The Proposed

Land Registration Act

Case Samples and Answers

Materials prepared by:

Catherine S. Walker, Q.C.
Walker & Associates
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Case Sample #1

J

↓ WARRANTY DEED 1875 (20 ACRE PARCEL)

K

↓ WARRANTY DEED 1900

L

↓ L DIES INTESTATE 1940 LEAVING THREE HEIRS AT LAW- M,N, AND O

M - N

DEED WITHOUT COVENANTS 1941
THERE IS NO MARITAL STATUS
FOR M(CONVEYS "ALL THE LANDS")

↓

P LIMITED

QUIT CLAIM DEED 1950
OF THE GRANTORS INTEREST
P LTD. WAS STRUCK OFF IN 1945

↓

Q

MORTGAGE TO EASTERN
TRUST COMPANY 1951
WARRANTY DEED 1971

RESTRICTIVE COVENANTS ↓

R LIMITED

FLOATING CHARGE DEBENTURE
1981

O- LEAVES THE PROVINCE IN 1939

QUESTIONS:

YOU ARE ACTING FOR 'S' BUYING THE PROPERTY FROM R, AND AS IT IS A TRANSFER FOR VALUE, YOU ARE REQUIRED TO MIGRATE THE PROPERTY INTO THE NEW LAND REGISTRATION SYSTEM (s.45(1)(a) of the *LAND REGISTRATION ACT*).

07/02/00

1. CAN THE 1941 DEED CONSTITUTE A GOOD ROOT FOR THE PURPOSES OF REGISTERING TITLE UNDER THE *LAND REGISTRATION ACT*?

Yes. As there are no words of qualification contained in the deed in 1941 ("all the lands described in Schedule "A" attached hereto"), the deed qualifies as a root of title pursuant to s. 4(2) of the *Marketable Titles Act*.

2. IN 1941, M SIGNED THE DEED, BUT NEGLECTS TO INDICATE HIS MARITAL STATUS. IS THERE A POSSIBLE OUTSTANDING DOWER INTEREST IN THE PROPERTY? IF YES, WILL THIS BE A REQUISITION ON TITLE, OR A QUALIFICATION ON YOUR CERTIFICATION TO THE NEW SYSTEM?

The *Land Registration Act* has determined some interests to be acceptable risks, and therefore the system does not require a lawyer to qualify his or her certificate for that risk. Section 38(2) provides that an unrealized dower interest is <u>not</u> an interest in a parcel. In the event that someone comes forward, and is successful in establishing a valid dower interest, the system will compensate the individual.

3. SHOULD YOU BE CONCERNED ABOUT WHETHER THE LANDS ESCHEATED TO THE CROWN IN 1945 AS A RESULT OF P LIMITED BEING STRUCK OFF THE RECORD?

No. For purposes of the proposed act, "an interest that has escheated to the Crown from any person other than the immediate predecessor in title of the applicant, is not an interest in a parcel" (s.38(3)).

This means that the purchasers lawyer will no longer have to be concerned about the corporate status of a previous owner, but must still ascertain the corporate status of the current vendor if a body corporate, as in this case R Limited.

4. IS THE UNRELEASED MORTGAGE IN FAVOUR OF EASTERN TRUST COMPANY IN 1951 A REQUISITION ON TITLE?

Section 38(1) provides that an unreleased security interest (like a mortgage) which is more than forty years old, and that has not been amended or supplemented by an instrument registered during the preceding forty years, is not an interest in a parcel, and there would be no requirement for you to either requisition it as an objection, or qualify your certification to the system for that interest. The legislation declares it not to be an interest for purposes of the Act.

Note that s.24 of the *Limitations of Actions Act* has been amended by s. 106(8) of the

Land Registration Act as well providing that no one may bring an action to recover land after 20 years have elapsed from the maturity date in the mortgage and any renewal thereof.

5. **THE RESTRICTIVE COVENANTS FROM 1971 PROHIBIT A SATELLITE DISH ON ALL PROPERTIES IN THE SUBDIVISION. THE PROPERTY THAT YOUR CLIENT IS BUYING HAS A NEW SATELLITE DISH THAT IS APPROXIMATELY 6 INCHES SQUARE, AND LOCATED ON THE ROOF WHERE IT IS NOT DISCERNABLE FROM THE STREET. WHAT WILL YOUR ADVICE BE TO YOUR CLIENT WITH REGARD TO HIS OPTIONS?**

Section 61 of the *Land Registration Act* provides a mechanism for the modification or discharge of restrictive covenants in certain circumstances by the court. The court must be satisfied that the change applied for is:

a) beneficial to the persons principally interested in the enforcement of the covenant;
b) the covenant conflicts with a municipal by law and the discharge is in the public interest; or
c) the condition offends public policy, or is prohibited by law.

