## NOTES ON BANKRUPTCY APPLICATIONS IN THE LAND REGISTRY

Not so long ago, bankruptcy matters were dealt with by a small number of firms, who had acquired considerable experience in this area of law. However, since the legislation now permits individual trustees in bankruptcy to be appointed, more practitioners are becoming involved in bankruptcy matters.

In addition, in the current economic climate, purchasers' solicitors are much more likely to encounter properties where the owner has been declared bankrupt. So we can no longer regard insolvency as a slightly arcane area of law which is best left to the experts.

The following notes consider the most common conveyancing transactions, which have a bankruptcy element, and explain their implications for Land Registry applications.

#### A. BANKRUPTCY PETITIONS

Notice of a Bankruptcy Petition may be registered as a burden under Schedule 6 of the Land Registration Act (NI) 1970 (as amended). Registration of the notice warns anyone dealing with the land that a petition has been issued against the registered owner.

Applications for registration of a Notice of Bankruptcy Petition are normally lodged by the Bankruptcy Office and should be made under Rule 153 of the Land Registration Rules (NI) 1994 (as amended)<sup>1</sup> in Land Registry Form 76.

#### **B. BANKRUPTCY INHIBITIONS**

# Applications for Registration of Bankruptcy Inhibition

Once a Registered Owner has been declared bankrupt, the Official Receiver or Trustee in Bankruptcy should lodge an application for a Bankruptcy Inhibition under Rule 155 using Land Registry Form 78.

No dealings with the land, other than registration of the ownership of the trustee in bankruptcy, may be registered while there is a Bankruptcy Inhibition on the Folio.

# **Applications for Cancellation of Bankruptcy Inhibition**

A Bankruptcy Inhibition may be cancelled under Rule 156 as a result of

(i) The registration of a Trustee in Bankruptcy as owner; or

<sup>&</sup>lt;sup>1</sup> In this article references to a rule relate to the Land Registration Rules (NI) 1994 (as amended) and references to Land Registry Forms relate to forms prescribed by those Rules.

(ii) A Court Order permitting the cancellation.

If a bankruptcy is <u>annulled</u>, the former interest of the Bankrupt will re-vest in him/her and on such an application the Bankruptcy Inhibition may be cancelled.

It should be noted, however, that the <u>discharge</u> of a Bankrupt is not the same as the annulment of the bankruptcy. (A discharge simply removes certain restrictions affecting the Bankrupt, whereas an annulment involves a Court Order putting an end to the bankruptcy.) Accordingly, an application for cancellation of a Bankruptcy Inhibition on the grounds of annulment must be accompanied by a certified copy of a Court Order confirming that the Bankruptcy has been annulled.

## C. VESTING IN THE OFFICIAL RECEIVER/TRUSTEE IN BANKRUPTCY

A Bankrupt's estate vests in a Trustee in Bankruptcy upon his/her appointment,<sup>2</sup> and the Trustee should apply to be registered as owner in place of the Bankrupt in the following manner.

- (a) An individual <u>Trustee in Bankruptcy</u> may be registered as owner in place of the Bankrupt under Rule 159, or in place of the Official Receiver under Rule 158, on the production of
  - (i) A certified copy of the Bankruptcy Order;
  - (ii) A certified copy of his certificate of appointment, or any Court Order appointing the trustee; and
  - (iii) A certificate signed by the trustee confirming that the land forms part of the Bankrupt's estate, has vested in the Trustee in Bankruptcy and has not been disclaimed (see **Precedent A** attached).
- (b) If the Official Receiver has been appointed as Trustee in Bankruptcy, the Official Receiver may apply to be registered as owner in place of a bankrupt owner, under Rule 157, by lodging
  - (i) A certified copy of the Bankruptcy Order; and
  - (ii) A certificate signed by the Official Receiver confirming that the land forms part of the Bankrupt's estate, has vested in the Official Receiver as Trustee in Bankruptcy and has not been disclaimed (see **Precedent A** attached).

#### D. SALES BY THE OFFICIAL RECEIVER/TRUSTEE IN BANKRUPTCY

Sales by the Official Receiver or a Trustee in Bankruptcy are reasonably straightforward if the Official Receiver or Trustee in Bankruptcy has already been registered as owner. Accordingly, a sale may be effected by a transfer in Land Registry Form 9 if all the land comprised in a Folio is being sold.<sup>3</sup>

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<sup>&</sup>lt;sup>2</sup> If the bankrupt is a joint tenant, the appointment of a Trustee in Bankruptcy severs the joint tenancy, even if this does not appear on the face of the Register.

<sup>&</sup>lt;sup>3</sup> Form 10 or 11 should be used if only part of the land is being sold.

If the Official Receiver or Trustee in Bankruptcy <u>has not been registered</u> as owner, proof that the Bankrupt's estate had vested in the transferor, and has not been disclaimed, must be lodged (see paragraph C above). In this situation, the transfer should <u>not</u> be in Form 9; instead, Form 10 or Form 11 should be used and Panel B should make it clear that the transferor is the Trustee in Bankruptcy of the registered owner.

