

PRACTICE STATEMENTS

INTRODUCTION

The Association of Property and Fixed Charge Receivers (NARA) is an association set up to support its Members, to represent their interests, to provide the specialised technical training to Members, and to define and set standards in matters of Fixed Charge Receiverships.

These Practice Statements set out the standards and basic principles to which all Members can reasonably be expected to adhere. They do not attempt to go into detail as to how Members should deal with specific issues which may arise. It is not the role of NARA to dictate to Members how they should act in any given situation. The supplementary Guidance Notes are for the benefit of its Members to support and concentrate in greater detail on the practical issues.

Definitions: Throughout the Practice Statements the following definitions apply:-

"Administrator" has the meaning given to it by paragraph 1(1) of Schedule B1 to the Insolvency Act 1986

"Appointor" means any body corporate, including a bank, friendly society, building society, deposit taking institution, person or persons who hold a charge, mortgage, lien or other security over Assets, which said charge, mortgage, lien or other security empowers the Appointor to appoint a Receiver, or where the said Appointor has power to appoint a Receiver pursuant to the provisions of Section 101 Law of Property Act 1925: together also with any Court of competent jurisdiction which has power to appoint a Receiver over Assets.

"Asset" means and includes any money, goods, things in action, land and property and every description of property wherever situated and whether present or future or vested or contingent. (not used in this document) "Borrower" means any body corporate, person or persons who have entered into a mortgage or charge with the Appointor which said mortgage or charge gives the Appointor power to appoint a Receiver or empowers the Appointor to do so pursuant to the provisions of Section 101 Law of Property Act 1925.

"Connected with" has the meaning given by Section 249 Insolvency Act 1986 (Check if term is in document)

"Conflict of Interest" shall be interpreted to mean the definition as attributed to it by the Members own professional (regulatory) body.

"Fixed Charge Receiverships" means the performance and discharge of functions, powers and duties which are attached or incidental to the offices or positions of Receivers of Assets (including without limitation Law of Property Act Receivers, Fixed Charge Receivers, Receivers appointed under the Agricultural Credits Act 1928.

"Insolvency Practitioner" has the meaning given by Section 388 Insolvency Act 1986.

"Member" means a Full Member of the Association of Property and Fixed Charge Receivers, whether a Registered Property Receiver or not.

"Professional Bodies" means either the Royal Institution of Chartered Surveyors (RICS) or the Insolvency Practitioners Association (IPA) or, in respect of Members who are not Registered Property Receivers such professional body to which the Member belongs and by which the Member or their practice is regulated.

"Receiver" Receiver or manager appointed under a security instrument or his personal representative.

"Registered Property Receiver" (RPR) means a Receiver registered through the Registered property Receivership Scheme

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These Practice Statements are issued for the benefit of Members as a guide to current best practice in the conduct of property and fixed charge receiverships.

Members should only depart from them where justified by special circumstances and a Member who does so depart may be required to justify reasons for the departure to the Scheme, their regulatory or professional body, or NARA (or nay combination thereof). Neither NARA, nor its directors or members of the NARA Council can accept responsibility for any loss occasioned by any person (including a Member) acting, or refraining from action, as a result of the material included in these Practice Statements.

Where appropriate in these Practice Statements, words denoting the singular shall include the plural (and vice versa) and words importing the masculine gender only shall be deemed to include the feminine gender. These Practice Statements reflect the law and practice in England and Wales only and as extant at the date of publication.

1. Pre-Appointment

1.1 Before a Member accepts any appointment to act as a Receiver, he should first satisfy himself that he is suitably qualified to accept such appointment.

1.2 Where a Member is instructed to prepare a report or to carry out an investigation that could lead to a Member being appointed as Receiver, he should not recommend an appointment, or accept instructions to take an appointment as a Receiver where it is clearly not in the interest of the prospective Appointor that an appointment is made.

1.3 An appointment to act as Receiver should not be accepted unless the Member has first satisfied himself that no relevant conflict of interest (as defined by the Member's own professional (regulatory) body) would arise from the acceptance of the appointment.

