

# LAND REGISTRATION ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON THE SECTIONS

#### Part 7: Special Cases

##### Pending Actions etc.

##### *Section 86: Bankruptcy*

138. This section makes special provision for the effect of bankruptcy, to reflect the provisions of the Insolvency Act 1986. It ensures that where an individual is the sole registered proprietor of a registered estate or charge, for his or her own benefit, an entry is made in the register that the estate or charge is subject to a bankruptcy petition presented against that person, or a bankruptcy order made against him or her.
139. At present, when a bankruptcy petition is filed at the court, the relevant court official must apply to register the petition in the register of pending actions kept by the registrar under the Land Charges Act 1972. Where the debtor is the registered proprietor of any land or charge, this can have no direct effect, because registration of a land charge does not affect registered land. This registration serves, however, to trigger a procedure for ensuring that an appropriate entry is made in the register of title. Using the index of the names of registered proprietors, the registrar will attempt to ascertain whether the debtor is the sole registered proprietor of any land or charge in the register. If it appears that the debtor is, the registrar must register a creditors' notice against the title of any land or charge that appears to be affected. This section replicates this procedure.
140. A similar procedure applies when a debtor is adjudicated bankrupt and a bankruptcy order is made against him or her. At present, the registrar is then required to enter a bankruptcy inhibition. Again this section replicates this procedure but because the Act prospectively abolishes inhibitions, the registrar is required to protect a bankruptcy order by the entry of a restriction.
141. *Subsection (5)* provides that in the case of a debtor who has been adjudged bankrupt, a donee to whom a registrable disposition is made is not subject to the title of the debtor's trustee in bankruptcy, provided that:
- i) the disposition is made for valuable consideration
  - ii) he or she acts in good faith;
  - iii) at the time of the disposition, no notice or restriction was entered in relation to the registered estate or charge; and
  - iv) the person to whom the disposition was made had no notice of the bankruptcy petition or the adjudication.
142. The approach followed is that in the Insolvency Act 1986 which protects a *bona fide* purchaser for value without notice.