

Appointment of a Receiver in Respect of Fixed Charges

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In England and Wales Lenders are able to appoint a receiver under the Law of Property Act 1925. In Northern Ireland the relevant legislation is the Conveyancing and Law of Property Act 1881.

When a Borrower of a commercial or residential property defaults on the terms of their mortgage a lender has the option to issue proceedings for a repossession order. Ultimately this will lead to the lender gaining vacant possession of the property and thereafter selling the property.

In some cases seeking vacant possession of the property may not be the Lender's preferred choice. For example if the property in question is tenanted the Lender may wish to secure the rents and profits to discharge the monthly mortgage instalments by appointing a receiver. In appointing a receiver the Lender does not exclude itself from pursuing an action for vacant possession of the property.

Power to appoint a receiver

The power of the lender to appoint a receiver arises once one of three conditions contained within section 20 of the Conveyancing and Law of Property Act 1881 are fulfilled. Once one of the conditions is fulfilled the power can be exercised:

1. immediately if the mortgage is created by deed after 1881
2. on the granting of a court order if the mortgage is an equitable charge (ie not created by deed)

Appointment of the receiver

Once the power to appoint a receiver arises, the Lender is not obliged to make such an appointment, however if the Lender does make the commercial decision to appoint a receiver rather than going down the repossession route they must note that the statutory requirement for the appointment to be made in writing. There are additional statutory requirements if the Borrower is a company rather than an individual such as notice being given to the Companies Registry within 7 days of the date of the appointment and the requirement that the appointed receiver must accept the appointment by the end of business on the day following receipt of the proposed appointment document.

Who can be appointed?

The receiver does not have to be an insolvency practitioner however it is common place that Lenders will appoint an insolvency practitioner. An undischarged bankrupt cannot act as a receiver for a company, nor can another company.

If you feel that this may affect you or your business please contact Lisa Boyd or another member of the Mortgage Repossession Unit who will be happy to help you.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.