1.4 Before a Member accepts any appointment to act as a Receiver, he must satisfy himself that he has adequate Professional Indemnity cover in place having regard to the value of the Asset and particular circumstances of the appointment.

2. Taking Appointments

On acceptance of an appointment (or as soon as reasonably practicable thereafter) a Member should, unless there are exceptional circumstances: -

2.1 take all appropriate steps to satisfy himself that the appointment can validly be made

2.2 satisfy himself that the charge under which the appointment is made is validly executed and that any formalities of appointment have been complied with by the Appointor.

2.3 satisfy himself that the charge under which he is appointed is, in the case of a Borrower who is a body corporate, appropriately registered within the relevant time limits.

- 2.4 satisfy himself that the instrument of appointment is in the required form and adequately describes the Asset over which he is appointed.
- 2.5 ensure that appropriate acceptance procedures are implemented in accordance with current legislation.
- 2.6 notify any third party who may have an interest in the appointment.
- 2.7 if not agreed prior to appointment, agree the terms of his engagement and the basis of his remuneration as soon as possible with his Appointor and record or confirm them in writing.
- 2.8 having had full regard to the insurance market pertaining at the time of appointment, and subsequently, ensure that appropriate insurance is in place (if obtainable) for the Assets over which the Member is appointed and for the liabilities relating thereto.
- 2.9 comply with any requirements imposed by any insurers relating to the Assets.
- 2.10 specifically identify all the Assets over which he is appointed and prepare an inventory identifying any third party chattels or assets which may be in or amongst the Assets over which he is appointed.
- 2.11 ascertain the existence of any tenancies or other occupiers
- 2.12 ascertain the terms of any lease or tenancy under which the Asset is held and whether there are any liabilities which need to be met to protect or preserve any Asset over which he is appointed.
- 2.13 ascertain the extent of potential liabilities where appropriate. In particular, steps should be taken to ascertain the extent of liability to employees and consideration should be given to action which may be desirable or appropriate to minimise any personal liability.
- 2.14 ascertain the existence of any required licence or registration within any relevant regulations which apply during any receivership, or which enhance the value of any Assets over which he is appointed.
- 2.15 consider seeking an indemnity from the Appointor in circumstances where the appointment so warrants.
- 2.16 if the Member is not an Insolvency Practitioner, ascertain whether any Assets over which he is to be appointed are Assets which may constitute the whole, or substantially the whole, of the Borrower's (who is a body corporate) undertaking which has been secured by a charge which, as created, was a floating charge. In such circumstances, a Member who is not an Insolvency Practitioner must take steps to ensure that he does not become an Administrative Receiver.

3. Conduct During Appointment

During the conduct of the Receivership a Member, unless there are exceptional circumstances:-

3.1 should maintain records as are necessary for the purpose of the Receivership.

3.2 should maintain records to comply with relevant VAT regulations and taxation legislation.

3.3 should report to the Appointor on a regular or agreed basis. Where appropriate he should also inform the Borrower, other lenders, any Insolvency Practitioner appointed over the Borrower, and other interested parties of the progress of a Receivership and of material developments such as the sale of an Asset.

3.4 must maintain separate books of account in respect of each appointment

3.5 is under a duty to maintain and file (where required by statute) receipts and payments accounts and disclose them to appropriate persons.

3.6 in appropriate circumstances, must account promptly for any realisation made during the course of the Receivership to those entitled to it and agree with the Appointor whether interest accrued thereon should be paid to the Appointor and, if so, when and in what amount.

3.7 must keep all funds received in the course of an appointment in a separate bank account from those of the Member or his firm or company, appropriately designated and complying with the appropriate accounting regulations of the Member's Professional Body

3.8 should take all appropriate steps to safeguard for an appropriate period of time records of the Borrower (if any) which come into his custody or possession during the course of the Receivership.

3.9 should take all appropriate steps to safeguard any assets in a property over which he has been appointed but over which he has no power.

