

MORTGAGE DEBT RECOVERY

EXAMPLES OF CIRCUMSTANCES

FOR THE APPOINTMENT OF A

LAW OF PROPERTY ACT (LPA) RECEIVER

CHECK CASE AGAINST THE CRITERIA BELOW:

1. Does the mortgage deed give the mortgagee the power to appoint a Receiver?

This must be specifically mentioned in the mortgage deed.

The LPA Receiver can take the place of the mortgagor but retain the, often valuable, tenant.

2. Has the relationship with the mortgagor broken down so badly that an arm's length intermediary can stand between the parties to try and find a satisfactory way forward?

Even the threat of the appointment of a Receiver can bring a reluctant borrower to the negotiating table. If matters have become acrimonious, a Receiver can appear as a neutral party to seek a solution, sometimes without the need to sell a property.

3. Has the mortgagor shown signs of irrationality, criminality or offered threats or violence?

If illegal activities are suspected on the premises, or threats have been made, an LPA Receiver is often better able to deal with matters and avoid being drawn into inadvertent culpability.

4. Are there any obligations that a 'controller' of the property might be liable for, not appropriate for the mortgagee to be dragged into?

This most often arises in properties held under a long lease and a rent or service charge needs to be paid to a superior landlord. If the mortgagor makes a payment it may then be held liable for other debts owed by the mortgagor to the same people on the same property. If the property does not sell quickly the liability remains ongoing and can reduce net proceeds of sale.

A Receiver can decline to make payments whilst arranging a sale, or make the payments out of rents received from tenants.

5. Are there tenants in the property who cannot be immediately dispossessed or whose rental income can help pay off the debt?

Tenants may have ongoing security of tenure or claim to do so. Shorthold residential tenancies, student lettings and commercial tenants are usually entitled to remain for the duration of their agreements. Protected tenants can remain for their lifetime and children living with them can inherit the same rights.

Tenant income can help to pay outstanding debt or secure investment value when vacant possession prices are falling. LPA Receivers can collect rents, pay outgoing and apply the balance to repayment of the debt, pending a sale. Legally, the Receiver acts as 'agent' for the owner so avoiding the mortgagee becoming liable for the property or any landlord obligation.

6. Are the tenants avoiding efforts to make contact, actively resisting vacant possession or not paying the rent?

An LPA Receiver can physically visit the site to recover unpaid rents or obtain possession through the courts. The courts often look favourably on professional Receivers involvement.

7. Is it 'politically' or corporately unacceptable for the mortgagee to be seen to dispossess innocent tenants?

The involvement of an LPA Receiver distances the mortgagee from sensitive actions.

8. Does a single mortgagor have many properties charged to the mortgagee and defaulting is sporadic within the portfolio?

The best solution in the context of the portfolio may be to place the whole portfolio in LPA Receivership so that it is dealt with consistently and its disposal does not flood a local market, reducing realisable prices.

If a portfolio has loans secured by individual charges against each property then notices of default, or demands for repayment, must be served individually. In these circumstances the payment of one property's debt by receipts from another is not possible without the agreement of the mortgagor.

9. Does the property need to be insured? Does it need to be secured, made safe and regularly inspected to meet insurer's requirements?

LPA Receivers usually have blanket insurance cover under which nearly all properties can be at least partially covered. LPA Receivers have a well established relationship with their insurers based upon the insurers knowing that the property will be made safe, water systems drained and the property regularly inspected to reduce risk.

10. Are there any unacceptable risks the mortgagee might become responsible for by taking direct control of the property?

Examples are:

- the management of common parts in a leasehold property (including common water based systems where preventative measures against Legionnaires disease are needed);
- statutory repairs are required (landlords are statutorily responsible for the structure, utilities and fittings of a residential property);
- periodic statutory checks on gas, electrical equipment, fire alarms in let residential property required
- furniture with high fire hazard may not be let with residential property
- requests from tenants for landlord repairs or improvements;
- there is potential for, or ongoing, litigation between landlord or tenant.

11. Is litigation threatened by third parties for which the mortgagee might become inadvertently liable if direct control is taken of the property?

Actions may be contemplated or underway by planning authorities, building control authorities, party wall claimants, neighbours, health officers. An LPA Receiver can stand between the mortgagee and third parties and prevent the mortgagee being the target for actions. LPA Receivers are not held liable for previous breaches by an owner.

12. Are council taxes or commercial property rates being demanded that would increase the debt?

Residential tenants may be paying a rent inclusive of council tax. Council tax and commercial property rates are due, in varying proportions, on even empty property. LPA Receivers are entitled to avoid making such payments resulting in substantial savings.

13. Are other charge holders threatening to take control, potentially reducing the net proceeds of sale?

This can happen when a second charge holder incurs unnecessary expense in court actions or attempted recoveries and leaves net proceeds diminished.

Well secured senior charge holders may be unwilling to take action, leaving second charge holders vulnerable to eroding net asset value.

An LPA Receiver, obtaining income or the proceeds of sale, applies the monies in order of charge seniority.

14. Are there any issues affecting the title or occupational agreements that need correction before sale?

The appointment of a Receiver can buy time as an intermediate arrangement whilst corrective legal work is done to make a property fully marketable. The Receiver will be able to undertake or oversee the corrections to the best advantage of net realisations.

15. Has the market for vacant possession properties seized up or dropped below the investment value of the property?

Tenant income can be a positive advantage when vacant possession prices have slid below the secured debt or the owner occupied market is not fluid. LPA Receivers can arrange new lettings and renew existing lettings, obtaining income to pay the debt and creating value to be realised in a sale.

16. Does the property have mixed uses?

If the freehold of a mixed use building is the security, there may be residential accommodation above a commercially used ground floor, for example. The property may have a multitude of uses, often required by planning authorities in new developments. What liabilities or benefits attach to the mixed use? Are there any risks for the mortgagee.

17. Are building works under way?

If the property is under construction, refurbishment or repair and works have ceased, leaving the property un-sellable except at a massive, unsatisfactory discount, a suitably experienced Receiver can complete the works, or oversee the mortgagor doing so, before arranging a sale. This is often a hands-on operation requiring specific skills to meet statutory requirements and make the property sellable when completed.

18. Are the mortgagors based abroad, died or otherwise incapable of or unwilling to take action?

Using the mortgagor's power of sale may be best unless the property is 'complex' and has some of the issues mentioned above.

Please do call our Managing Director, Denise Ford, if you would like her or a member of our team to visit you for an informal discussion.