

# nara

The Association of Property  
and Fixed Charge Receivers

[www.nara.org.uk](http://www.nara.org.uk)

## Guide to Property Receivership

**nara**...real estate insolvency defined



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**nara** is firmly established as the leading organisation dedicated to the support, education and promotion of professionals who work in the field of fixed charge receivership. It was formed in 1995 by a group of professionals from the property, legal, and insolvency disciplines who were concerned at what was perceived to be a lack of standards by some practitioners when undertaking fixed charge or Law of Property Act receivership appointments.

Since this work specifically refers to insolvency outside the scope of the Insolvency Act 1986 and the definition of administrative receivers which that Act contains, it was decided to adopt the name Non-Administrative Receivers Association, abbreviated to **nara**. Following the Enterprise Act in 2002, which removed the title of 'administrative receiver', for clarification, **nara** adopted the title 'Association of Property and Fixed Charge Receivers' but retained the abbreviated name.

The Association is multi-disciplinary and its membership is drawn from a broad range of regulated professionals including accountants, surveyors and valuers, insolvency practitioners, and lawyers. Its Council is drawn from leading members of the combined professions across the country and their expertise has produced a structure for insolvency work of this type.

The Association has a detailed Code of Practice and Guidance Notes to which all of its members agree to adhere. It promotes training for trainees and qualified members, holds an annual conference, publishes a regular newsletter and liaises with government, professionals, lenders and the wider industry on matters concerning fixed charge receivership.

**nara** fully endorses and supports the concept of regulation.

It played a pivotal role in developing the Registered Property Receivership Scheme for the voluntary licensing of fixed charge receivers.

This is a tripartite initiative between the Royal Institution of Chartered Surveyors (RICS), the Insolvency Practitioners Association (IPA) and **nara**. All Registered Property Receivers (RPRs) must have completed a formal training programme on all aspects of receivership practice, have passed both a written examination and peer competency interview and are required to undertake a continuous professional development programme after qualifying. They are subject to regular monitoring and regulation designed to enhance and maintain professional standards for the benefit of their clients, borrowers and the public.

All practicing Fellows of **nara** are RPR Scheme members.

# 1. introduction

The receivership process has been developed over more than a century in England, Wales and Ireland to be an effective and economical means of recovering money lent to a borrower who has failed to comply with the terms of a loan whose security is a fixed asset – usually a residential or commercial property. This type of loan is generally known as a mortgage. The receiver is appointed by the lender in such circumstances to ensure the loan is repaid either via the income produced from the mortgaged asset or through its sale.

It is a highly effective and well-proven process, yet it is not well understood outside the relatively small group of professionals who specialise in this area of work. Despite this, receivership directly affects many people who own, occupy or finance property.

This publication has been produced by **nara** as an introduction to property receivership. It is aimed in particular at those who are new to the receivership process and who have become involved in it either as lenders, borrowers or professionals advising these parties.

It is not intended to be a comprehensive guide; more detailed sources are listed at the back of this publication. **nara** runs introductory and more advanced training courses for those requiring further knowledge of receivership.

## 2. the background

### Property loans

A property loan is one where the security is an interest in real estate.

One of the major benefits of property ownership is that it enables the owner to borrow money relatively easily by taking out a loan (usually known as a mortgage) for which a property is the security. Land and buildings are an attractive form of security because they are immovable, they tend to maintain their value in stable markets and can also provide an income that may be used to pay interest and borrowings.

If the borrower fails to fulfil the conditions of the loan, the most common of which are to pay interest and to make repayments, the lender can take control of the secured property in order to recover money owed or to enforce other terms of the mortgage.

A mortgage is usually a *fixed charge* – this means that if the borrower defaults on one or more of the terms of the loan, the lender may use only the mortgaged property to recover the money owed.

This contrasts with a floating charge where the lender may have access to the entire assets or share capital of a company, or to the wider assets owned by an individual.

When a loan is made by a lender to a borrower the terms will be set out in a loan agreement and recorded in a mortgage deed.

