

LPA Receivership

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What is LPA Receivership?

Law of Property Act Receivership is the process used where a lender appoints a Law of Property Act Receiver ('LPA Receiver'), an individual (or those acting jointly), under the provisions of a charge, to recover loans secured against a property in England and Wales where the primary security is land or buildings.

As the lender's right to enforce its security is made under the provisions of the Law of Property Act 1925 and not the Insolvency Act 1986 (as amended), the lender does not have to determine a debtor's insolvency. The LPA Receiver's appointment is made over the charged asset(s) following the debtor's default on a mortgage and after the expiry of a final demand, i.e. this is the 'last resort' for secured debt recovery.

The appointment of an LPA Receiver means that a lender assumes the ownership of a debtor's property. This applies to both company assets and individual domestic dwellings, where the lender is mortgagee.

The LPA Receiver will usually be an insolvency practitioner or chartered surveyor and his/her general powers are set out in the Law of Property Act 1925. However, additional specific powers may be granted in the lender's charge documentation.

Options and Rights of the LPA Receiver

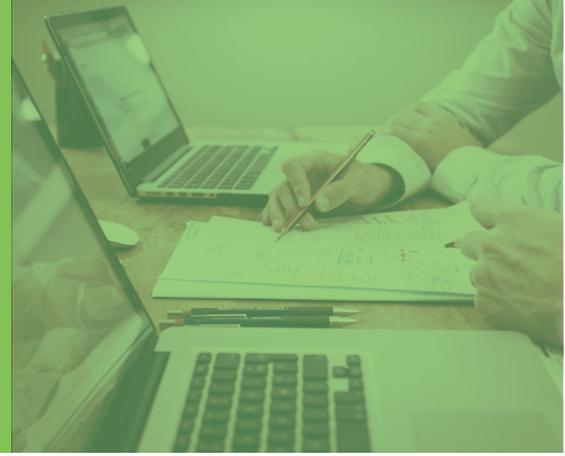
The primary objective of the receiver is to act in the interests of the secured lender and recover all owed monies as quickly and efficiently as possible.

The LPA Receiver's statutory powers are set out in section 109 of the Law of Property Act 1925 which are:

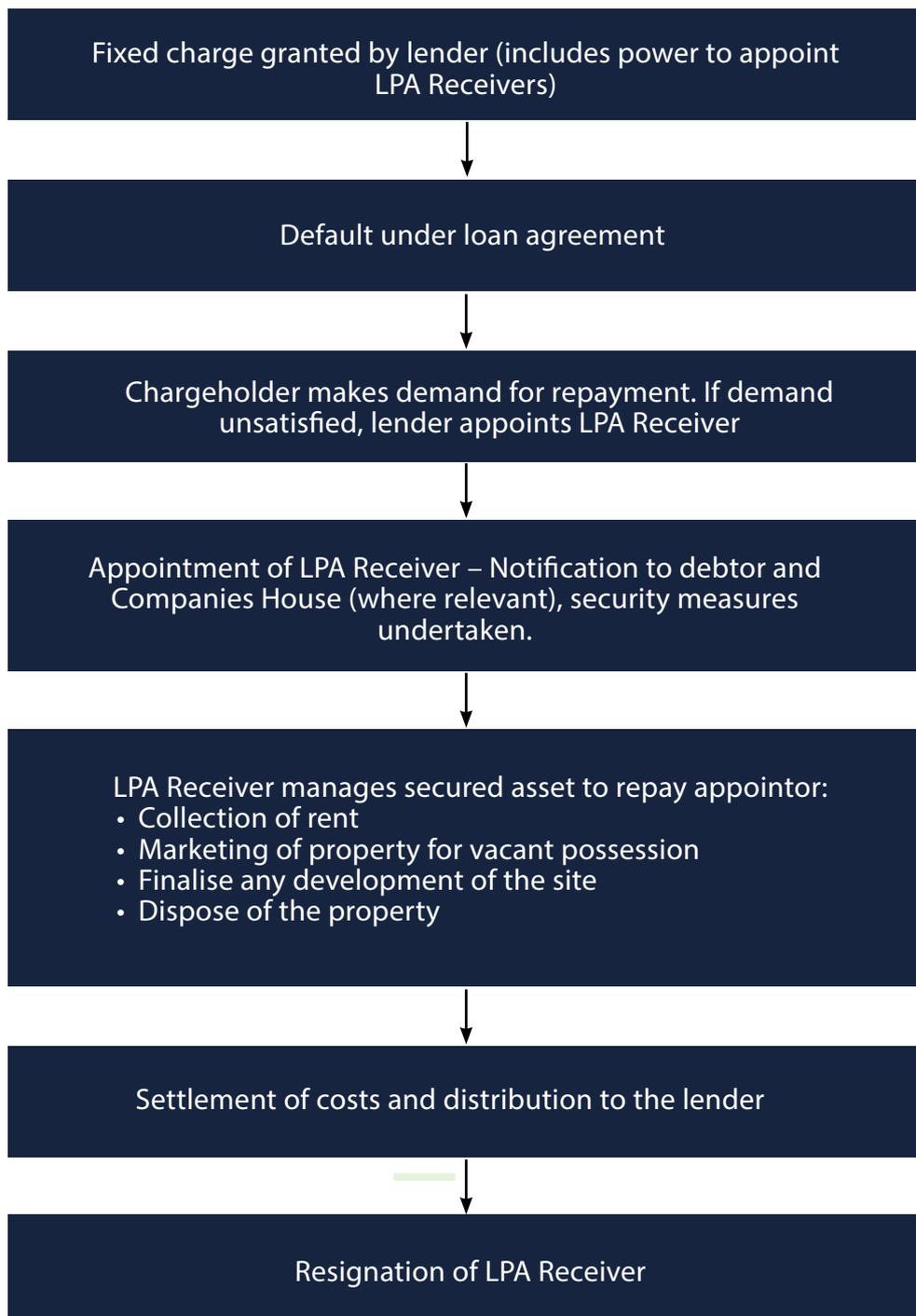
- "demand and recover all income from the property"; and
- "insure and keep insured...out of the money received by them"

