



REAL ESTATE | Acquiring a property from an LPA receiver – what are the risks?

As we approach the June quarter day, it is not only landlords who will be keeping a close eye on rent collection. For lenders rent collection is also very important.

So far we have largely seen that lenders have been supportive of landlords in relation to unpaid rent for the March quarter day – in some cases lenders have agreed to variations and waivers in financing arrangements.

With rent collection this month likely to be far worse than the March quarter day and with no certainty over when social distancing restrictions will be fully eased, the next few months are going to be challenging for lenders. Some lenders could start to take a tougher stance with landlords. For properties where a lender does not have valuable additional security (e.g. a parent company guarantee), we could later this year see a number of lenders considering whether to appoint a receiver under the Law of Property Act 1925 to sell the property.

Buying a property from an LPA receiver will be attractive to some investors, as such properties are often sold at a competitive price and may therefore represent a very good opportunity. However, there are additional risks associated with such acquisitions:

1. No title guarantee will be provided

As a receiver is not the registered owner of the property and has no prior knowledge of the property, the receiver will not provide any title guarantee to the buyer. There may be third party interests or other rights that the receiver is not aware of and the buyer will take subject to these.

To reduce the risk a full title review should be carried out and the buyer should instruct a surveyor to undertake a thorough inspection of the property. Additionally, a no title guarantee indemnity

insurance policy or an all risks indemnity insurance policy is often available at a reasonable premium to cover any remaining risk here. If a buyer is purchasing with funding from a lender, the lender may insist on such an indemnity insurance policy being put in place.

2. No replies to enquiries

The receiver will have no personal knowledge of the property and will therefore provide no replies to enquiries and will not give any representations or warranties as to any matters.

Again there are a few ways to help bridge this gap and mitigate this risk including:

- carrying out a full suite of searches. Of particular importance will be a local authority search, environmental search and highways search;
- instructing a surveyor to undertake a building survey;
- inspecting the property and trying to speak to any existing managing agents and occupiers; and
- consider taking out an all risks indemnity insurance policy. Such a policy can cover a wide range of issues including unknown boundary disputes and the property being altered without the correct planning consents.

3. The validity of the appointment of the receiver

There are a number of procedural steps that need to be followed by a lender to appoint an LPA receiver. If these steps are not followed strictly there is a risk the receiver's appointment maybe invalid and the sale contract could therefore be void.

We would therefore recommend that a buyer instructs an insolvency lawyer at an early stage to check the receiver's appointment is valid. If the buyer is acquiring the property with debt funding, its lender may expect certain statements and/or confirmations to be provided in the Certificate of Title with regard to the validity of the receiver's appointment. Also, in most cases in order to register a transfer executed by a receiver, the Land Registry will require a certified copy of the receiver's appointment documents and certain confirmations from the receiver.

4. Receiver has no personal liability under the sale contract

A receiver will not accept any personal liability under a sale contract. A simultaneous exchange and completion is therefore advisable rather than having a gap between exchange and completion.

In addition, it's important that the receiver's appointment documents/confirmations required by the Land Registry are provided before exchange or the receiver's solicitors provide an undertaking to provide these on completion. Ideally you should also push for an undertaking from the receiver's solicitors to use reasonable endeavours to assist with any requisitions that might be raised by the Land Registry about the receiver's appointment.

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