We have all had difficulties from time to time with non compliance with restrictive covenants, such as a required set back from the road for houses on properties that are now 30 years old, or prohibitions of subdivision for properties that used to be on well and septic and are now on municipal services, so the required lot size is effectively reduced.

In the instant case, the restriction was against a satellite dish, which when they were first marketed were the size of a small spaceship, and an eye sore in a neighbourhood. With the passage of time, and new technology, satellite dishes are now not an eyesore, and the restriction is probably an undue and unnecessary one. An application could be made under s.61 for the modification of the restrictive covenant, which is easier than securing the consent of every owner in the subdivision. In the event that the developer has reserved the right to modify, then it may be that the developer could modify the covenant.

6. **THE AREA IN THE LEGAL DESCRIPTION IS DESCRIBED TO BE APPROXIMATELY 20 ACRES, AND FROM OLD PLANS THAT THE SELLER GOT FROM A NEIGHBOUR THIS SEEMS TO BE APPROXIMATELY CORRECT. THE MAPPING SHEET AT 'GEONOVA' SHOWS IT TO BE 15 ACRES IN SIZE. DOES THIS DISCREPANCY IMPEDE REGISTRATION OF THIS PROPERTY IN THE NEW SYSTEM?**

No. What is recorded in the parcel register is the "general location of the parcel" (s. 12(c)) At the time of a new registration, if the registrar cannot locate the parcel, the registrar may require the applicant to provide such further information concerning the size and location of the parcel as will permit the registrar to develop a parcel identification number for the parcel, showing it in relation to neighbouring parcels "with reasonable accuracy"(s.36(3)). The key is relative location, namely relative to adjoiners. It is anticipated that lawyers' feedback to the mappers will improve the quality of the Geonova survey matrix over time, just as it is improving now with the information that lawyers provide to mappers.

The mapping is <u>not</u> a guarantee of the extent of the parcel. In the event that a parcel overlaps another, section 19(2) confirms that a registration <u>"may not be rejected only because the boundaries or extent of the parcel appear to overlap the boundaries or extent of another parcel"</u>

7. THE DEBENTURE OF R LIMITED IS A FLOATING CHARGE. WHAT INQUIRIES MUST YOU MAKE TO DETERMINE WHETHER THE FLOATING CHARGE HAS BEEN CRYSTALLIZED?

None. The Act provides that if a floating charge debenture has been crystallized by the security holder, the debenture will not charge the parcel of the debtor until such time as a notice of crystallization is recorded(s.53(3)). If there is no notice recorded, then you need not inquire further as it cannot constitute a charge against the parcel.

8. 'S' HAS REGISTERED THE PARCEL INTO THE NEW SYSTEM, AND THEN DIES INTESTATE LEAVING NO SPOUSE, AND THREE CHILDREN. HOW IS THE REGISTRATION REVISED?

A registrar will require the following to revise the register (s. 24):

- **a) proof of death;**
- **b) an affidavit of a person having knowledge of the facts setting out the heirs at law of that registered owner; and**
- **c) a certificate of a qualified solicitor verifying the interest conveyed, the parcel conveyed, and based on the affidavit, the persons to whom it was conveyed.**

However, in the event that administration has been taken out at the Probate office, then the proof of death, and affidavit as to the heirs are not required (s.24(3)).

Case Sample #2

A- WARRANTY DEED 1892 TO B, AND,D AS TENANTS IN COMMON

↓

B

D QUIT CLAIM DEED IN 1895 FOR INTEREST ("ALL MY RIGHT TITLE AND INTEREST")

↓

B-DIES WITH WILL 1940 DEVISING WHOLE ESTATE TO DAUGHTER IN MASSACHUSETTS

B(1) WILL IS REGISTERED IN USA.

E-E DIES IN 1967 WITH A WILL LEAVING PROPERTY TO F (WILL IS REGISTERED AT THE REGISTRY OF DEEDS)

↓

F- QC DEED 1968 (CONVEYING "ALL THE LANDS IN SCHEDULE "A")

↓

G-DIES IN 1969- REGISTERED WILL LEAVES PROPERTY TO H- THERE IS A STATUTORY DECLARATION REGISTERED IN 1979 INDICATING THAT PROPERTY OCCUPIED SINCE 1908 BY G, F, AND E AS HOMESTEAD BUILT 1908. PROPERTY SUBDIVIDED IN 1973PLAN OF SUBDIVISION SHOWING FARMHOUSE ON LOT FILED IN 1973.