3.10 should seek advice from third parties with appropriate qualifications when appointed over Assets in respect of which he does not have the appropriate expert knowledge either of the Assets or of the actions required or proposed.

3.11 must take steps to maintain up to date knowledge of changes in statutes or regulations that may affect the Assets over which he is appointed or the conduct of the Receivership.

3.12 should take all necessary steps to obtain the proper price on a sale of Assets, having regard to all the circumstances of the case.

3.13 should be aware of any duties to the Borrower (if any) and to any subsequent mortgagee where any power of sale and/or leasing is to be exercised.

3.14 should act in such a manner as to have regard to any duty of care that the Member may have to any Borrower and any third parties who have an interest in the Assets over which he is appointed

4. Ceasing to Act

4.1 A Member must forthwith resign his appointment if:-

4.1.1 a Bankruptcy Order is made against him.

4.1.2 he becomes mentally ill (within the meaning of the Mental Health Act 1983).

4.1.3 an Interim Order is made in respect of him under Section 252 Insolvency Act 1986.

4.1.4 he is subject to an order made under the Company Directors Disqualification Act 1986.

4.2 A Member should consider offering to resign his appointment if his company or other organisation by which he is employed:-

4.2.1 becomes insolvent.

4.2.2 goes into Liquidation.

4.2.3 has an Administration Order made against it.

4.2.4 becomes subject to a Corporate Voluntary Arrangement.

4.2.5 has a Receiver appointed over some or all of its assets.

4.3 A Member should consider offering to resign his appointment if a partnership of which he is a partner:-

4.3.1 has an Administration Order made against it.

4.3.2 is subject to an Insolvency Order pursuant to the provisions of the Insolvent Partnership Order 1994.

4.4 A Member should consider offering to resign if his health prevents him from carrying out his duties to the best of his ability.

4.5 In the case where a Member is able to resign under the terms of the charge by which he is appointed, or where a Member should resign by virtue of paragraphs 4.1 to 4.4 hereof or otherwise, a Member must give reasonable notice to the Appointor and Borrower and, unless there are exceptional circumstances, give at least seven days' notice. Where the terms of the charge do not allow the Receiver to resign he must seek to agree the terms of his discharge at an appropriate time and on an appropriate basis with the Appointor.

4.6 If a Member is removed as Receiver he is under a duty to hand over all monies and interest due to the Appointor or to those who are entitled to it.

4.7 Immediately following his resignation, or as soon as practicable thereafter, a Member must prepare appropriate receipts and payments accounts and send them to the Appointor, to Companies House, and, if appropriate, the Borrower.

4.8 When all Assets over which a Member is appointed are realised, and accounts finalised, a Member should either offer to resign or request to be discharged as provided in the charge. On ceasing to act, a Member must hand all monies not already accounted for to the Appointor or to those entitled to them.

4.9 On ceasing to act a Member must submit Form LQ02/LL LQ02 Notice of Ceasing to Act to Companies House and complete all other statutory procedures.

4.10 Where a Member is ceasing to act on the appointment of a new Receiver, the Member should co-operate in the provision of appropriate information to the new Receiver and ensure an orderly hand over of control of the Assets.

4.11 A Receiver should ensure that, in the event of his death, appropriate procedures are in place for his joint appointee, his firm or company, or his personal representatives, to inform the Appointor and Borrower and to facilitate an orderly hand over of control of the Assets.

4.12 A Member must keep any personal records, accounts or notes for a minimum of six years after the date of his resignation, or for such longer period that is required by Statute.

These Practice Statements is issued for the benefit of Members as a guide to current best practice in the conduct of relevant Receiverships. Members should only depart from them where justified by special circumstances and a Member who does so depart may be required to justify reasons for the departure. The circumstances of each case must be carefully considered and the Receiver must take his or her own independent advice. Neither NARA, nor its directors, nor its members of council nor the authors of these Practice Statements accept responsibility for any actions taken, or refrained from being taken, nor any loss consequent thereon.