

LAW OF PROPERTY ACT RECEIVERS

WHAT DO THEY DO AND HOW DO THEY DO IT?

WHAT DOES 'LPA RECEIVER' MEAN?

The Law of Property Act 1925 (LPA) codified the rights and liabilities of lenders and borrowers who used property as collateral or security for a loan. The Act set out what a lender could do to recover a loan if the terms of the loan were not being met. One power given by the Act is to appoint an independent Receiver over the property.

Most modern mortgage deeds therefore include the power to appoint a Receiver and will set out in some detail what the Receiver can and cannot do. When a Receiver is appointed he will look first at the mortgage deed to check the legality of his appointment and any restrictions on what he can do.

The powers of the Receiver under the Law of Property Act (thus called an LPA Receiver) extend only to the property over which the legal charge was made and not to the individual or any company which is the borrower.

An individual who is unable to pay his debts would enter an Individual Voluntary Arrangement (IVA) under the direction of a court appointed overseer or personal bankruptcy. A company that could no longer trade would be placed in Administrative Receivership, if there is a chance of rescuing it, or Liquidation if all that can be done is to sell its assets to pay back what can be recovered. In both these cases the company's Administrative Receiver runs the company and he is usually a qualified accountant.

WHAT CHOICES DOES A LENDER HAVE UNDER THE LAW OF PROPERTY ACT?

Before resorting to any power under the Act and mortgage deed, borrowers will do the best they can to agree with the borrower a method to repay the loan. The costs of re-possession or Receivership are too great for a lender to use these alternatives unless they feel there is no alternative.

If you are a borrower and you are having difficulty meeting your loan obligations, contact the lender as soon as possible and discuss with them what you can do.

If the relationship between the borrower and lender has broken down, the lender may look to the powers it has under the Act and mortgage deed.

One route is for the borrower to take possession of the property and sell it (usually called re-possession or, in America, foreclosure). This means the borrower has to leave the property. If he does not do so voluntarily the bank may have to obtain a Possession Order from a court.

Another option for the lender is to appoint an LPA Receiver who independently becomes responsible for the property and is then empowered to act as if he were the owner of it. The LPA Receiver may also apply to the court for a Possession Order.

Borrowers should recognise that once a Receiver is appointed the business relationship between the lender and the borrower is almost certainly irretrievably broken and the lender does not want to put it back together.

POWERS AND DUTIES OF A RECEIVER

The Receiver has a duty to act in the interests of the lender who has appointed him and, residually, for the owner of the property as well. If the property has more than one charge registered against it, securing other loans, then the Receiver has to take these into account as well.

The Receiver generally has broad powers which include:

- collecting in monies due to the property, for example from rents
- looking after the property, securing it, repairing it or insuring it
- obtaining possession if it is occupied illegally or the occupier has defaulted on his obligations, for example to pay rent
- seeking planning consent or otherwise dealing with the property
- arranging the letting or sale of the property if the Receiver considers that is the best way of repaying all or part of the debt
- paying monies collected to repay the loan due
- agreeing a settlement with creditors if needs be
- paying to the owner/borrower any money that is left over after repaying all the debts and costs.

IS IT INEVITABLE THAT THE PROPERTY WILL BE SOLD?

In most cases Receivers will try to establish with a borrower, early on, if there is any way he can repay the loan. If there is a realistic chance of doing so the Receiver will discuss this with the lender to see if the lender will accept the proposal.

It is probably true to say that if matters have reached the point of an LPA Receiver being appointed then these choices will have already been fully explored.

If the property is producing a lot of rent and the loan, interest and costs can be paid off from the rent, then the Receiver may choose to keep and manage the property until the loan is repaid and he will then return the property to the owner.

In most cases, however, sale of the property is probably the most likely outcome.

RECEIVERS FEES AND EXPENSES

In the absence of rents from the property the Receiver may need to borrow money personally from a bank to meet costs and his own fees. The Receivers fees and costs are always paid first from any monies collected in. The Receivers costs have to be reasonable and related to his duties.

Generally a Receiver will be paid for his hours worked at a pre-agreed rate and he will keep records of those hours. At the end of the Receivership he must make available an account of all monies received and expended, including his own fees.

HOW DO RECEIVERS SELL PROPERTIES?

It is a common misconception that LPA Receivers sell property cheaply. That is far from true.

In case of uncomplicated properties the first choice of an LPA Receiver may be to place a vacant property in an auction. An alternative is to market the property openly through an agent.

There may be circumstances in which the optimum price can be obtained from a special purchaser, such as an occupying tenant or a neighbouring property owner. The Receiver has the choice to sell without full marketing if he feels that is the right thing to do in all the circumstances.

If the market was falling rapidly, or the loan interest was accruing quickly, the Receiver may well decide the best thing to do is sell as quickly as possible, even if a slightly higher price might be obtained after extended marketing or taking some other action such as getting planning consent. The Receiver has total discretion but must act reasonably.