↓

H

QUESTIONS:

YOU ARE ACTING FOR 'I' BUYING FROM H, AND YOU ARE MIGRATING THE PARCEL INTO THE SYSTEM. THE PROPERTY THAT 'I' IS BUYING IS THE FARMHOUSE LOT.

1. DOES 'H' HAVE MARKETABLE TITLE?

Yes. As there is a qualification contained in the body of the 1895 deed ("all of my right title and interest"), this deed cannot operate as the commencement of the chain of title. The root document is the deed in 1892. The title would qualify as a 'marketable title' as defined by the *Marketable Titles Act* Section 4(2), and as required for new registration pursuant to s.35(5)(a) of the *Land Registration Act* by virtue of B1's interest being extinguished upon the registration of the deed from H to I. The interest of B1 is unregistered (at least in Nova Scotia), and it has been 20

years since it vested(s. 107(3) of the *Land Registration Act* adding s.4A to the *Marketable Titles Act).* Note that under the *Land Registration Act* a Notice of Claim under the *Marketable Titles Act* is not registerable or recordable (s. 47(7)) once a parcel is registered in the new system.

In addition there is evidence of adverse possession by statutory declaration as discussed below.

2. CAN 'E'S'WILL OPERATE AS A ROOT?

No. A chain of title commences with an instrument "other than a will"(Section 4(2) of the *Marketable Titles Act.*

3. WHAT IS THE LIKELY EFFECT OF THE DECLARATION FILED IN 1979, AND THE PLAN OF SUBDIVISION?

If uncontroverted, the effect of the declaration and the plan of subdivision, may be to confirm affirmatively possessory title in G and G's predecessors adverse to B's interest. Section 2(a) of the *Vendors and Purchasers Act* provides that "recitals, statements and descriptions of facts and matters... contained in...instruments, or statutory declarations any of which are more than twenty years old at the date of the contract, unless and except in so far as they are proved to be inaccurate, shall be sufficient evidence of the truth of such facts, matters and descriptions".

Absence from the Province is repealed as a disability under the new Act. Section 106(1)(b) of the *Land Registration Act,* amends Section 4 of the *Limitation of Actions Act.* So, B(1)'s right of action to recover land is statute barred, if the acts of adverse possession recited in the Statutory Declaration can't be disproved.

Section 106(1)(e) confirms that the only extension available to those who are under a disability shall be for five years beyond the initial twenty. Section 106(6) of the *Land Registration Act* reduces the forty year outside limit in Section 20 of the *Limitation of Actions Act* to twenty five.

4. YOU ARE PUTTING ON A MORTGAGE FOR 'I'. IS THE MORTGAGE TO BE REGISTERED OR RECORDED IN THE NEW SYSTEM?

Under the *Land Registration Act*, a mortgage is an interest in land that is recorded(Section 47(1)). This is a change to the substantive property law which provides that a mortgage is a conveyance of the legal title to property. The new Act provides that security interests, like mortgages, do not transfer the title of the land charged by them and do not sever a joint tenancy (Section 51(1)) However, the new Act provides that mortgages can be foreclosed and in every practical way treated

"as if the lands had been conveyed by the mortgage"(Section 52(1)), and so mortgage foreclosure is unaffected by the new system.

There is one new requirement under the *Land Registration Act*, which is that mortgage lenders will be required to record a release of mortgage once the obligation secured has been paid in full (Section 51(4)). Further, the interest recorded, together with any release or discharge shall be removed from the parcel register one the term for which the interest was recorded has expired (s.57(1)(b)).

5. 'I' IS BUYING WITH HER HUSBAND, AND THE MORTGAGE IS TO BE EXECUTED BY BOTH, BUT 'I's HUSBAND WILL NOT BE HERE FOR THE CLOSING. 'I' HAS THE POWER OF ATTORNEY FOR HER HUSBAND. HOW IS A POWER OF ATTORNEY PUT ON RECORD IN THE NEW SYSTEM?