However, additional specific powers are usually granted by the lender under the terms of the security. These extended powers usually include:

- Power of sale
- Power to take possession of security and/or proceedings to obtain possession
- Power to grant, vary or surrender leases or tenancy agreements; and
- Power to commence or complete repairs or building works.



The LPA Receivership Process





Advantages of LPA Receivership for Secured Lenders

There are several key advantages for secured lenders in appointing an LPA Receiver where some other insolvency processes, such as administration or Company Voluntary Arrangement, may not be relevant or possible:

Agency

An LPA Receiver is deemed to be the agent of the mortgagor. Therefore, the law prevents the lender being liable for acts or omissions of the LPA Receiver.

Control

The appointment enables the lender to have control over the charged assets whilst maintaining a degree of separation from the responsibilities associated with the secured asset. The LPA Receiver will collect rents, takes over the management of the property and ensures compliance with appropriate legislation, particularly for tenanted properties.

Value

An LPA Receivership, as opposed to some insolvency processes, can be a cost-effective way in swiftly realising the lender's secured property. The costs of the LPA Receivership (LPA Receiver's fees, solicitors, agents etc), as stipulated in section 109(6) of the Law of Property Act 1925, are not to exceed 5% of asset realisations, unless a court states otherwise. Further, the costs are added to the debtor's indebtedness due to the lender.

Flexibility

Where the property is tenanted, an appointment of LPA Receivers can encourage the borrower to engage and make sufficient payment to the lender to reduce arrears. The LPA Receiver's appointment can be terminated in short order if the lender's position is suitably resolved.

Development of property

Where the secured asset is a part completed development and where the borrower is cooperative but has severe cash flow problems, the LPA Receiver can assist lenders by overseeing the building completion.

Publicity

If the borrower has a grievance, this would be administered by the LPA Receivers rather than the lender. Any adverse publicity would also be directed to the LPA Receivers.

Reporting

The LPA Receivers can provide the lender with frequent updates and progress reports on the properties.

Why CBW?

Our breadth of experience, expertise, technical excellence and people means that we are ideally positioned to deal with a range of LPA Receivership or debt recovery engagements.



Experience

We have significant knowledge and experience in dealing with LPA Receiverships and debt recovery generally. Some case studies are provided below.



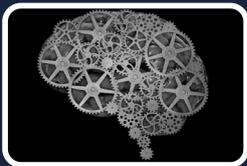
Capacity

We have a team with the scale, resource and qualifications to deliver on all lenders' requirements in any agreed timeframe.