This is a document signed by the borrower and the lender. Terms commonly found in nearly all agreements include:

- Amount of loan – usually a fixed sum agreed at the beginning of the term. There may be provision for early repayment if the value of the security falls below an agreed percentage of the outstanding loan
- Loan period – the time for which the money is lent, at the end of which the loan must be repaid and any other conditions complied with
- Interest charges – at a fixed or variable rate on the outstanding loan amount, usually due monthly. A variable rate will be linked to changes in LIBOR or another agreed base rate

- Repayment – repayment of the sum loaned may be in instalments on a regular basis (monthly, quarterly) over the loan term or as a single payment at the end of the term (known as a ‘bullet repayment’)
- Security – the security for a loan is usually an asset owned by the borrower which has a value in excess of the amount of the loan and which may produce an income
- Events of default – the borrower will be required to comply with the terms of the loan agreement and mortgage deed. If it does not, the lender can take control of the secured property to enforce payment

Very frequently the loan will be made to enable the borrower to purchase and/or develop the property which forms the loan security.

The loan may also be obtained for other purposes; for example, a freehold owner/ occupier of industrial premises may take out a loan secured on the property for the purposes of expanding the business operating from it.

The maximum amount of money available under the terms of the loan agreement will usually relate to the value of the property, as assessed at the outset by an independent valuer engaged by the lender.

The loan-to-value (LTV) ratio will depend on the strength of the borrower, the type of loan, the strength of the market and many other factors.

The first loan secured on a property is known as a ‘senior loan’ because, in the event of default, the lender will have priority over any other lenders with a claim on the security.

If the borrower wishes to increase the amount borrowed above the LTV agreed with the senior lender this may, in some market conditions, be possible via a second loan, referred to as a mezzanine, or junior, loan. If the senior LTV is 60%, for example, it may be possible to borrow up to (say) 80% of a property’s value in this way. In the event of default, the holder of the senior debt will have a prior claim on the security up to the amount of its outstanding loan. The mezzanine lender is therefore at a higher risk of not being able to recover its money if values have fallen. For this reason, mezzanine loans will usually be at a considerably higher interest rate than senior debt.

## What can go wrong?

### **Borrower fails to meet repayment and interest obligations**

These circumstances usually arise when the borrower is in financial difficulty. In the case of investment property, the failure of a tenant can also precipitate default if the borrower is relying on this income to service the loan, or the loan terms require a specific rental income level to be maintained.

### **Falling capital values**

In a weak market, capital values can become very volatile and this can affect the LTV ratio. To take a hypothetical example, a lender may agree to advance a loan of £700,000 on a property valued at £1,000,000, based on a maximum permitted LTV of 70%, for a period of 5 years.

If after 2 years the value of the property has fallen to £900,000, the LTV becomes 77.8%. In such circumstances, and depending on the terms of the loan, the lender may require the borrower to repay £70,000 to bring the LTV ratio back to the required 70%. If the borrower is unable to comply, the loan will be in default.

### **Other causes of default**

These may vary widely, depending on the requirements of the loan agreement and the type of property. For example:

- Loans to residential occupiers frequently do not permit the mortgaged property to be let so if the borrower permits a letting to occur, there will be a breach of the agreement
- In the case of a loan to develop a property there may be a requirement for the borrower to adhere to a specified timetable  
If this is subject to delay the loan terms may be breached
- Development loans may also require the borrower to obtain planning permission for the scheme and if this fails, again default may be triggered

## What can the lender do if the borrower defaults?

### Negotiations with the borrower

While the law, and almost certainly the loan agreement, will allow the lender to appoint a receiver or administrator in the event of default, it may not always be in the lender's best interests to do so. For example, if the market values have fallen, the value of the secured property may not be sufficient to repay the amount of loan outstanding. In a depressed market (notably that in the UK and Ireland from 2008) banks may also have concerns that appointing receivers to sell a large number of properties subject to loans in default may itself have a depressing effect on market values as a whole.

The lender may therefore sometimes be best advised to work with the borrower in agreeing acceptable terms to vary repayments or to ignore a breach in the LTV covenant in order to avoid the more drastic action of enforcing the default provisions. In so doing the lender will need to work closely with insolvency professionals to ensure the best outcome and in the case of property loans this will usually be a Registered Property Receiver, despite the fact that a formal appointment may never in practice occur.

Ultimately the lender is likely to be seeking a course of action which allows the best chance of recovering its loan and any outstanding interest while at the same time acting, if possible, in the best interests of the borrower.

### Appointment of an administrator

An administrator is appointed by a lender to act as an interim chief executive when a company is insolvent. The administrator's job is to run the company as a going concern while options as to its future (for example, recapitalisation, sale or break-up) are explored.

The administration process is governed in the UK by the Insolvency Act 1986, amended by the Enterprise Act 2002. In most cases an administrator is appointed by the court following an application by a creditor, the company itself or its directors.



