



Law of Property Act Receivers

Recoveries - March 2010

Law of Property Act Receivers: unpaid non-domestic rates and council tax

Also sometimes referred to as a **Fixed Charge Receiver**, confusion can sometimes arise about their status and liability for the payment of non-domestic rates and council tax. Below, in short-form is a brief explanatory summary.

Appointment of a Law of Property Act Receiver (an "LPA Receiver")

An LPA Receiver can be appointed by a lender (usually a bank) when a borrower has breached its loan facility. The most common reason for this is the borrower defaulting on mortgage payments, which could be due to the insolvency of the borrower, owner of a property or a tenant.

The purpose of appointing an LPA Receiver is to maximise income from the property so that the outstanding debt can be repaid. LPA Receivers usually have extensive powers to do this, which typically involve taking physical control of a property and then collecting rent or selling the property to redeem as much of the mortgage as possible.

Once an LPA Receiver has been appointed, the borrower, owner or tenant will no longer be enjoying any income from the property, so may not have the money to pay National Non-Domestic Rates and council tax. Local authorities are sometime unclear in this situation who to pursue for payment of these charges.

National Non-Domestic Rates ("NNDR")

In normal circumstances, the occupier of a non-domestic property, which will be either the owner or

tenant of the property, is liable for NNDR under section 43 of the [Local Government Finance Act 1988](#).

When an LPA Receiver is appointed, the owner or tenant will continue to be liable for NNDR, even when an LPA Receiver is in possession of the property. This is because an LPA Receiver is actually appointed as the borrower's agent and so acts on behalf of the borrower rather than the appointer, the lender. Situations where the LPA Receiver becomes personally liable for NNDR are extremely rare.

If the borrower later goes into administration or liquidation, the agency relationship will terminate and liability for NNDR will be assumed by the administrator or liquidator as an expense of the administration or liquidation. This will not be a personal liability, as an administrator or liquidator is appointed as an agent of the company.

Accordingly, in the first instance, Local Authorities should continue to pursue the owner or tenant of the property for unpaid NNDR when an LPA Receiver is appointed. That said, it may be useful to also be in contact with the LPA Receiver, especially if the property is being sold or the borrower has moved on without providing a forwarding address.

Council tax

As with NNDR, council tax is normally paid by the owner or tenant of a property under section 6 of the [Local Government and Finance Act 1992](#).

After the appointment of an LPA Receiver, the owner or occupier will continue to be liable for council tax, even when the LPA Receiver is in possession of the property.

Where the owner is also the occupier, the local authority may be asked by the owner to transfer liability for council tax to the LPA Receiver. This request should be resisted on the basis that the LPA Receiver is appointed by the lender, so the lender is effectively in possession of the property. As an LPA Receiver is always appointed as the borrower's agent, the borrower

(who would be the owner in this scenario) will remain liable.

Conclusion

Local authorities should therefore pursue the owner or tenant of the property for unpaid council tax as well as NNDR. In view of the owner or tenant no longer obtaining income from a property once an LPA Receiver has been appointed, local authorities might be advised to take swifter action than usual to recover these sums.

At Morgan Cole we have a team of lawyers with specialist knowledge in the fields of property insolvency and the recovery of business rates and council tax. The team is headed by Paul Caldicott, partner and licensed insolvency practitioner.

More information

If you would like to discuss any matters that arise out of this article, in the first instance, please contact Paul Caldicott, Head of our Business Support and Insolvency team.



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