

Law of Property Act Receivers look set for a busy year

This article looks at the role of a specific type of receiver: the Law of Property Act receiver (“LPA receiver”). LPA receivers are sometimes known as fixed charge receivers or non-administrative receivers and are different from administrative receivers.

An LPA Receiver is either appointed under statutory powers or under specific powers set out in the relevant charge. The statutory powers are far more limited and so are almost always extended by the relevant charge.

The changes to insolvency laws mean that charge-holders cannot now appoint administrative receivers unless the charge predated the changes coming into force. However, an LPA receiver can still be appointed in relation to fixed charges over land. This means that it can be used as an effective way to protect a chargeholder’s interests. The appointment of an LPA receiver protects the charge-holder’s security over the relevant land against other parties and the also prevents the borrower from disposing of the land secured by the charge.

The role of an LPA receiver

Charges usually provide for an LPA receiver to be appointed by the holder of a fixed charge over land to enforce its security by collecting rents or selling the land or both. Many charges extend the powers of an LPA receiver even further so that essentially they can do everything that the owner of a property can do. Charges also frequently contain a power of attorney. This means that an LPA receiver can sign documents as an attorney for the defaulting borrower as landowner.

It should be noted that administrators, liquidators or trustees in bankruptcy cannot usurp the ability of a fixed chargeholder to appoint an LPA receiver. Therefore, it can be a particularly useful course of action for the fixed charge-holder to quickly get its hand on monies to satisfy the default under the charge. A fixed charge-holder cannot, however, take steps to enforce its security during the period of a company or individual voluntary arrangement.

A lender’s decision to appoint a LPA receiver cannot be challenged (except perhaps on grounds of bad faith). Although an LPA receiver is appointed by a charge-holder to realise the value of the land for its benefit, the LPA receiver does owe duties to act in good faith and deal fairly with the borrower. The LPA receiver also owes a duty to the borrower to obtain a proper price on a sale.

Surveyors or valuers can be appointed as LPA receivers

It is important to note that an LPA receiver need not be an insolvency practitioner. This is in contrast to administrative receivers, administrators, liquidators and trustees in bankruptcy.

This means that a chargeholder can appoint a surveyor or a valuer as the LPA receiver. This may be particularly useful if the land charged is an investment property with a number of tenants. The LPA receiver can then deal with the management of the property e.g. rent collection or rent review negotiations. This creates a buffer between the charge-holder and the defaulting borrower and the charge-holder can entrust property matters to someone who is professionally qualified to deal with them.

With the changes in insolvency laws and current economic climate, charge-holders may well be looking to enforce the terms of their charge against defaulting borrowers. The appointment of an LPA receiver is a remedy that can be overlooked. However, it is a very useful weapon in the arsenal of the holder of a fixed charge over land. Assuming the chargeholder appoints someone who is suitably experienced in property matters, they will be able to hand over what has become a very troublesome matter to someone who takes responsibility and has the necessary power and expertise to resolve difficult issues and realise the value of the secured land to settle the default.

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