**CASE STUDY (1)**

# Seeking consensus

**The Property**

A family-operated restaurant property with upper parts located in an important tourist town to the West of London.

**Appointment of the receiver**

The borrowers were unable to meet interest payments on a loan secured on the property. The bank had for a number of years been attempting to encourage the family to sell the property voluntarily.

Ownership of the company operating the restaurant was in the hands of an offshore trust and disputes between family members further complicated the position. Receivers were therefore appointed by the bank.

**Outcome**

The receivers succeeded in enlisting the cooperation of the trustees and some of the family members, who had to give up possession.

The property was then sold at a price that enabled the first charge holder to be fully repaid and for a part repayment to be made to the second charge holder.

Administration is most commonly used when a business has a value and more extensive powers are required, for example to deal with claims of other creditors. It has the advantage of protecting the assets from other creditors by virtue of the *moratorium*. If property forms a significant proportion of the value of the assets of the company, the administrator will normally instruct a surveyor to provide specific advice.

Alternatively there is no reason why a fixed charge receiver should not be appointed over the property as well as and independently of the administrator, albeit that the consent of the administrator or permission of the Court will be required. It should be noted that receivers do not have the power to operate trading companies directly.

The important difference between an administrator and a receiver is therefore that an administrator will deal with the entire company while the receiver will only be appointed in relation to a specific, charged asset (assuming a fixed charge exists relating to that asset). The advantages of the receivership process are that;

- such an appointment need not significantly affect the operation of the company as a whole
- the process relates solely to the charged asset
- complications and costs of running the company are avoided
- receivership is usually considerably simpler and therefore cheaper

### **Appointment of a Fixed Charge Receiver**

The appointment of a Fixed Charge Receiver is the most frequently used approach to recovery in the case of property loans in England, Wales and Ireland. Section 3 covers the appointment, role and responsibilities of the receiver in more detail.

**CASE STUDY (2)**

## Dealing with planning problems



### **The Property**

A development site in the West of England with planning permission for 20 detached houses. The planning permission was due to expire eight weeks after the appointment of the receiver.

### **Appointment of the receiver**

Falling values had resulted in the loan to value covenant in the loan agreement being breached and the borrower was unable to maintain interest payments. A receiver had therefore been appointed.

### **Outcome**

The receiver appointed an experienced team of planning consultants and architects who rapidly negotiated the settlement of planning pre-conditions with the local authority. Contractors were then engaged to go on site and dig a trench, thus legally implementing the existing planning permission before it expired.

The value of the site was therefore retained and a sale to a developer was negotiated.

## 3. fixed charge receivership

### Legal background

A receiver's basic powers are set out in Section 109 of the Law of Property Act 1925 in England and Wales (hence the frequently used term 'LPA receiver') and in the very similar Section 24 of the Conveyancing and Law of Property Act 1881 which applies in both Northern Ireland and the Republic of Ireland. The mortgage deed which the lender and borrower will have signed at the time of the grant of the loan will usually make provision for events of default and the deed frequently extends the receiver's powers considerably beyond those set out in the Law of Property or the Conveyancing Acts.

Strictly speaking, a receiver appointed under the terms of a mortgage deed is known as a fixed charge receiver, while if the appointment is solely under the terms of the LPA 1925, the term 'LPA receiver' will be applied. In practice the terms LPA and fixed charge receiver are often used interchangeably to cover any receiver appointed over a fixed asset.

That said, an LPA receiver relying solely on the terms the LPA 1925 in England and Wales or the 1881 Conveyancing Act in Ireland will have extremely limited powers, as follows:

- 1) The power to demand and recover all the income (which will include rent) from the property to which the receivership appointment refers, by action, distress or otherwise
- 2) The receiver will be able, if so directed in writing by the mortgagee, to insure the property against loss or damage by fire using money received from the property.

These powers are of limited value particularly as there is no power of sale and of course the lender will often wish to recoup its capital by selling the secured property. It is therefore more common for a receiver to be appointed under the terms of a mortgage deed, whose terms should mirror those in the loan agreement summarised in Section 2. As a result, the receiver will generally have additional powers including an ability to:

- Sell
- Collect rent
- Grant leases
- Borrow funds
- Enter into contracts, including building contracts

In practice appointments are often a hybrid since they will refer both to the terms of the mortgage deed and the LPA 1925 or the 1881 Conveyancing Act.

