must be selected. Recording in the parcel registers is selected, if applicable):

- ☐ I request that the attached statutory declaration respecting judgments be recorded in the judgment roll. *(Statutory declarations respecting judgments are recorded in the judgment roll only and are not recorded in parcel registers).*
- ☐ I request that the attached assignment of judgment be recorded in the judgment roll *(assignments must be recorded in the judgment roll).*
- ☐ I request that the attached assignment of judgment be recorded in the parcel registers of the PIDs indicated below *(required only if judgment is currently recorded in parcel registers).*
- ☐ I request that the attached postponement of judgment be recorded in the judgment roll *(postponements must be recorded in the judgment roll).*
- ☐ I request that the attached postponement of judgment be recorded in the parcel registers of the PIDs indicated below *(required only if judgment is currently recorded in parcel registers).*
- ☐ I request that the attached judgment amendment be recorded in the judgment roll *(amendments and renewals must be recorded in the judgment roll).*
- ☐ I request that the attached judgment amendment be recorded in the parcel registers of the PIDs indicated below *(required only if judgment is currently recorded in parcel registers).*
- ☐ I request that the attached order for judgment be recorded in the judgment roll *(Orders for judgment are recorded in the judgment roll only and are not recorded in parcel registers).*
- ☐ I request that the attached partial release re judgment debtor be recorded in the judgment roll *(Note: partial release that releases one or more, but less than all, of the judgment debtors (all partial releases re judgment debtor must be recorded in the judgment roll)).*
- ☐ I request that the attached partial release re judgment debtor be recorded in the parcel registers of the PIDs indicated below *(required only if judgment is currently recorded in parcel registers).*

- ☐ I request that the attached Order to Set Aside Judgment be recorded in the judgment roll. (*Orders to set aside judgments are recorded in the judgment roll only and are not recorded in parcel registers*).
- ☒ I request that the attached assignment of bankruptcy be recorded in the judgment roll. (*This form acts to add the document to the judgment roll only; additional forms are required to be recorded simultaneously if registering or recording interests in parcel registers or the Grantor/Grantee index*).
- ☐ I request that the attached discharge of bankruptcy be recorded in the judgment roll. (*This form acts to add the document to the judgment roll only; additional forms are required to be recorded simultaneously if recording this document in parcel registers or the Grantor/Grantee index*).

The attached document appears in the parcel registers of the following PIDs:

In the matter of Parcel Identification Number (PID)

PID	
PID	

(Expand box for additional PIDs. **Maximum 9 PIDs per form**)

I request that the parcel register be changed as follows:

Instrument type	
Interest holder name and type to be added	
Interest holder name and type to be changed (<i>used only for assignment of judgment to change current judgment creditor to Interest Assigned</i>)	
Mailing Address of interest holder added	
Instrument reference (insert book and page or document number of affected judgment) <i>Note: postponement of judgment requires the judgment as well as the document that is being given priority</i>	

Dated at Dartmouth, in the County of Halifax, Province of Nova Scotia, on November 14, 2007.

Signature of interest holder/agent

Name _____

Address _____

Phone _____

Email: _____

Fax: _____

April 3, 2007

Assignment of Bankruptcy (non fee simple) Re Third Party's LR Parcel**Form 26**

Purpose: to record an interest in a parcel; or
to record a power of attorney in the power of attorney roll

For Office Use

Registration district:	Halifax
Submitter's user number:	1234
Submitter's name:	Joe Lawyer

In the matter of Parcel Identification Number (PID)

PID 43495767	
PID	

(Expand box for additional PIDs. **Maximum 9 PIDs per form.**)

Take notice that the undersigned hereby requests that the registrar record the attached document
(select applicable box):

- ☐ in the parcel register as a recorded interest
- ☐ in the power of attorney roll
- ☐ power of attorney registered under the *Registry Act*, for duplication in the power of attorney roll

And further take notice that the following information relates to the interest being recorded:

Instrument type	Assignment of Bankruptcy (non fee simple)
Expiry date (if applicable)	N/A
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g. estate of, executor, trustee, personal representative) if applicable</i>	Change Joseph Green as Mortgagee to Interest Assigned Add McCuaig & Co. (Qualifier-Trustee) as Mortgagee
Mailing address of interest holder to be added	1288 Barrington St, Halifax, NS B3R 1J8
Name and mailing address of power of attorney donor to be added (if applicable)	N/A
Name and mailing address of power of attorney donee to be added (if applicable)	N/A
Reference to related instrument in names-based roll/parcel register (if applicable) <i>(for power of attorney to be duplicated, insert document/instrument number/year; include</i>	Mortgage: Book and Page 5766/443 Doc # 7788, Year: 2004.