Value

Value for money comes first by ensuring that the precise requirements of the lender is understood and by providing a bespoke service offering.



Expertise

As a team of accountants and insolvency professionals we pride ourselves on technical excellence.



Service

We take pride in providing clear and precise communications to deal with the key issues in an expedient manner. Lenders would have a dedicated CBW director/senior manager as a point of contact to ensure that we deliver on their objectives.



Culture

The CBW culture is based on five core values: care, pride, loyalty, innovative and quality service and integrity. We aim to embody these values in everything we do as a firm.



Case Studies

Residential Property of High Net Worth Individual Located in South West London (Live Case)

Background

The lender, Nucleus, provided a cash advance facility to two bar/restaurant businesses, which defaulted and entered into Administration in September 2019. The director personally guaranteed the debt supported by a charge over the above residential property, which has an estimated value of £6m-£7m. The director failed to obtain a refinance or provide an alternative proposal to Nucleus who relied on their charge to appoint CBW as LPA Receivers to recover their debt.

Scope

Failing any refinance or settlement offer, we are seeking possession and sale of the Property.

What We Are Doing

We are liaising with solicitors and are about to issue a Pre-action protocol letter with a view to seeking a Court Order for possession and sale.

Value Delivered

It is expected that the charge holder will be repaid in full.

A Well-known Welsh Marina (and Other Connected Commercial Properties)

Background

Barclays Bank plc appointed LPA Receivers over a portfolio of property including the marina. The case had its challenges due to the uncooperative nature of the debtor, who opposed the appointment and (unsuccessfully) attempted to refinance with an alternative lender. The total bank debt was circa £7 million.

What We Did

The nature of the Marina, which was 'tenanted' by circa 50 yachts at the time was by no means straightforward. We attended site and spoke to all berth holders who had their boats moored there and arranged for the rent to be redirected to the Receivers. After a period of marketing, we achieved a sale of the marina and other properties approximately 6-9 months after the appointment.

Scope

Seek possession and sale of property in order to repay the bank debt.

Value Delivered

Although there was a small shortfall against the debt, the Bank had heavily impaired for this case and the return from the LPA Receivership resulted in a significant write back. We added additional value by pursuing debtors of the Marina who had failed to pay mooring fees for a number of months prior to appointment, which resulted in additional realisations of c.£100k.



A Care Home Based in Tadworth, Surrey

Background

The care home was operated in an op-co/prop-co model and had capacity for 46 residents. Other group properties consisting of buy-to-let dwellings were used by the property company to cross-guarantee the Bank's debt of circa £4.3million. Barclays Bank appointed administrators of the operating company and LPA Receivers over the care home and other group properties.

Scope

Due to various legal issues with the Bank, our team were required to trade the care home for over three years, paying rents to the property company for transmission to the Bank. Once the legal issues were resolved, we marketed the home for sale in conjunction with the administrators to repay the Bank.

What We Did

In collaboration with specialist care agents, we traded the home in an efficient and commercial manner whilst adhering to the many regulations associated with care homes. Under our team's management, the care home's Care Quality Commission grading improved, resident numbers increased and it became profitable which enhanced the care home's market value that ultimately led to a higher return for the Bank. We also had to actively engage with the staff, residents, families of the residents, local authorities, regulators and other stakeholders in a professional and sensitive manner.

Value Delivered

A sale of the care home property for £2million and the operating company's business and assets of £1.25million resulted in a significant return to the Bank. Following the disposal of the other group properties, Barclays suffered a small shortfall against their debt.

A Large Residential Country House in Berkshire

Background

Credit Suisse appointed LPA Receivers over the borrower's residential property following years of legal disputes and significant mortgage arrears. Credit Suisse's debt totalled £955k.

Scope

Failing any refinance or settlement offer, we are seeking possession and sale of the Property.

What we did

After months of ongoing disputes, an order for Possession and Sale was obtained and the Borrowers were evicted.

Once in control of the property, we proceeded with marketing the property for sale at £1.8m. However, due to a lack of interest further reductions in asking price were made and a sale was eventually agreed at £1.44million.

Value delivered

We became the point of contact for what was a difficult borrower for Credit Suisse. As a result of the successful sale of the property, the Bank were repaid in full.



