

January 7, 2008
Registrar General's Directive 2008-01
Assignments in Bankruptcy

Pursuant to Section 30 of the *Land Registration Act*, effective immediately, Assignments for the General Benefit of Creditors and Receiving Orders made under the *Bankruptcy and Insolvency Act (Canada)*, including those attached to Cautions under Section 74 of that Act, must be submitted to the Land Registration Office with a Form 24 [where the Assignment or Order is to be placed in the parcel register and relates to a registered interest holder (owner)], a Form 48B [where the Assignment or Order is to be recorded in the judgment roll], or Form 26 [where the assignment relates to a recorded interest of a third party who has made the Assignment/is the subject of the Receiving Order]. Attached is a convenient table covering all scenarios involving bankruptcy documents, along with an updated Form 48B to add the assignment or discharge to the judgment roll. [note: the table refers to sample forms, which are posted in the client manual, and includes page numbering, which is from Garth Gordon's paper on the BIA, also posted in the client manual]

Background

The Land Registration Act, Section 30, contemplates that Assignments in Bankruptcy and Receiving Orders operate as a revision of ownership of real property from the registered owner, the bankrupt, to the Trustee in Bankruptcy.

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

Because of that provision, when the system became operational in 2003, these documents were only able to be registered using a Form 24 (Form 25 as it then was).

After representations made to the Registrar General by members of the Bankruptcy and Insolvency bar and Trustees in Bankruptcy, it was agreed as follows: Assignments in Bankruptcy and Receiving Orders could be accepted by the Land Registration Office for registration or recording in a parcel register on either a Form 24 or a Form 26, depending on whether the trustee was taking title to the bankrupt's real property or not. The key to that decision was the advice to the Registrar General from this group that vesting under the *Bankruptcy and Insolvency Act (Canada)* [the BIA] was not automatic.

The Procedures Advisory Committee [PAC] questioned this advice. A review of case law, the BIA and academic sources¹ supported the PAC's position. That Committee asked the Registrar General to contact the Superintendent in Bankruptcy for a ruling on the vesting of real property on bankruptcy or receivership.

The A/Deputy Superintendent of Bankruptcy, Regulatory Affairs and Compliance confirmed the automatic vesting of real property on making an Assignment in Bankruptcy.

¹The Registrar General is indebted to Garth C. Gordon, Q.C. for his research and learned paper on the topic. Mr. Gordon has kindly consented to the posting of his materials on the Land Registry's resource page.

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 register 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 record the A/RO in the Judgment Roll. See the second sample form.
To register 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 record the A/RO in the Judgment Roll. See the second sample form.
To record 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 record 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 record 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 record 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.

<p>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).</p>	<p>Order (Not Transferring / Not Judgment) (412)</p>	<p>Form 26.</p> <p>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).</p>
<p>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).</p>	<p>Assignment of Bankruptcy (110)</p> <p>Order (Not Transferring / Not Judgment) (412)</p>	<p>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).</p> <p>Form 26, Now the Trustee may record the order.</p>
<p>To <i>record</i> an order made under BIA respecting a parcel registered under the <i>Registry Act</i>.</p>	<p>LRO codes as Order (Not Transferring / Not Judgment) (412)</p>	<p>Form 44.</p>
<p>To <i>register</i> a conveyance of an LR registered parcel registered in the Trustee's name from the Trustee to another under <i>BIA</i> ss. 20, 30 or 40(1).</p>	<p>Deed (101)</p>	<p>Form 24. See the fifth sample form.</p>
<p>To <i>register</i> a conveyance of an LR registered parcel not registered in the Trustee's name from the Trustee to another under <i>BIA</i> ss. 20, 30 or 40(1).</p>	<p>Assignment of Bankruptcy (110)</p> <p>Deed (101)</p>	<p>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.</p> <p>Form 24. The Trustee or bankrupt may then register the conveyance.</p>
<p>To record a transfer of a non-fee simple interest in a LR registered parcel by the Trustee.</p>	<p>Deed (101)</p>	<p>Form 26. See the sixth sample form.</p>
<p>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>.</p>	<p>LRO codes as Deed (101)</p>	<p>Form 44. *Refer to the Caution below.</p>
<p>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>.</p>	<p>LRO codes as Assignment of Bankruptcy (110)</p> <p>LRO codes as Deed (101)</p>	<p>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.</p> <p>Form 44. Then the Trustee or bankrupt may register the conveyance under the <i>Registry Act</i>. *Refer to the Caution below.</p>
<p>*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.</p>		

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

Registration district:	
Submitter's user number:	
Submitter's name:	

For Office Use

(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 in the County of , Province of Nova Scotia, on .

Signature of interest holder/agent

Name _____

Address _____

Phone _____

Email: _____

Fax: _____