WHEN IS IT SENSIBLE TO APPOINT AN LPA RECEIVER?

Lenders should first check the mortgage deed to ensure it contains the power to appoint a Receiver. The relevant clauses will also give details on limitations of action imposed on the Receiver.

Assuming the lender has concluded that no further benefit can be obtained from talking to the borrower, the next step is to consider whether the property is occupied by the borrower, income producing or vacant.

If the borrower is in occupation it may be best to seek vacant possession by agreement or, if necessary, by obtaining a Possession Order from a court. It is not legal to forcibly eject any occupier without a court order and the attendance of a court appointed bailiff.

If the property is vacant then it is probably cheaper to 'take possession' and arrange a sale through an agent. Selling a property without an agent is fraught with potential claims that the sale has not been at arm's length and could result in legal action by an aggrieved borrower.

If a lender does take possession it will need to immediately insure the premises, make it safe against trespass, occupation and attack. Most insurers will insist on boarding up, draining water systems and regular security inspections. Rates may also need to be paid. A lender will then need to appoint the agent to sell, meet any up-front costs and oversee the sale.

If the property is let and income producing, or has some other aspect which a lender is not equipped to deal with, then appointing an LPA Receiver is the best thing to do. Examples of some of the circumstances that require the involvement of a professional Receiver are:

- Occupation by single or multiple tenants with rents needing collection.
- Outstanding rents that have not been collected.
- The property is in a poor state of repair, dangerous or damaged.
- Common areas maintenance obligations falling on the owner which requires expenditure and income collection.
- Planning consent may be obtainable to secure a higher value use.
- Other lenders are threatening to take control ahead of another lender.
- There are outgoings such as ground rents, head rents, security and maintenance staff.
- Legal actions have been initiated against the property such as planning breaches, insurance claims or unpaid rates.
- There are special purchasers who need to be dealt with carefully
- The property is under construction (e.g. a development site or single house) and the work needs to be completed before the property is sold.
- Commercial property where the best price may be obtained by first letting the property and then selling as an investment.
- Illegal activity associated with the property

A common reason for appointing an LPA Receiver is if the relationship between the lender and borrower is so unhappy that there needs to be distance between the parties. Then a professional intermediary can take a lot of heat out of the situation.

DO I ALWAYS NEED A PRE-RECEIVERSHIP REPORT?

No, it is not always necessary but it is often worthwhile if time allows.

A pre-receivership report by a professional can highlight issues that a lender was not aware of. It may also give a last opportunity for a conversation to be had with the borrower, in the light of impending receivership, which brings home the seriousness of the situation and elicits a resolution.

Issues which can be brought to light may be, for example, terms of the mortgage deed which limit actions; the physical condition of the property; its insurability; tenants not previously known about; ongoing uses for which planning consent does not exist; obligations associated with the property such as the repair of a common area; vacant parts previously believed to be let; opportunities to achieve a higher value through obtaining planning consents, the costs and timescales to do so.

We recommend that, in most cases, lenders at least talk through with a proposed LPA Receiver the circumstances and, better still, give that intended Receiver the chance to appraise the situation. It may well be that he can suggest an alternative to the expense of a formal Receivership.

EXAMPLES OF OUTCOMES OF CASES

Caravan park – Receivers obtained planning consent for industrial development. Terminated occupations. Site sold and substantial part of debt repaid.

Development of 15 flats partly finished, but roof structure faulty, borrower runs out of funds - Receivers complete the development after designing a roof solution and sell the flats. Most of debt repaid.

Large house with squatter in. Borrower unable to cope with abusive occupier. Receivers obtain possession, with some difficulty, and sell the property. The full debt is repaid and the surplus paid to the owner/borrower.

Industrial property with materials causing a fire hazard. Receivers clear the premises, secure it and sell. Full debt recovery.

House owner-occupied by the borrower. Appointment of Receiver induces a re-mortgage by the owner which repays the debt. Receiver resigns without having to sell the property.

Insurers unwilling to insure a property leaving the lender exposed to potential losses. Receiver's specially arranged insurance policy allows immediate cover until property quickly sold.

Apartment block with many tenants and common areas requiring management. Angry tenants refusing to pay back rents. Tenants addressed and common areas put right. Rents collected until freehold sold as an investment.

WHO DO I CONTACT?

The Receivership team is lead by Denise Ford who is both a member of the Royal Institution of Chartered Surveyors and The Association of Property and Fixed Charge Receivers (NARA).

The team also includes Grahame Gould and Cheryl Tutt.

Please feel free to call Denise Ford or Grahame Gould for an initial consultation on 01634 294994.

Don't be worried about asking 'daft' questions. This is an area that is not well understood and is often associated with some difficult and stressful circumstances. Our consultations are entirely confidential.