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book/page if applicable)	
--------------------------	--

(select all applicable statements)

- ☐ **And further take notice that** the attached document is signed by an attorney for a person under a power of attorney, and the power of attorney is
- ☐ recorded in the attorney roll
 - ☐ recorded in the parcel register
 - ☐ incorporated in the document
 - ☒ no power of attorney applies to this document

Dated at Halifax, in the County of Halifax, Province of Nova Scotia, on November 14, 2007.

Signature of interest holder/agent

Name _____

Address _____

Phone _____

Email: _____

Fax: _____

- ☐ This document also affects non-land registration parcels. The original will be registered under the *Registry Act* and a certified true copy for recording under the *Land Registration Act* is attached.

April 3, 2007

Discharge of Bankruptcy (Judgment Roll) for LR or Traditional Parcel

Form 48B

Purpose: To record a judgment-related document (documents other than judgments or partial or full discharges) in the judgment roll and parcel register, if applicable

For Office Use

Registration district:	Halifax
Submitter's user number:	1234
Submitter's name:	Joe Lawyer

(Select the applicable box(es). One option for recording in the judgment roll must be selected. Recording in the parcel registers is selected, if applicable):

- ☐ I request that the attached statutory declaration respecting judgments be recorded in the judgment roll. *(Statutory declarations respecting judgments are recorded in the judgment roll only and are not recorded in parcel registers).*
- ☐ I request that the attached assignment of judgment be recorded in the judgment roll *(assignments must be recorded in the judgment roll).*
- ☐ I request that the attached assignment of judgment be recorded in the parcel registers of the PIDs indicated below *(required only if judgment is currently recorded in parcel registers).*
- ☐ I request that the attached postponement of judgment be recorded in the judgment roll *(postponements must be recorded in the judgment roll).*
- ☐ I request that the attached postponement of judgment be recorded in the parcel registers of the PIDs indicated below *(required only if judgment is currently recorded in parcel registers).*
- ☐ I request that the attached judgment amendment be recorded in the judgment roll *(amendments and renewals must be recorded in the judgment roll).*
- ☐ I request that the attached judgment amendment be recorded in the parcel registers of the PIDs indicated below *(required only if judgment is currently recorded in parcel registers).*
- ☐ I request that the attached order for judgment be recorded in the judgment roll *(Orders for judgment are recorded in the judgment roll only and are not recorded in parcel registers).*
- ☐ I request that the attached partial release re judgment debtor be recorded in the judgment roll *(Note: partial release that releases one or more, but less than all, of the judgment debtors (all partial releases re judgment debtor must be recorded in the judgment roll)).*
- ☐ I request that the attached partial release re judgment debtor be recorded in the parcel registers of the PIDs indicated below *(required only if judgment is currently recorded in parcel registers).*

- ☐ I request that the attached Order to Set Aside Judgment be recorded in the judgment roll. (*Orders to set aside judgments are recorded in the judgment roll only and are not recorded in parcel registers*).
- ☐ I request that the attached assignment of bankruptcy be recorded in the judgment roll. (*This form acts to add the document to the judgment roll only; additional forms are required to be recorded simultaneously if registering or recording interests in parcel registers or the Grantor/Grantee index*).
- ☒ I request that the attached discharge of bankruptcy be recorded in the judgment roll. (*This form acts to add the document to the judgment roll only; additional forms are required to be recorded simultaneously if recording this document in parcel registers or the Grantor/Grantee index*).