A receivership appointment made pursuant to a mortgage deed arises when there is a breach of certain specified terms of the agreement. As already identified, these can include non-payment of interest or repayment installments, a fall in the value of the property in relation to the amount of the loan, failure to undertake agreed development works and a series of other terms relating to the circumstances of the particular loan and property. In the event of a breach the lender may demand the appointment of a receiver, or occasionally the borrower may invite the lender to appoint a receiver.

## **Responsibilities and liabilities of the fixed charge receiver**

The fixed charge receiver occupies an unusual legal position.

He or she will be appointed by the lender, but will legally be in the position of agent for the borrower. This means the receiver will 'step into the shoes' of the borrower and be responsible for managing and running the property, and possibly for developing it or completing a development, with the primary aim of meeting the borrower's obligations under the terms of the loan agreement. This will usually mean maximising the income generated via rent and/or selling the property at the best reasonable price.

Following a sale, the receiver will pay to the borrower any sale proceeds that remain after redemption of the mortgage and after payment of all costs resulting from the receivership.

The receiver therefore has a duty of care to the lender and also a residual duty of care to the borrower. In particular, as agent for the borrower, the receiver must manage the property with due diligence and sell it at the 'best reasonable price', taking into account all of the circumstances.

Case law has established that the receiver's duty to sell the property at the 'best reasonable price' does not extend so far as to require a sale to be delayed, or to take steps or incur costs (for example by applying for planning permission) with a view to enhancing the prospects for the sale.

The receiver must simply take all reasonable steps to achieve a successful sale (*Silven Properties Limited & Anor v Ors* [2003]).

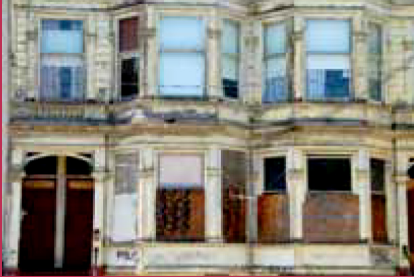
In terms of liability, as agent of the borrower the receiver should enjoy the protection afforded to an agent.

If the security and/or appointment are invalid then the receiver will have no authority to deal with the property and will be personally liable for his or her actions. For this reason the receiver should aim to secure an indemnity from the appointing lender. If there is no specific indemnity one might be available as a result of section 34 of the Insolvency Act 1986.

Two other circumstances may expose the receiver to be personally liable for his or her actions; firstly if the receiver's agency comes to an end due to the insolvency of the borrower and secondly if the receiver acts in a negligent manner. Sufficient professional indemnity insurance should be maintained to cover such eventualities.

**CASE STUDY (3)**

## Handling unrealistic expectations

**The Property**

A development site in south-east England comprising a number of Victorian residential buildings. The borrower occupied one of the properties on the site; another had suffered fire damage and was in a dangerous state.

**Appointment of the receiver**

Falling values and the fire damage had meant the loan to value covenant had been breached and interest was not being paid. The borrower could make no progress with the insurance claim and negotiations had stalled. The lender therefore appointed a receiver.

**Outcome**

The receiver's assessment revealed the borrower had an over-optimistic view of the development potential of the site.

The receiver appointed contractors who made the damaged building safe, to the satisfaction of the local building control department.

Following this the receiver was able to agree a sale at a price which enabled a major part of the debt to be recovered for the bank. Following the sale the receiver in the role of surveyor was able to advise the bank in connection with the insurance claim.

## The relationship between the fixed charge receiver and the borrower

The fixed charge receiver as agent for the borrower can enter into contracts in the name of the borrower. Consequently the borrower's contractual rights in respect of the property are suspended for the duration of the appointment. This is a common cause of contention as borrowers are frequently confused about this area of law and wrongly assume that, since the receiver is their agent, he or she should be taking instructions from them.

The receiver is only appointed over the property asset which forms security for the loan. There is no power to deal with the borrower's *fixtures*, *fittings* and *chattels* that do not form part of the mortgaged property.

If the borrower is an individual and has been declared bankrupt, or is a company which has gone into liquidation, the receiver's position as agent of the borrower ceases. On termination of the agency, the receiver will usually become a principal (i.e. not an agent at all), and does not automatically become agent of the lender (*American Express International Banking Corp v Hurley* [1985]).

