

Enquiry of the month

Council tax liability for a property where landlord was made bankrupt

We received an enquiry regarding a client who had been made bankrupt in 2016. The client had owned multiple properties that they had rented out and had buy to let mortgages for.

The client received a council tax bill for 2018/19 in relation to one of the properties that had vested in the trustee upon bankruptcy. The council tax bill was for the period after the tenant had moved out and while the property was unoccupied.

The trustee in bankruptcy said that the mortgage lender appointed a Law of Property (LPA) receiver following the bankruptcy and an estate agent had been instructed to collect the rent from the tenant whilst they were living in the property. There had been no possession proceedings taken by the lender.

The adviser wanted to know whether the client was liable for the council tax for the period of time after the tenant moved out.

In order to establish who is liable for the council tax in this scenario it is necessary to consider a number of things:

The role of an LPA receiver

It sounds as though the mortgagee exercised their right to appoint an LPA receiver. They are entitled to do this under [s.103 Law of Property Act 1925](#).

The following is confirmed in a Lexis Nexis PSL practice note entitled 'Insolvency for property disputes lawyers':

“A mortgagee may appoint a receiver under the Law of Property Act 1925 (LPA 1925) or under contractual powers in a fixed charge...

A mortgagee may decide to appoint a receiver if it feels that someone with the appropriate expertise could deal with the mortgaged property more effectively than the mortgagee. By appointing a receiver, the mortgagee avoids the risk of being regarded as a mortgagee in possession...

A receiver appointed under LPA 1925 has power to demand and collect rent, and acts as agent of the mortgagor. The receiver will account to the mortgagee for rents received but must pay certain debts ahead of making payment to the mortgagee.”

You can find a very useful summary of the role and powers of an LPA receiver on UK Finance's [“UK Finance policy briefing for mortgage lenders– the role of LPA Receivers \(14 March 2018\)”](#) for your reference.

How and when a property vests in the trustee

When a property is owned in a bankrupt's sole name, the trustee will automatically become the legal owner of the property following their appointment or following the Official Receiver becoming trustee, as per [s.306 Insolvency Act 1986](#).

This means that the trustee will have become the landlord of the property automatically when a trustee was appointed or when the OR became trustee.

The bankrupt would have remained the landlord until a trustee was appointed or until the official receiver became trustee.

The trustee would therefore still be the legal owner of the property at this point, provided they have not disclaimed their interest.

Is the mortgagee (the lender) a 'mortgagee in possession' and what effect does this have?

This part refers to the Insolvency Service Technical Manual which is out of date. We have however cross referenced the information with the current internal guidance being used by the Insolvency Service which we have had sight of.

As the client had a buy-to-let mortgage, the mortgagee will have been bound by the tenancy whilst the tenant remained in the property. This position is confirmed in the Insolvency Service Technical Manual at paragraphs 31.11.36 and 31.11.116 and at paragraph 29.46 of the new guidance. We also know that the LPA receiver appointment will have given them the right to collect the rental income (see above).

The Insolvency Service Technical Manual at paragraphs 31.11.172 to 31.11.173 and the new guidance at paragraphs 29.158 – 29.159 states the following regarding what constitutes possession:

"What constitutes possession

Where a mortgagee takes actual possession of a property, there is no doubt as to his/her intention to take possession and he/she assumes the liabilities of a mortgagee in possession (see paragraph 31.11.174). Where the mortgagee gives notice to the tenant to pay rent to them, it is also clear that they intend to go into receipt of rents and profits. This is equivalent to taking possession [note 18]. This is also the case if they give notice to the tenant not to pay rent to the mortgagor [note 19].

Mortgagee not in possession

A mortgagee cannot be said to be in possession when they merely receive a sum equal to the rent from the mortgagor's agent, when the agent has not served on the tenant any notice on the mortgagee's behalf [note 21]. The mortgagee must act in such a manner to substitute themselves for the mortgagor in the control and management of the property. The

mortgagee does not assume possession by insuring the property or by making arrangements with the tenant if the tenant does not recognise the mortgagee as landlord [\[note 22\]](#)."

By appointing an LPA receiver, the mortgagee avoids being classed as a mortgagee in possession. This means that the appointment of the receiver alone will not be enough to make the mortgagee a 'mortgagee in possession'.

The trustee in bankruptcy remains the legal and beneficial owner of the property and would be entitled to any equity after the property is sold. This is not affected by the LPA receiver appointment.

Council tax liability

The client will no longer be the person liable to pay council tax as they are not the owner or occupier of the property.

When a trustee was appointed, or when the official receiver became trustee, they became the legal owner of the property. This means they obtained legal title to either the freehold or leasehold. As a result of this they will be the person liable to pay council tax when there is nobody occupying the property or nobody with an inferior lease as per [s.6 Local Government Finance Act 1992](#).

The trustee in bankruptcy will be exempt from paying Council Tax under the Council Tax (Exempt Dwellings) Order 1992 (SI 1992/558) - Class Q.

If the mortgagee does take possession, they could become liable to pay council tax at the property. This is confirmed in Lexis PSL practice note 'Council Tax':

"In the case of a property which has been repossessed the liable person will be the person who is a mortgagee in possession of the owner's interest in the dwelling."

A mortgagee in possession could still be exempt from paying however under the Council Tax (Exempt Dwellings) Order 1992 (SI 1992/558) - Class L. As a result of the Local Government Finance Act 2012 the council was given discretion with regard to this and other specified exemptions.