There are three options, and they are set out in Section 75 of the Act. A Power of Attorney may be:

- **a) recorded in the attorney register;**
- **b) recorded in a parcel register; or**
- **c) included in the document to which it relates**

Under the new legislation, a new power of attorney register will be established. This will be a name based register. Although powers of attorney are usually only required for specific transactions, there are many cases , particularly for institutions releasing large numbers of mortgages, where the power of attorney is used for hundreds of documents, and recording it each time it is used would unduly burden the public and the system. The Act also allows for the power of attorney to be recorded as part of the document for which it is being used, which eliminates the separate cost of registering the attorney document.

6. 'G' GRANTED AN EASEMENT TO THE POWER CORPORATION OVER ALL THE LANDS ENCOMPASSED BY THE FARM WHICH NOW HAS BEEN SUBDIVIDED INTO 30 LOTS. HOW WOULD THIS BE ENTERED INTO THE NEW SYSTEM?

It can be recorded in the parcel register, as it is an interest in land (s.47), or in can be recorded in an 'interest register' and flagged in the parcel register. Section 11(2) provides that a registrar may establish an interest register for easements owned by a utility or a municipal government that affect more than 10 parcels and are of the same general effect. This saves the cost of registering the easement in every parcel register to which it relates. The existence of the easement in the interest register would be flagged in each affected parcel register, so that anyone examining any affected parcel register would know to check the interest register for a description of the easement.

7. YOU ARE ACTING FOR A JUDGMENT CREDITOR AND HAVE A JUDGMENT AGAINST I WHO NOW HOLDS THE TITLE TO LAND IN THE NEW SYSTEM. WHAT ARE YOUR OPTIONS WITH REGARD TO HOW THIS JUDGMENT CAN BE ENTERED INTO THE NEW SYSTEM?

Under the new act, there is still a name based judgment register (s.65). However, a judgment recorded under the new legislation requires that the information concerning the judgment debtor "shall include such information as tends to distinguish the judgment debtor from all other persons of the same or similar names" (s. 68(1)).

A judgment creditor may record the judgment in the judgment register(s.65(2), or in a parcel register (s.66(1)). If a judgment is being recorded in a parcel register, the registrar may require evidence that the registered owner of the parcel to be affected and the judgment debtor are one and the same person "and shall not record the judgment until satisfied of the identity" (69(1)(b)). As well, if a judgment creditor records a judgment in a parcel register, a copy of the judgment must be served on the registered owner (s.66(3).

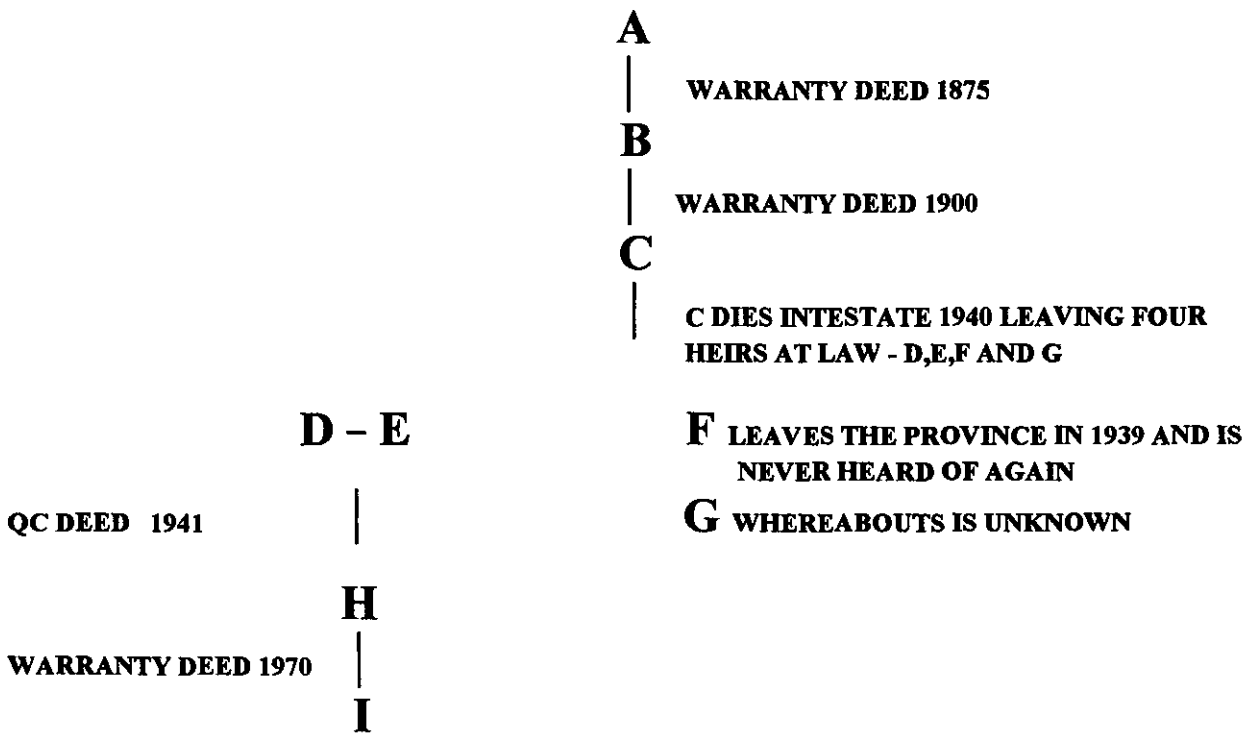
If a judgment has been wrongly recorded in a parcel register, the registered owner may request the removal of the recording, and the request shall be forwarded to the registrar together with the information to support the request (s.70(1).) The judgment will be automatically discharged unless the judgment creditor obtains a court order continuing the recorded judgment within 60 days of receiving notice from the registrar. A person who has sustained damage as a result of a wrongful recording against a parcel, has a cause of action against the judgement creditor (s.72).

