

nara

The Association of Property
and Fixed Charge Receivers



The Facts

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RESTRUCTURING & RECOVERY



Regulated by

RICS



What is a **LPAR**?

Law of Property Act Receivers (LPAR) or a **Fixed Charge Receiver (FCR)** is a person that is appointed under a mortgage or charge over real property by a Lender in order to recover debt secured against the property. It is a personal appointment and generally two individuals are appointed who will be jointly and severally able to exercise their powers. The remedy for the Lender is unique to English and Welsh law. It is a quick, economical and efficient remedy for a Lender to initiate and realise their security.

The difference in the terminology of the name of the Receiver, LPAR or FCR, is dependent on if the power to appoint is derived from the security documents or under the Law of Property Act 1925 and this has a direct influence on the powers available to the Receiver to carry out their duties. This point will be explored in more detail later in the article. For ease, the Receiver will be referred to as a LPAR throughout this article.

A crucial difference between LPARs and other insolvency professionals is that they do not need to be licensed insolvency practitioners. This enables the Lender to appoint a person that is skilled in dealing with the specific asset that is charged so that the debt can be fully recovered quickly and efficiently.

Although no qualifications or specific professional membership is required for a person to act as a LPAR, it is recommended that they are members of the Royal Institution of Chartered Surveyors (RICS), the Association of Property and Fixed Charge Receivers (NARA) and are a Registered Property Receiver (RPR). This will give the Lender comfort that the LPAR is a skilled individual with the experience and technical ability to deal with all real estate assets that are charged under the security.

The LPARs at Knight Frank are all Registered Property Receivers, NARA accredited and MRICS affiliated (in addition to a number of other specialist qualifications) and combined have over 100 years of experience to draw upon to ensure that a cost effective and decisive strategy is implemented to enable the full recovery of the debt for the Lender.

Confidentiality and integrity are critically important to the team at Knight Frank

WHY USE A LPAR, REASONS TO APPOINT

A mortgage creates both a contract and an interest in the property that is charged under the security. Although the Lender will have several remedies to recover the debt including taking possession of the property and becoming a mortgagee in possession, each of these have their own inherent risks to recovery and to the Lender.

Principally, if the Lender were to become a mortgagee in possession, the Lender will be liable to account to the Borrower for all monies derived from the property, to repair and take reasonable care of the property, pay council tax and business rates, pay utility bills and will be liable under environmental legislation and under the Occupier Liability Acts. In short, these liabilities may hinder the ability of the Lender to deal with the asset and recover their debt.

The LPAR, when appointed, will create a buffer between the Lender and the Borrower and the liabilities described above. The LPAR will take control of the asset, collect any income derived from the asset, ultimately dispose of the asset and where responsible, subsume the liabilities described above. The appointment of the LPAR is quick and cost effective and does not require any formal insolvency petition, court proceedings or advertising of the appointment and is a remedy that will insulate the Lender from any negative publicity when enforcing their security.

Confidentiality and integrity are critically important to the team at Knight Frank and we/they will always act in a way to ensure that the image and reputation of the Lender is protected and the rights and privileges of the Borrower are respected.