## The relationship between the fixed charge receiver and the lender

Once the lender has exercised its power and appointed the receiver, it will, in theory, have no control over the subsequent actions of the receiver. It will therefore be in a similar position to the borrower. In particular the lender cannot instruct the receiver and, vice versa, the receiver must take care not to seek instructions from the lender.

To maintain this relationship between lender and receiver, the receiver must not be a position where he or she appears to be under the control of the lender. If this should happen, the protections conferred on the lender by the receiver acting as agent of the borrower would be lost.

However, in practice the receiver will require at least the support of the lender since the lender will be funding the receivership. Furthermore, when the property is sold by the receiver, the lender will need to cooperate by formally releasing the charge.



**CASE STUDY (4)**

# Completing a development



## **The Property**

A partially completed residential development in SW London.

The buildings (listed Grade II) were formerly used as a hostel and Phase 1 was 75% complete. Planning consent had yet to be granted for Phases 2 and 3.

## **Appointment of receivers**

Development costs had overrun and the developer was in breach of the planning consent for Phase 1. As a result the lender appointed receivers.

## **Outcome**

The receivers' assessment indicated that if the property was sold immediately in its existing uncompleted state there would be a very limited recovery of outstanding loans. It was therefore decided to complete the development in the light of the favourable residential market in the area.

Over a two year period the receivers coordinated development of a multi-phased scheme, undertaking negotiations with the local planning authority and listed building officer, dealing with residual issues concerning the original construction team, securing appropriate insurance and disposing of all completed residential units in line with strategy projections. In addition the receivers arranged the sale of the freehold interest to the residents and secured a new planning consent for Phases 2 and 3 which were sold in the open market to a local developer.

As a result, net receipts for the lender were some 20%, or about £1.5 million, higher than they would have been if the property had been sold in its existing state immediately following the appointment of receivers.

## 4. the process of receivership

### Who can be appointed?

There are no special requirements for the potential receiver but the prospective appointee will need to have appropriate skills in the management, development and sale of the type of the receivership property. In practice, such a person is likely to be either an insolvency practitioner or a chartered surveyor with receivership experience. Although a receiver is not required to have any formal qualifications, lenders now usually expect their appointees to be Registered Property Receivers and Fellows of **nara**.

### Facilitating refinancing



CASE STUDY (5)

#### The Property

A mixed use residential and office building on the fringe of the City of London. Change of use of the offices to residential could increase the value but planning permission had not been obtained.

#### Appointment of the receiver

The loan agreement had expired and, as the borrower had not put new funding in place it was not able to pay off the outstanding loan balance. As a result, a receiver was appointed.

#### Outcome

It was decided not to attempt to change the use of the offices as this would have resulted in at least two years' delay. The receiver was not obliged to follow this route in the light of the Silvan case. The receiver's valuation of the property indicated that the amount owed to the lender was less than the property's value. The receiver therefore worked with the lender and another investor and succeeded in introducing new funds secured on the property. By facilitating the refinancing of the property a sale was avoided and it was returned to the borrower.

## Before the appointment

### The pre-appointment report

Where adequate time is available the lender may require the receiver to provide advice and reports prior to being appointed.

Normally the lender will have briefed the potential receiver some time ahead of the likely appointment and will have instructed him or her to prepare a report on the possible courses of action. This should highlight all the relevant facts concerning the charged property and will usually include the potential receiver's opinion of value. The report is likely to be much more than a simple valuation and it should be noted that any opinions of value expressed are unlikely to be formal valuations in accordance with the terms of the *RICS Red Book*.

A pre-appointment report should be a plan of action, setting out a recommended strategy. It is likely to include a menu of possible options and a range of consequent values.

Above all it will contain recommendations as to how to achieve the optimum efficient realisation in the light of prevailing market conditions.

### Other pre-appointment actions

The preview of the asset and its key features should also be an opportunity for the prospective receiver to review the property in detail and to assess whether he or she is qualified and prepared to take up an appointment. In view of the personal nature of the obligations, the receiver needs to take care, since at this stage a full risk assessment will not have been put in place and other problems might exist. Risks can be very considerable: for example if the building is destroyed by fire causing injury to occupants or others after the receiver has accepted the appointment, and it subsequently becomes apparent that an enforcement notice had been served by the Fire Service, the receiver could be liable for criminal negligence.

The prospective receiver should also ask to see copies of any earlier valuation reports which may give useful information and which may need to be considered in relation to whether the lender had been properly advised by the original valuer when the loan was first agreed.

