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| A Guide to Fixed Charge Receiverships

What is Fixed Charge Receivership?

The terms 'Fixed Charge Receiver' ("FCR"), 'Law of Property Act Receiver' and 'Non Administrative Receiver' are often used interchangeably to refer to the same thing – a Receiver appointed under a fixed charge, whose powers are derived from a combination of the Law of Property Act 1925 ("LPA 1925") and the lender's charge.

In certain circumstances a FCR can be appointed under a floating charge/debenture.

What is a fixed charge?

A fixed charge is a debt secured against a tangible asset. A mortgage on a property is a form of fixed charge, registered at Land Registry (HMLR). Where the owner of a property disposes of an asset, they are required to obtain consent from the beneficiary of the charge to its removal.

Law of Property Act 1925

Section 103 of the LPA 1925 allows the holder of a fixed charge to appoint a receiver in the following circumstances where one of three breaches have occurred:

1. Default has been made in payment of the mortgage money, or of part thereof, for three months after such service;
2. Some interest under the mortgage is in arrears and unpaid for two months after becoming due;
3. There has been a breach of a provision contained in the mortgage deed

Part 3, above, gives scope for a lender's facility to broaden the definition for what constitutes a default, such as a loan to value covenant breach, a failure to adequately maintain the property, or the death of a borrower. This provides a lender far greater flexibility and scope to enforce their security.

Section 101 of the LPA 1925 simply limits the powers of a Receiver to collecting rent and to insuring a property. Modern, well drafted loan agreements/mortgages incorporate further provisions and confer on the receiver additional and wider reaching powers, which often include the ability to undertake repairs, complete development works, agree and surrender leases/other forms of occupation and most fundamentally of all – conduct of sale. These provisions and powers are agreed to by the borrower on signing a mortgage contract.





Receivership v Administration

Unlike in an Administration, Receivership is an expeditious and cost-effective means to recover a debt, secured by way of a fixed charge or mortgage. There is no need for a court application and a lender can, depending on the terms/wording of the charge-holder's facility, appoint a Receiver after a default/breach is identified, following the service of formal demand.

A Receiver is only appointed over the fixed charge. Therefore, unlike in an Administration, a Receiver has no control over the dealings of the Company. In addition, a Receiver's primary duty is towards the appointing fixed charge-holder, whereas an Administrator must act in the best interests of creditors as a whole.

A Receiver cannot for example compel a Director of a business to provide/deliver up information; although it is often in the interests of a Director to do so, particularly where personal guarantees have been provided and where withholding information may adversely impact the outcome.

Are there any properties where a Receiver cannot be appointed?

Receivership is a recognised and effective method of recovery for a diverse range of property types from commercial income producing investments, to a residential house of multiple occupation ("HMO") or a part complete development.

A FCR is not able to trade a business. Therefore, where a lender holds a debenture and fixed charge over (for example) a care home or hotel, the value of the business as a going concern is often greater than the value of the property with vacant possession.

Whilst it is therefore possible to appoint a Receiver in such a scenario, the Receiver must either secure vacant possession or grant a lease/licence or operating agreement to an operator to allow it to continue to trade. In such scenarios, administration (where the asset is owned by a Company) is often seen as the best and most appropriate method of enforcement because it allows the business to continue to trade thereby preserving value.

A Receiver can, on rare occasions, also be appointed over chattels (such as classic cars or artwork), under the terms of a chattel mortgage.

Receivership v Mortgagee in possession

A Fixed Charge Receiver acts as agent for the borrower, but his/her principle duty of care is to their appointor. The "agency" role that a Receiver assumes allows them to exercise control of a property without incurring personal liability – the liability for the property remains with the borrower, albeit the Receiver manages the assets.

The agency function of a Receiver should not be confused with the agency role of (for example) an estate agent where the agent receives instructions from the homeowner.

The Receiver will act in good faith and independently of the owner. A lender should avoid directing the Receiver, otherwise a court could find that the Receiver is acting as agent for the lender, rather than the borrower. However, where a borrower becomes insolvent or is deceased, the Receiver's "agency" capacity ceases to exist and the Receiver acts as principal with unlimited liability.

A Receiver is also not liable for business rates or council tax, unless they are using the premises to trade. This liability remains a cost of the borrower.

Receiver's fees are paid in priority to their appointor's debt. If there is insufficient value in the asset to repay the appointing charge-holder in full, the Receiver's fees and costs will effectively be paid by the lender. However, where there are excess sales proceeds, the lender will be re-paid in full and the surplus distributed according to the priority of the charges.

The appointment of a Receiver will also distance the lender from enforcement action, which is often helpful where the relationship between the lender and borrower has deteriorated. Conversely, where a lender becomes a mortgagee in possession, they do not benefit from the same agency protection as that of a Receiver. Thus, a mortgagee in possession is liable for business rates/council tax and risks being considered the landlord (in scenarios such as rent collection), thereby making it vulnerable to personal/corporate liabilities and health and safety issues.



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The Association of Property
and Fixed Charge Receivers



Receivership v Mortgagee in possession

Unlike in a formal insolvency process (such as liquidation, administration, or bankruptcy), fixed charge receivers are not licensed insolvency practitioners (Insolvency Act 1986) and, with very few exceptions, there is no limiting of who can take a fixed charge receivership appointment. However UK Finance states that it's members are likely to prefer appointing a Fellow of NARA as a Receiver; a theme which is consistent with the approach adopted by most leading banks.

NARA (The Association of Property and Fixed Charge Receivers) was created in 1995 as a trade association to represent professionals acting as FCRs. Its membership includes Chartered Surveyors, Solicitors, Licensed Insolvency Practitioners and Accountants.

RICS accredited Fellows of NARA (those carrying the initials FNARA) are monitored by NARA and regulated by the RICS. To obtain that personal accreditation, an FCR must pass both a written exam, and a peer interview set by the RICS. NARA accredited receivers are expected to uphold their ethical & professional standards as well as undertake annual, specialist, professional training.

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Our Team

Sanderson Weatherall has a team of 9 Registered Property Receivers, (all of whom are members of NARA) operating from four regional offices (London, Birmingham, Manchester, Leeds) and is one of the largest teams in the UK. We pride ourselves on providing a thorough and professional service to a broad range of clients – from High Street Banks to short term lenders. For further information please [click here](#) or get in touch with one of our fixed charge receivers below.

Our Fixed Charge Receivers

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