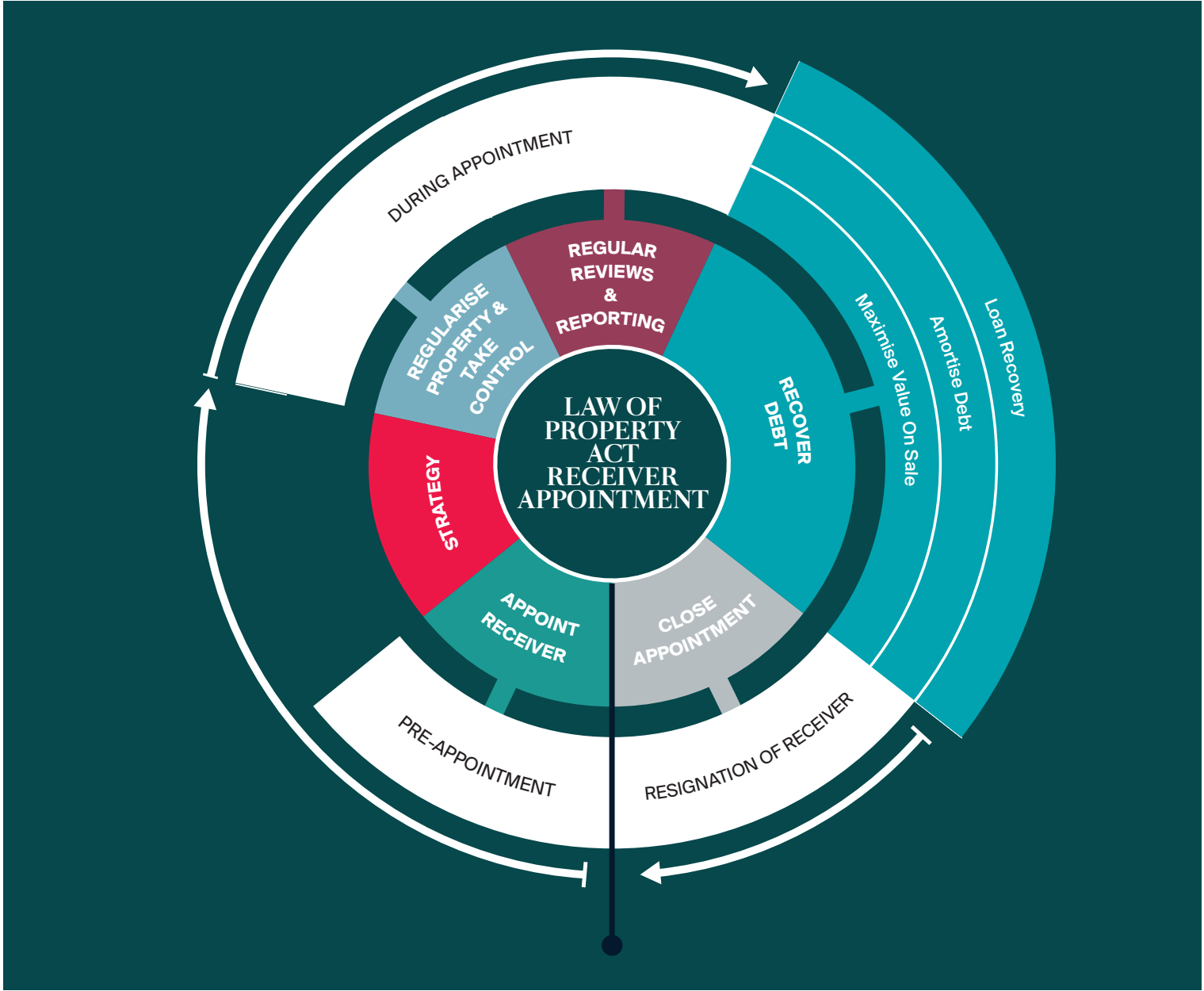
LPAR DUTIES, POWERS, CAPACITY, AGENCY

The LPAR has a primary duty of care to the Lender and conventionally acts as agent of the Borrower. This allows the LPAR to, in essence, step into the Borrower's shoes and carry out actions in relation to the property as if they were the Borrower.

In order to deal with the number of issues, parties and complications that may arise during the course of an appointment over the land, the LPAR has a wider set of powers than a mortgagee in possession.

The powers bestowed to the LPAR by the Law of Property Act are limited and extend only to the collection of rent, carry out repairs and insuring the property. The majority of the powers that the LPAR will have are derived from the security documents and these include, amongst others, the power of sale, the power of attorney, the ability to enter into contracts, the power to grant and accept surrender of leases, the power to borrow, the power to employ staff, the power to carry on business and the power to open bank accounts.

The LPAR is duty bound to achieve the best possible price for the property in the market at that time, however, they are not compelled to further improve the property nor continue any endeavours that the Borrower may have put in place prior to their appointment. Nevertheless, the extensive powers bestowed provide the opportunity for the LPAR to further improve the value of the property or restructure the occupancy and alter the physical layout in order to maximise the value of the property.



BEFORE THE APPOINTMENT OF A LPAR

Before a LPAR can be appointed a number of processes must first be undertaken. The most important step is to make contact with the nominated LPAR to discuss the potential appointment, the property and what strategies will be undertaken once the LPAR takes office.

It is recommended that a security review is undertaken by a reputable firm of solicitors and their confirmation sought that the Lender's power to appoint a LPAR has arisen. In general, the power to appoint arises when the mortgage money has become due, for example the expiry of the facility or non-payment of interest on the debt, or if there has been a breach of the security conditions. The service of a formal demand for the mortgaged monies is generally considered sufficient to demonstrate that the monies are due.

The solicitors, on behalf of the LPAR, will also produce a validity report to provide comfort to the LPAR that they can be appointed and detail the powers that are extended to them under the security documents. This is of critical importance as the resultant civil and criminal repercussions for the LPAR and Lender are severe. The LPAR's solicitors will also deal with formalities surrounding the appointment.

The LPAR will also carry out their own due diligence with respect to the property and will review any documentation that the Lender has about the occupancy and condition of the property. This will enable an outline strategy to be devised and anticipated realisations to be estimated to enable the Lender to fully consider their prospects of recovering the mortgaged monies from the security.



LPAR FIRST STEPS AND ACTIONS DURING APPOINTMENT

Once a LPAR has been appointed they will immediately insure the land /property on an all-risks basis so that the Lender's security and the LPAR are protected against all eventualities. The LPAR will register their appointment where necessary and notify all connected parties and will contact the Borrower to arrange a meeting. It is always beneficial to have open lines of communication with the Borrower to enable the LPAR to efficiently manage and dispose of the property, however, this is not always possible. The LPAR will also secure the property and put in place appropriate security provisions to ensure that the property is protected from trespassers and further potential damage and loss of value.