At the same time, the solicitors will be carrying out a security review. They will be checking that, in the case of corporate borrowers, the charge has been registered at Companies House, that the mortgage deed is appropriately worded and is enforceable, and that it gives the receiver all the necessary powers.

The solicitors will also report on other charges and comment on any priority arrangements in place between two or more lenders. Whilst in most cases the receiver is appointed pursuant to the first charge, appointments can be made under subsequent charges.

The lawyer will also ascertain whether the borrower, if an individual, has been declared bankrupt or, if a company, it has gone into liquidation or administration. If the borrower does go into bankruptcy or liquidation then (as discussed above) the receiver will not act as agent of the borrower. In addition, the moratorium conferred by an administration will require either the consent of the administrators or the permission of the court to an appointment of a receiver.

## Receiver's Fees

The Law of Property Act 1925 and the Conveyancing Act 1881 both provide that the receiver's commission (which includes remuneration and all costs, charges and expenses incurred) should amount to no more than 5% of the gross sum realised. In practice, however, since most appointments are made under the terms of the mortgage deed, other fee bases are agreed with the lender. Usually there will be an initial set-up fee with the principal fees being on a time basis, but alternative bases are monthly retainers and, sometimes, a fee that is related to the ultimate sale price.

## Appointment of a fixed charge receiver

The appointment document itself is usually relatively straightforward. In most cases a deed is not essential, although it may often be in the form of a deed. The document will state the date and the names of the (usually) two individuals appointed to each case. It will refer to the address of the property, the registered title number, the legal charge and the terms of that charge.

The receiver's acceptance can be even simpler. It will recite all of the basic information in the appointment but in addition will state the date and time of receipt of the appointment and also the date and time of the acceptance. The timing is relevant since appointments over property owned by a company must be accepted by the end of the business day following the day of receipt (section 33 Insolvency Act 1986). A corporate appointment should also be registered at Companies House within seven days of acceptance.

No appointments should be accepted until the receiver has put full insurance cover in place. Most will already have a block receivership insurance policy that will provide appropriate cover.

In view of the significant personal obligations that a receiver incurs in taking up an appointment it is important that he or she should feel entirely comfortable that the appointment is indeed valid. The solicitors should be able to provide that written comfort in the form of a validity report and the receiver should, if possible, avoid undertaking any activity before receiving it.

## **First acts of the fixed charge receiver**

The majority of borrowers will have had no previous experience of fixed charge receivership and their lack of knowledge is likely to exacerbate their dismay at being removed from the control of their property. This can be to some extent mitigated by providing a brief note explaining in non-technical language the role of the receiver. To facilitate this **nara** produces a brief note which **nara** members are encouraged to issue to the borrower when they are appointed as Fixed Charge Receiver.

The following should be amongst the standard first actions on the part of the receiver. If the appointee is an insolvency practitioner (IP), the actions will be divided between the IP and the surveyor who will be instructed by the IP to deal with the property-specific issues.

- Notify the borrower of the appointment in writing
- Notify any occupants of the appointment in writing and inform them of the property management arrangements that are now being put in place
- If the property is occupied, investigate whether there are leases and check whether the lender's consent has been obtained for these
- Initiate a property management system
- If the property is vacant, change the locks and ensure that the property and the site are secure. Arrange for the plumbing to be drained down
- Contact HMRC to enquire about the VAT status of the property
- Open a dedicated receivership bank account and agree an overdraft facility with the lender
- Make contact with other charge holders
- In the event that specialised professional advice is needed, assemble a team of advisors

## Adding value

A key aspect of receivership is to explore the possibility of adding value. This may take the form of building out a semi-completed development, resolving outstanding planning or building control problems, renegotiating leases or simply obtaining vacant possession. In a high proportion of receivership cases the present value of the property will be significantly less than the outstanding debt so maximising value is essential in order to mitigate the lender's loss. Indeed very often the reason for making the appointment is the fact of the borrower's inability to deal with the property in a way that optimises its value.

In these situations it is essential that a receiver is appointed who has experience in the type of work that is required, and that there is a proven team of experts working under the receiver's guidance. Frequently, speed is of the essence; for example, it is common for an appointment to be made just weeks before a planning permission or a lease is due to expire.