Under the proposed act as drafted, judgments are to be effective for five years (s. 67(4)(e)) with a simple process to renew for a further five years (s. 67(5)), and no more.

8. YOUR LOCATION CERTIFICATE SHOWS PART OF THE WATERFRONTAGE AREA OF THE PARCEL AS 'INFILLED' AND EXTENDING BEYOND THE HIGHWATER MARK. HOW IS THIS TREATED UNDER THE PROPOSED LEGISLATION?

Under the proposed legislation, by way of a consequential amendment to s. 108 of the *Environment Act,* it is possible to occupy a watercourse where the land is no longer covered by water and over time to establish adverse possession. Occupation must be "for a period of not less than 40 years"..and "may give an interest therein in accordance with the principles of adverse possession or prescription"(s. 99(2) of the *Land Registration Act*).

Case Sample#3



QUESTIONS:

YOU ARE ACTING FOR 'J' AND 'K' BUYING AS JOINT TENANTS FROM 'I'.

1. **DOES "I" HAVE MARKETABLE TITLE TO CONVEY TO YOUR CLIENT? WHAT IS THE ROOT?**

   -Section 35(5)(a) of the *Land Registration Act* requires for first registration, a solicitor's opinion of title which shall be based on an abstract of title to the standard of the *Marketable Titles Act;*

   -Whether the 1941 deed can operate as a root of title will depend on the language of the deed. If there are no words of qualification, a Quit Claim Deed may operate as a root under s. 4(2) of the *Marketable Titles Act;*

   -If words of qualification are contained in the deed (ie. "All the right title and interest the Grantors have or had") then the root would be the Deed in 1900 from B to C.

08/02/00

2. WHAT IS THE STATUS OF THE INTEREST OF "F" ?

Absence from the province is repealed as a disability under the new Act. Section 106(1)(b) of the *Land Registration Act* amends section 4 of the *Limitation of Actions Act.*

Section 106(1)(e) confirms that the only extension to those who under adisability shall be for five years beyond the initial twenty. Section 106(6) of the *Land Registration Act* reduces the forty year outside limit in Section 20 to Twenty Five.

So, if the root is the 1900 deed, and there has been occupation of the property in such a way as to constitute 20 years adverse possession against F's interest after 1940, then under the amended provisions of the *Limitation of Actions Act,* F is statute barred from commencing an action to recover his interest in the land. (See s. 37(2) discussion below in 3(2))

If 1941 is the root, because there are no words of qualification contained in the deed, (ie. "all the lands described in Schedule "A" attached hereto") then F's interest, being unregistered, is extinguished upon the registration of the deed from I to J and K, as that deed will have been executed by a person with 'marketable title'(s.107(3) of the *Land Registration Act* amending and adding s. 4A to the *Marketable Titles Act* to replace the former s.4(4)) .