The LPAR will immediately review any managing agent contracts, sales agent instructions and maintenance contracts and put in cost effective contractors where needed in order to reduce cost and ensure the maximum return from the property. The LPAR will undertake an in depth review of the current leasing structure, vacancies and service charge for the property to ensure that lease events are actioned and vacant spaces are utilised. Where the property has residential tenants, the LPAR will undertake a cost benefit analysis to understand if the property value is higher as a tenanted investment or sold with vacant possession. The ability of the LPAR, as a property expert, to undertake these actions ensures that the highest value possible is distilled from the charged property. In addition, depending if the Borrower is a company rather than a person, the LPAR will also have to register their appointment at Companies House in the UK or the equivalent office where the company is incorporated.

If there is a sale taking place or if the Borrower is attempting to refinance the debt owed, the LPAR will assist the Borrower where possible. A thorough review of the sales process and probability of the sale completing will be undertaken and the LPAR

will, if necessary, support the Borrower with their refinancing efforts. In general, the LPAR will ensure that these processes run in parallel with the recovery and sales strategy to ensure that the Lender's debt is redeemed in a timely and cost efficient manner. Where the property is tenanted the LPAR will ensure that their statutory obligations are up to date and will begin collecting all income, including rent, service charges and licencing fees. This income can then be used to enable the management of the property and any surplus funds will be returned to the Lender to be set against the debt owed.

If the value of the property is linked to the trading entity, for example hotels, care homes and licenced premises; the LPAR will ensure that the entity continues to trade where possible. The LPARs have existing relationships with specialist managing companies that can trade the entities on the LPAR's behalf thus preserving the value attributed to the property.

The LPARs are not liable to pay business rates or council tax but if the property is VAT elected, must submit VAT returns accounting for the VAT collected. The recovered funds can be used to cover the costs of the recovery or set against the outstanding debt. In general the LPARs are not liable for any other taxation with regards to the property and these liabilities remain with the Borrower.

In some cases the LPARs are appointed over part-completed developments or refurbishments. Subject to the terms of the legal charge, the LPARs have the powers to complete these works and further improve the property with the support from the Lender. Dependent on the prevailing market conditions it may be possible to continue the Borrower's original strategy for improving the property or alternatively the LPARs can put in place their own strategy.

For an agricultural appointment or appointments where there is a significant farming /rural element the LPAR can ensure that a specialist manager is put in place to ensure the smooth running of the business and to maintain the well-being of the livestock and crops. The LPAR will conduct a thorough assessment of the property to determine if the sum of its parts are greater than the sum of the whole and what strategy would be needed to achieve the result.

The Knight Frank LPARs will support and advise on a proactive strategy by working with the Lender and the Borrower to maximise the performance of the asset and enable the full recovery of the debt.

Knight Frank LPARs will support and advise on a **proactive strategy**

INTERACTION OF LPAR WITH IP

If the Borrower is subject to other insolvency actions, either voluntary or court appointed, the Lender can still use the LPAR as a remedy to recover their debt. It is essential for the Lender to seek legal advice from an insolvency specialist in order to be fully appraised of the implications and outcomes due to these processes.

If a LPAR appointment predates the appointment of an Administrator or a Liquidator the LPAR can continue to act and realise the Lender's security. Whilst an Administrator has the power to force the resignation of the LPAR, in reality the LPAR will work in conjunction with the Administrator to ensure the best result is obtained.

If an Administrator is already appointed a moratorium for the negotiation of a small company voluntary arrangement or individual voluntary arrangement has been granted, this will restrict the appointment of an LPAR without the consent of the office holder or the courts.

When a Liquidator is appointed (or Trustee in Bankruptcy for individuals) this will not generally restrict the appointment or conduct of the receivership. The liquidator will, however, terminate the LPAR's right to act as agent of the borrower and may, therefore, increase the risk of the LPAR's exposure to such personal liability if they breach their duties after the commencement of bankruptcy or liquidation proceedings.

SALE

Ultimately the LPAR will sell the property and will ensure that the best price reasonable obtainable is achieved. The LPAR are free to use whichever method of sale they deem suitable to maximise the sale price, this includes private treaty, auction and off market sales.

The sales monies will be then be used to settle the remaining LPAR and third party fees and then set against the charges over the property in order of priority. The order of priority is dictated by the Land Registry entries and any accompanying Deed of Priority between the charges. Any funds remaining after all the charges have been redeemed will be returned to the Borrower.

TERMINATION

The LPAR appointment is terminated by the Lender by either requesting or accepting the Receivers resignation. It is a peculiarity of the appointment process where the LPAR requires the express permission of the Lender to resign from their appointment. This allows the Lender to control the recovery of their debt and ensure that a LPAR with the relevant skills and experience is appointed.

SUMMARY

Although often thought as the last resort for Lenders the appointment of a LPAR is a cost effective and efficient remedy for a Lender to take control and recover loans secured against property. In general, the appointment process is quick and does not require an application to court, thus enabling the property and the value of the security to be quickly captured and realised.

Finally, the appointment of a LPAR will limit the liabilities of the Lender in recovering the debt itself and will insulate the Lender from any negative publicity when enforcing their security.

For more information and advice on how the Knight Frank Restructuring and Recovery team can assist please do not hesitate to get in touch.

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