#### E. DISCLAIMER BY THE OFFICIAL RECEIVER/TRUSTEE IN BANKRUPTCY

A Trustee in Bankruptcy is entitled to disclaim property owned by the Bankrupt, but disclaimed property does not automatically re-vest in the Bankrupt or vest in a co-owner. Therefore, anyone seeking to be registered as owner of disclaimed property should lodge the following documents –

- (i) A certified copy of the Court Order vesting the land in the applicant;
- (ii) A certified copy of the Bankruptcy Order (unless this has already been registered);
- (iii) A certified copy of the Order appointing the Trustee in Bankruptcy (unless he/she is already registered as owner);
- (iv) Notice of disclaimer by the Trustee in Bankruptcy (which should be properly attested); and
- (v) A Certificate of Identity, if the name of the Bankrupt in the Court Order is not exactly the same as the name on the Folio.

#### H. RE-VESTING IN THE BANKRUPT

#### 1. Re-vesting following Annulment

Section 67A(9) provides that on the annulment of a bankruptcy any registered estate vested in a Trustee in Bankruptcy shall re-vest in the registered owner.

In such a case, a certified copy of the Court Order should be lodged as evidence of annulment. If the name of the Bankrupt in the Court Order is not exactly the same as the name on the Folio, a certificate of identity should be produced confirming that they are the same person.

#### 2. Re-vesting of the Bankrupt's home

In a situation where the Bankrupt's home becomes re-vested in the Bankrupt, the Trustee in Bankruptcy should apply for registration of the re-vesting as follows:

- (a) If the Trustee in Bankruptcy is registered as owner, he/she should lodge an application based on **Precedent B** together with certified copies of any relevant documents.
- (b) If the Trustee in Bankruptcy is not registered as owner, he/she should lodge evidence of both the vesting and re-vesting. This involves lodging -
  - (i) A certified copy of the Bankruptcy Order;

- (ii) A certified copy of the certificate of appointment, or the Court Order appointing the trustee; and
- (iii) Applications in Precedent A and Precedent B. However, as an alternative to the lodgement of Precedent A and Precedent B, the Land Registry will accept a combined application in **Precedent C**, which incorporates the contents of both those precedents.

#### I. REGISTRATION FEES

No registration fees are currently payable for Notices of Bankruptcy Petitions or Bankruptcy Inhibitions. However, all the other transactions mentioned above attract fees under the Land Registry (Fees) Order 2011.

## PRECEDENT A

## **VESTING IN THE OFFICIAL RECEIVER/TRUSTEE IN BANKRUPTCY**

LAND REGISTRY Folio: Registered Owner:	County:	
I of hereby certify that:		
(i) The land comprised in the above Folio forms part of the bankrupt named in a Bankruptcy Order dated is annexed hereto.		
(ii) The said bankrupt is one and the same person as Registered Owner.	AB the above named	
(iii) The said land has vested in me as Trustee in Bankruptcy of the estate of the said AB and has not been disclaimed.  Dated: Signed: Witness: [The signature of the Trustee in Bankruptcy should be witnessed by a solicitor or by two witnesses.]		
PRECEDENT B		
RE-VESTING OF PROPERTY IN A BANKRUPT (where the trustee has been registered as owner)		
LAND REGISTRY Folio: Registered Owner:	County:	
I of hereby certify that:		

(i) I am the Trustee in Bankruptcy of AB of ... the former Registered Owner of the

(ii) The land comprised in the above Folio formed part of the estate of AB prior to

land comprised in the above-mentioned Folio:

his bankruptcy and it became vested in me on ... 20...

(iii) The said land [insert, if appropriate, comprises AB's residence and] subsequently became re-vested in AB as a result of [provide details of the Court Order, statutory provision or document that gave rise to the revesting] and I request that the entry of my ownership be cancelled and that AB be registered as owner.

Dated:

Signed:

Witness:

[The signature of the Trustee in Bankruptcy should be witnessed by a solicitor or by two witnesses]

#### PRECEDENT C

# RE-VESTING OF PROPERTY IN A BANKRUPT (where the trustee is NOT already registered as owner)

LAND REGISTRY Folio: Registered Owner: AB	County:
I of hereby certify that:	
(i) The land comprised in the above Folio formed part of, the bankrupt named in a Bankruptcy Order da of which is annexed hereto.	

- (ii) The said bankrupt is one and the same person as AB the above named Registered Owner.
- (iii) The said land vested in me as Trustee in Bankruptcy of the estate of the said AB on ...... 20.. and has not been disclaimed.
- (iv) The said land [insert, if appropriate, comprises AB's residence and] subsequently became re-vested in AB as a result of [provide details of the order or document that gave rise to the re-vesting and lodge a certified copy] and I request that the entry of my ownership be cancelled and that AB be registered as owner.

Dated:

Signed:

Witness

[The signature of the Trustee in Bankruptcy should be witnessed by a solicitor or by two witnesses]