3. WHAT ARE YOUR CLIENT'S OPTIONSWITH REGARD TO THE INTEREST OF G?

G's interest arose in 1940. G was the beneficiary of a one quarter interest in the property, as a result of C's intestacy. G's whereabouts is unknown. As G's interest is unregistered, if the deed in 1941 is the root, then the deed from I to J and K will operate to extinguish the interest of G pursuant to s. 4(4) of the *Marketable Titles Act.*

If the root document is the deed in 1900, because of some qualification contained in the deed in 1941, then the options for your client are as follows:

1. **Take the property subject to the possible outstanding interest of G. In this case as their lawyer, you would qualify your certificate of title to the client and to the system upon registration, and the title would be registered subject to a possible interest of G;**

2. **Your client could, pursuant to section 37(2) apply to the Registrar General to have the title registered "free of that interest" through a statutory adjudication process. This may be particularly appropriate if there is**

evidence that D and E occupied the property to the exclusion of G for a long enough period of time to have G's right to recover land statute barred pursuant to the reduced limitation periods under the *Limitation of Actions Act*. As with the interest of F, if the root is the 1900 deed, and the requisite time periods have expired, then the Registrar General may be prepared to direct the registrar to register the title to the land free of the interest specified (s.37(13)) The notice provisions anticipate that the interest that is the subject of the application may be the interest of a person whose identity or address is unknown (S.37(4)). If the Registrar approves the application, then the lawyer is not liable to the system for the possible interest, and in the event that G comes forward and is successful in proving an interest, compensation is payable by the system (s.37(16)), not the lawyer (s. 37(14));

3. You could advise your clients that they could have the title qualification insured through title insurance.

4. ONCE THE PARCEL IS REGISTERED IN THE NEW SYSTEM, K DIES. THE REGISTRATION OF J AND K WILL REQUIRE REVISION. HOW DOES THE PROPOSED *Land Registration Act* ENABLE THIS?

Once a parcel is registered in the new system, the registrar shall accept proof of death of a joint tenant as a direction to revise a registration to delete the deceased joint tenant as a registered owner (Section 25).

If a parcel is not yet registered, there is no requirement to file a proof of death. In the event a surviving spouse decides to transfer the house to his child as a gift, after his spouse's death, that transfer, as it is not a transfer for value (S.45(1)(a)), does not trigger a requirement to migrate the parcel into the new system.

5. YOU ARE PUTTING ON A MORTGAGE AND AN EASEMENT FOR J AND K. HOW ARE THESE DOCUMENT ENTERED INTO THE RECORDS? ARE THEY REGISTERABLE INTERESTS?

No. To determine whether an interest is one which qualifies for registration, and therefore a guarantee, one must look to section 16 of the *Land Registration Act*. If the interest in land is

a) a fee simple interest;
b) a life estate and the remainder interests; or
c) a Crown interest

then the interest is one which is registerable under the new Act. All other interests in land are recorded in the parcel register. Neither a mortgage nor an easement qualify

as registerable interests in land, and therefore these interests will be 'recorded' in the parcel register to which they relate.

What is a parcel register?

Parcel Register- Section 11 provides that the Registrar shall establish a 'parcel register' for each parcel of land in the appropriate registration district. As there are approximately 500,000 parcels of land, there will be an equal number of parcel registers. Each parcel register will be the spot where all registered interests, and all recorded interests that relate to a parcel will be found. Section 12 sets out the contents of a parcel register, which will include:

- **a) PID;**
- **b) Civic address and lot number, if known;**
- **c) general location of parcel;**
- **d) description of the parcel;**
- **e) name and address of each registered owner of the fee simple absolute;**
- **f) full text of all recorded interests that are interests less than fee simple;**

Mortgage- A mortgage is considered an interest in a parcel, and as it is not registerable, it may be recorded pursuant to Section 47(1). Section 52 changes the common law principle with regard to the effect of a mortgage. A mortgage under the *Land Registration Act* is no longer a conveyance of legal title to land, but as a mortgage can be enforced in the usual way (s.52(1)), the change has no practical effect on foreclosure practice and procedure.

6. WHAT IS THE EFFECT OF REGISTRATION OF J AND K'S PARCEL UNDER THE NEW SYSTEM?

Registration means that the system guarantees that J and K, as registered owners, own absolutely and incontrovertibly the interest defined in the register in respect of the parcel described in the register, subject to survey, and any overriding interests (Section 18(1). This is a statement of law, and requires no interpretation.

7. DOES THE GUARANTEE TO J AND K EXTEND TO BOUNDARIES, OR EXTENT OF TITLE?

No. The description of a parcel in a register is not conclusive as to the boundaries or the extent of the parcel (Section 19(1)).

8. IS THIS A NOTICE BASED SYSTEM-WILL YOU BE ABLE TO VIEW THE FULL TEXT OF A RECORDED MORTGAGE?

This is not a notice based system, and you will be able to view the full text of a mortgage recorded in a parcel register. (Section 12(f)).