

# The Secured Lending Reform Bill

This Bill is designed to protect the economic recovery by encouraging a rescue culture and greater responsibility in the banking industry. At its heart is a simple premise: that if a borrower gives a lender security over their property, they have a special right to be treated fairly by the lender. This will protect not only the borrower but also the interests of employees and other unsecured creditors.

While the banks have shown some forbearance in the last couple of years, this has been due primarily to a lack of options taking in to account conditions in the property market. The lesson from past recessions is that the period of greatest conflict between borrower and lender is as the economy emerges from recession and banks move aggressively to eliminate customers who have issues with serviceability but have comfortable margins of equity. This is because the banks, as preferential creditors, can appoint a receiver and enforce their security at the cost of the borrower.

This Bill would close loop-holes which have been exploited by the banks since the 1980's allowing them to aggressively enforce their security and it would exclude the contractual extension of their powers which currently go way beyond what was envisaged by the original 1925 Law of Property Act. Finally, it would curtail sharp practice among LPA Receivers. By rebalancing the law in favour of the secured borrower and by significantly reducing the role of LPA Receivers, the Bill would lead to a reduction in litigation, encourage much needed responsibility in the banking industry and foster a culture of conflict resolution.

The provisions of the Secured Lending Reform Bill have been developed with the help of Peter Williams, a senior partner in the law firm Burges Salmon and one of the country's leading authorities on the Law of Property Act 1925.

The key provisions of the Bill are:

- 1) An LPA Receiver should revert to the role envisaged by the Law of Property Act 1925, namely to receive income earned from assets. It is not their role to receive the proceeds of the sale of such assets. But the banks have contractually extended their powers through mortgage deed to allow this to happen. Under this Bill, this contractual extension of powers would be statutorily excluded.
- 2) It follows that a Receiver should not be able to maintain an action for possession against a mortgagor (borrower).
- 3) The Bill would affirm in statute that a Receiver's duties (*Medforth vs Blake*) should expressly be owed to both the mortgagor and mortgagee alike.
- 4) An LPA Receiver would expressly not have the power of sale.

- 5) Banks have exploited loop-holes to contractually extend their powers and in numerous cases to “peaceably re-enter” properties on which they have a legal charge leading to the extraordinary situation where the owner of the property can be deemed a trespasser on his own land without recourse to the courts. This Bill would make clear that a mortgagee should not be permitted to peaceably re-enter a property on which he has a charge.
- 6) The provisions of Section 36 of the Administration of Justice Act 1970 would be extended to cover all mortgages. This requires banks to seek a possession order from the courts. It currently applies only to residential mortgages but banks have exploited this loop-hole so that many business premises such as farmsteads do not get adequate protection under the law.
- 7) This Bill would ensure that the mortgagee’s powers of sale should not be enforceable until either a) they have the agreement of the mortgagor or b) the mortgagee has an order for possession from the court and it has been enforced.
- 8) At the moment, a lender can, for instance, commit breach of contract but this does not hinder their ability to enforce their security and the remedy is only retrospective financial compensation. Under the provisions of this Bill, the mortgagee shall not be entitled to an order for possession until the court has determined any claims by the mortgagor whether by way of set-off or counter claim.
- 9) Finally, the Bill will repeal section 31 of the Agricultural Tenancies Act 1995. The Law of Property Act 1925 held that the interests of mortgagees should not be allowed to stand in the way of food production and that land owners were therefore entitled by statute to grant tenancies over their land. Section 31 of the 1995 Act took away that right. Since food security is once again an issue of national concern, this should be repealed and the position should revert to that outlined in the 1925 Act.

**ENDS**