The attached document appears in the parcel registers of the following PIDs:

In the matter of Parcel Identification Number (PID)

PID	
PID	

(Expand box for additional PIDs. **Maximum 9 PIDs per form**)

I request that the parcel register be changed as follows:

Instrument type	
Interest holder name and type to be added	
Interest holder name and type to be changed (<i>used only for assignment of judgment to change current judgment creditor to Interest Assigned</i>)	
Mailing Address of interest holder added	
Instrument reference (insert book and page or document number of affected judgment) <i>Note: postponement of judgment requires the judgment as well as the document that is being given priority</i>	

Dated at Dartmouth, in the County of Halifax, Province of Nova Scotia, on November 14, 2007.

Signature of interest holder/agent

Name _____

Address _____

Phone _____

Email: _____

Fax: _____

Deed Out of Bankruptcy Trustee (re fee simple) for LR parcel

Form 24

Purpose: to request or direct a revision of title and Certificate of Legal Effect

For Office Use

Registration district:	Halifax
Submitter's user number:	1234
Submitter's name:	Joe Lawyer

--

In the matter of Parcel Identification Number (PID)

PID 12345678	
PID	

(Expand box for additional PIDs. Maximum 9 PIDs per form)

The following additional forms are being submitted simultaneously with this form and relate to the attached document: *(check appropriate boxes, if applicable)*

- ☐ Form 24(s)
- ☐ Form 8A(s)
- ☒ This Form 24 creates or is part of a subdivision or consolidation

TAKE NOTICE THAT a revision of the registration of the above-noted parcel(s), is hereby requested or directed, as set out below.

AND FURTHER TAKE NOTICE THAT the attached document is signed by attorney for a person under a power of attorney, and the power of attorney is (select one or more)

- ☐ recorded in the attorney roll
- ☐ recorded in the parcel register
- ☐ incorporated in the document
- ☒ no power of attorney applies to this document

(Select all appropriate boxes)

X The following registered interests are changed in the parcel's registration

Instrument type	Deed
Interest holder and type to be removed (if applicable)	Pricewaterhousecoopers Inc (Qualifier – Trustee) as Fee Simple
Interest holder and type to be added (if	Joseph Green – Fee Simple

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applicable) <i>Note: include qualifier (e.g. estate of, executor, trustee, personal representative) (if applicable)</i>	
Mailing address of interest holder to be added (if applicable)	4444 Main Street Halifax, NS B4F 3G4
Manner of tenure (if applicable)	Not Applicable
Description of mixture of tenants in common and joint tenancy (if applicable)	N/A
Access type to be removed (if applicable)	N/A
Access type to be added (if applicable)	N/A
Percentage or share of interest held (for use with tenant in common interests)	N/A
Non-resident (to qualified solicitors information and belief) (Yes/No?)	No
Reference to related instrument in parcel register (if applicable)	N/A
Reason for removal of interest (For use only when interest is being removed by operation of law) Instrument code: 443	N/A

- ☐ The following tenant in common interests that appear in the section of the parcel register labelled A Tenants in Common not registered pursuant to the *Land Registration Act* are to be removed because the interests are being registered (*insert names to be removed*):

- ☐ I have searched the judgment roll with respect to this revision of the registered interest and have determined that it is appropriate to add the following judgment(s) or judgment-related documents to the parcel register, in accordance with the *Land Registration Act* and *Land Registration Administration Regulations*:

Instrument type	
Interest holder name and type to be added	
Interest holder mailing address	

April 3, 2007

Judgment Roll reference	
--------------------------------	--

- ☐ The following benefits are to be added and/or removed in the parcel's registration:

Instrument type	
Interest holder and type to be removed (if applicable)	
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g. estate of, executor, trustee, personal representative) (if applicable)</i>	
Mailing address of interest holder to be added (if applicable)	
Servient tenement parcel(s) <i>(list all affected PIDs):</i>	
Reference to related instrument in names-based roll/parcel register (if applicable)	
Reason for removal of interest <i>(for use only when interest is being removed by operation of law)</i> Instrument code: 443	

- ☐ The following burdens are to be added and/or removed in the parcel's registration:

Instrument type	
Interest holder and type to be removed (if applicable)	
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g. estate of, executor, trustee, personal representative)(if applicable)</i>	
Mailing address of interest holder to be added (if applicable)	
Reference to related instrument in	

names-based roll/parcel register (if applicable)	
Reason for removal of interest (<i>for use only when interest is being removed by operation of law</i>) Instrument code: 443	