A Leasehold Flat in Holland Park, London

Background

Credit Suisse appointed LPA Receivers over the borrower's residential leasehold property due to significant mortgage arrears. Credit Suisse's debt totalled £750k and the property was valued at £2.3million.

Scope

Failing any refinance or settlement offer, we were to seek possession and sale of the Property.

What we did

The intention following our appointment was to allow the Borrower a short period to seek refinance options, failing which they would voluntarily agree to market and sell the property. The Borrower successfully refinanced and settled the Bank's debt in full.

Value delivered

We effectively managed the debtor's situation and worked with the Bank to ensure that a refinance was achieved and the Bank's debt repaid.

A Property Portfolio of a High Net Worth Individual

Background

Allied Irish Bank appointed LPA Receivers over the borrower's property portfolio due to significant mortgage arrears. The portfolio was complex and included retail sites, small commercial units, residential property and two preschools. The Bank's debt totalled £5.4million and the portfolio was valued at £11.5million.

Scope

Failing any refinance or settlement offer, we were to seek possession and sale of the properties.

What we did

We actively engaged with the borrower to source a refinance and to sell off some of the portfolio. Through working with our network of agents, we realised some property at higher amounts than the borrower's estimated values.

Value delivered

We effectively managed the situation and worked with the debtor to ensure that the Bank's debt repaid. Due to the portfolio's value being materially higher than the indebtedness, we devised a strategy which also assisted the Borrower in keeping certain key property. Ultimately, all parties walked away content with the outcome.

High Street Bank

Scope

A debt collection project for a large portfolio of cases that had defaulted on their repayment terms. The large majority of these loans had been written off by the Bank.

What we did

Members of our team (at their previous employer) jointly managed this significant debt recovery project which the High Street Bank had outsourced.

This involved utilising the LPA Receivership option on cases where a settlement was not possible with a borrower or they were simply not engaging.

Value delivered

Although our team did not take the LPA Receivership appointments, we carried out a monitoring role to recover a significant percentage of the High Street Bank loan book over a period of 4 years+, most of which led to significant write backs for the Bank.

Key Contacts

John Dickinson



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John is a Licensed Insolvency Practitioner.

Prior to joining CBW in 2011, John previously held positions at Bridge and Mercer & Hole, where he led the development of their rescue, recovery and insolvency departments in London.

John has worked full time in Corporate Recovery and Insolvency for over 30 years and has experience in all aspects of insolvency, both corporate and personal.

He brings an objective and sympathetic approach and works to find a pragmatic solution to complex and often apparently insoluble problems.

He has worked with companies and individuals across all business sectors, as well as advising board members he frequently advises investors in distressed businesses.

John also acts for creditors wishing to recover assets and has been active in court appointed receiverships in high profile fraud cases. He has given expert witness testimony on reported cases.

Joseph Colley



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Joe, a licensed insolvency practitioner, has considerable experience advising clients in financial distress, having guided stakeholders through successful restructuring assignments on both a solvent and insolvent basis.

He has worked with both corporate and not-for-profit organisations across a broad spectrum of sectors and has acted as an advisor for a number of secured lenders, undertaking cash flow monitoring, due diligence and business review assignments. Joe has led many complex administration assignments including appointments over a recruitment group, a property developer and several care home groups.

He advises stakeholders in relation to winding down operations and placing corporate vehicles into voluntary liquidation (either solvent or insolvent). He is a Certified Chartered Accountant and an Insolvency Practitioner. Joe is Chairman of the Member Services Committee for the Insolvency Practitioners Association (IPA).

Jonathan Reason



Senior Insolvency Manager
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Jonathan is a Fellow of the Association of Certified Chartered Accountants and joined CBW in June 2020.

He has worked in restructuring and insolvency since 2004 and has considerable experience advising stakeholders including lenders (both secured and unsecured), directors and shareholders, on a wide variety of assignments. He also advises charities and has particular experience in care homes, day nurseries and education.

Jonathan also undertakes financial and business reviews on behalf of funders and provides pre-insolvency advice to directors, often helping to avoid the need for a formal insolvency procedure.

In recent years, Jonathan has specialised in undertaking pension employer covenant reviews either for trustees, as part of the triennial valuation process or as part of a restructuring.

Jonathan also represents creditors at physical meetings ensuring that the creditors' interests are voiced and, where relevant, proposals or modifications are presented and implemented.



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