The borrower may also have an interest in added value either because this could mean that, after the outstanding loan and all fees etc. have been repaid, there is an amount outstanding which would be payable to the borrower, or because it would reduce the lender's claim on any personal guarantees made by the borrower. As already explained, though, the receiver does not have an obligation to pursue action which may ultimately result in an increase in a property's value. His or her responsibility is to deal with the property as it is and, in the event of a sale, to achieve the best price reasonably obtainable for the property in its existing circumstances.

## **Achieving recovery (realisation) for the borrower**

The receiver will usually recover monies owed by the borrower to the lender in one of three ways:

- By selling the property
- By using money received from letting the property to pay interest and repayment sums due, plus any outstanding sums owed
- By refinancing the property

### **Sale**

A sale is the most frequently used method for recovery of outstanding mortgage sums in the event of default.

Assuming the receiver has the power of sale, he or she is required to achieve the best price reasonably obtainable for the property in its existing circumstances. Once all outstanding mortgage arrears have been settled, together with the receiver's fees and other sums due, any money remaining from the proceeds of sale is repaid to the borrower or, in the case of an insolvent mortgagor, to the appointed liquidator or trustee in bankruptcy.

### **Letting**

The receiver will be responsible for collecting all rents due from the property and may also arrange new lettings, assuming there is provision for this in the mortgage deed. If the rental income achieved is sufficient to meet the borrower's obligations under the terms of the mortgage deed, a sale of the property may not be required. Even if it is not sufficient, the receiver may let the property in order to maximize its sale value.

### **Refinancing**

A receiver can sometimes facilitate a refinancing of the property. In this situation the loan is redeemed and the original lender steps out of the picture.

## **Termination of the appointment**

A receiver may resign with the consent of the lender without any particular formality. A simple letter to the lender will suffice but more commonly the appointment will come to an end if the loan is redeemed by way of a refinancing, or the if asset is sold.

Following a sale and before terminating the appointment the receiver must, among other matters, settle outstanding invoices, cancel insurance and finally, if the borrower is a company, submit returns to Companies House together with a resignation form.

Many borrowers believe, mistakenly, that a receiver should resign if the borrower has been successful in settling the arrears. In order to avoid such a misunderstanding arising, the responsibilities and position of the receiver should be explained to the borrower at the time of the appointment.



## 5. conclusion

The receivership process is an efficient and cost effective way for a lender to achieve recovery of an outstanding loan which is not performing and where the borrower is in breach of the terms of the loan agreement. Statute and case law are very clear as to the personal liability and responsibility of the Fixed Charge Receiver. The process – whilst any receivership is unpalatable to a borrower – is usually the most cost effective and most economic from the perspective of the borrower. It can avoid multiple fees which may otherwise be incurred.

For many properties it can be a complex process and the receiver will have to deal with the often conflicting requirements of the borrower and the lender. While the law permits anyone to act as a receiver, the appointment of a qualified Registered Property Receiver and **nara** member will ensure that the matter is in the hands of a trained and experienced professional who will be dedicated to maximising recovery while managing what can be a delicate and complicated situation.

The importance of seeking advice at an early stage cannot be over emphasised. With property, time can so often be the enemy of value, as lease terms shorten, tenants disappear and buildings deteriorate. Swift action, taken well before a formal receivership appointment is made, can preserve and enhance value for the benefit of both the lender and the borrower. A qualified, professional receiver can minimise losses and time-consuming disputes on the way to achieving the best solution to what may initially appear to be an intractable problem.

## 6. sources of further information

Law of Property Act Receiverships

Author: John Hughes

Publisher: Lime Legal (2013)

ISBN 0955283426

Mortgage Receivership Law & Practice

Author: Stephanie Tozer / Cecily Crampin

Publishers: Wildy, Simmonds & Hill

ISBN 9780854902521

Property Insolvency

Authors: Peter Levaggi/Roger Elford

Publisher: Jordans (2009)

ISBN 9781846611513

Commercial Leases and Insolvency

Author: Patrick McLoughlin

Publisher: Bloomsbury Professional (2008)

ISBN 9781847661470

**nara** web site – [www.nara.org.uk](http://www.nara.org.uk)

**nara** Fundamentals of Property Receivership course

– A half-day course run annually in the autumn.