- ☐ The following recorded interests are to be added and/or removed in the parcel's registration:

Instrument type	
Expiry date (if applicable)	
Interest holder and type to be removed (if applicable)	
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g. estate of, executor, trustee, personal representative)(if applicable)</i>	
Mailing address of interest holder to be added (if applicable)	
Reference to related instrument in names-based roll/parcel register (if applicable)	
Reason for removal of interest (<i>for use only when interest is being removed by operation of law</i>) Instrument code: 443	

- ☐ I request that the following textual qualifications on the registered interest in the above-noted parcel be changed:

Textual qualification on title to be removed (<i>insert any existing textual description being changed, added to or altered in any way</i>)	
Textual qualification on title to be added (<i>insert replacement textual qualification</i>)	
Reason for change to textual qualification (<i>for use only when no document is attached</i>) Instrument code: 838	

- ☐ I request that the following information about the occupier of the parcel, which is owned by the Nova Scotia Farm Loan Board, be changed (*insert n/a if not applicable*)

Name and mailing address of occupier to be removed	
Name and mailing address of occupier to be added	

Certificate of Legal Effect:

I certify that it is appropriate to make the above-noted changes to the parcel register(s) for the indicated PIDs.

Certified at Dartmouth, in the County of Halifax, Province of Nova Scotia, on November 14, 2007.

Signature of authorized lawyer

Name _____

Address _____

Phone _____

Email: _____

Fax: _____

- ☐ This document also affects non-land registration parcels. The original will be registered under the *Registry Act* and a certified true copy for recording under the *Land Registration Act* is attached.

April 3, 2007

Deed out of Trustee re Non-Fee Simple Interest in Third Party's LR Parcel**Form 26**

Purpose: to record an interest in a parcel; or
to record a power of attorney in the power of attorney roll

For Office Use

Registration district:	Halifax
Submitter's user number:	1234
Submitter's name:	Joe Lawyer

In the matter of Parcel Identification Number (PID)

PID 43495767	
PID	

(Expand box for additional PIDs. **Maximum 9 PIDs per form.**)

Take notice that the undersigned hereby requests that the registrar record the attached document
(select applicable box):

- ☐ in the parcel register as a recorded interest
- ☐ in the power of attorney roll
- ☐ power of attorney registered under the *Registry Act*, for duplication in the power of attorney roll

And further take notice that the following information relates to the interest being recorded:

Instrument type	Deed
Expiry date (if applicable)	N/A
Interest holder and type to be added (if applicable) <i>Note: include qualifier (e.g. estate of, executor, trustee, personal representative) if applicable</i>	ADD: (Insert Name of Grantee re Deed) as Mortgagee REMOVE: (Insert Name of Bankruptcy Trustee (Qualifier – Trustee) as Mortgagee
Mailing address of interest holder to be added	Mailing Address of Interest Holder Added Above
Name and mailing address of power of attorney donor to be added (if applicable)	N/A
Name and mailing address of power of attorney donee to be added (if applicable)	N/A
Reference to related instrument in names-based roll/parcel register (if applicable) (for power of attorney to be duplicated, insert document/instrument number/year; include book/page if applicable)	Mortgage: Book/Page 5766/443 Doc # 7788, Year: 2004. Assignment of Bankruptcy: Book/Page: 6677/223 Doc #444, Year: 2007.

April 3, 2007

(select all applicable statements)

- ☐ **And further take notice that** the attached document is signed by an attorney for a person under a power of attorney, and the power of attorney is
- ☐ recorded in the attorney roll
 - ☐ recorded in the parcel register
 - ☐ incorporated in the document
 - ☒ no power of attorney applies to this document

Dated at Halifax, in the County of Halifax, Province of Nova Scotia, on November 14, 2007.

Signature of interest holder/agent

Name _____

Address _____

Phone _____

Email: _____

Fax: _____

- ☐ This document also affects non-land registration parcels. The original will be registered under the *Registry Act* and a certified true copy for recording under the *Land Registration Act* is attached.

April 3, 2007