Details of the next course are published on the **nara** website

### Acknowledgements

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## 7. glossary

**Administration/administrator** – an administrator is appointed under the terms of the Insolvency Act 1986 (as amended by the Enterprise Act 2002) by a company, its directors or by a creditor. The administrator acts in the interest of the creditors to attempt to rescue the company as a going concern

**Chartered Surveyor** – designation of professional members and fellows of the Royal Institution of Chartered Surveyors [www.rics.org](http://www.rics.org)

**Chattels** – personal, moveable property

**Default** – failure to comply with the terms of a loan, usually through non-payment of interest or repayments due

**Development loan** – a loan to provide finance for the development of a property. It will usually be secured on the value of the undeveloped site initially, with further monies being advanced to the developer as construction proceeds

**Fixed asset** – usually property, plant and equipment owned by a company and used in the production of its income. Fixed assets are not usually saleable to the company's customers and cannot readily be converted into cash

**Fixed charge** – a charge or mortgage secured on a particular property

**Fixtures and fittings** – non-structural items in a property that are usually moveable and which would not normally be included in a sale

**Floating charge** – a charge which is secured over a group of assets owned by a company

**Going concern** – a company with sufficient resources to continue to operate indefinitely

**Insolvency Practitioner (IP)** – a person licensed to be appointed in relation to formal insolvency procedures for businesses and individuals

**IPA** – the Insolvency Practitioners Association [www.insolvency-practitioners.org.uk](http://www.insolvency-practitioners.org.uk)

**LIBOR** – London Inter-bank Offered Rate.

The average interbank interest rate at which a selection of banks on the London money market are prepared to lend to one another

**Liquidation** – the process through which a company is brought to an end and its assets redistributed

**Loan agreement** – the contract between the lender and borrower which regulates the terms of the loan (amount, duration, repayment terms, procedure in the event of default etc)

**Loan to Value (LTV)** – The amount of the loan divided by the value of the secured property, usually expressed as a percentage

**LPA receiver** – a receiver appointed under the terms of Section 109 of the Law of Property Act 1925

**Mezzanine loan** – a loan used by a property investor or developer to obtain finance over the limit set (usually through a loan to value measure) in a senior loan

**Moratorium** – a delay or suspension of activities. In an administration, a moratorium prevents creditors from taking certain actions for the duration of the administration

**Mortgage deed** – the formal legal document which gives the lender a legal interest in a mortgaged property

**Realisation** – the sale of a mortgaged property

**Registered Property Receiver** – an individual who has completed the training and examination process organised by the RICS, IPA and nara and is therefore a member of, and regulated by, the RPR scheme.

**Registered Property Receivers Scheme** – (RPR Scheme)

**Regulation** – the regulatory control imposed by a professional body. acting in the public interest, on its members e.g. IPA / RICS

**RICS** – the Royal Institution of Chartered Surveyors

**RICS Red Book** – the informal name for the publication 'RICS Valuation – Global Standards' published by the Royal Institution of Chartered Surveyors

**Senior loan** – A loan which, in the event of the insolvency of the borrower, is the first to be repaid, before all other interested parties receive repayment

## Benefits of becoming a member of **nara**

- **Listings in the **nara** directory** - the only definitive directory of fixed charge receivers- mailed regularly to appointors, media, linked organisations and Government agencies (Fellows and Associates)
- **Details entered onto ‘Find a Practitioner’** search facility on **nara**'s website for Appointors looking for a local LPA Receiver (Fellows)
- **Access to exclusive **nara** Guidance Notes Library** and **Practice Statements** published on the **nara** website covering all aspects of LPA Receivership.
- **Access to helpline** for professional support and guidance
- **Entitlement to attend **nara** training days** and the **Annual Spring Conference** at Membership rates
- **E-Mail notification** of relevant changes in legislation and other items of interest to members
- **Access to exclusive Breaking News** articles when published on the website
- **Appropriate use of the **nara** ® logo** and designatory letters (FNARA)
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- **Twice yearly publication of mailings of **narator**** – the **nara** newsletter aimed at providing a balance of news about **nara**, practical comment and professional advice
- **Entitlement to attend functions arranged by **nara**** such as networking opportunities for members
- **Entitlement to attend and speak at **nara** General Meetings** (Fellows and Associates)
- **Eligibility to become a member of the **nara** Council**
- **Representation** to, and lobbying of government, MP's, HMRC, lenders, and statutory authorities
- **Public recognition of competency and regulatory compliance**

# nara

The Association of Property  
and Fixed Charge Receivers

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**Find us on LinkedIn:**

[linkedin.com/company/nara-the-association-of-property-and-fixed-charge-receivers/](https://linkedin.com/company/nara-the-association-of-property-and-fixed-charge-receivers/)



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