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The Association of Property
and Fixed Charge Receivers

www.nara.org.uk

Fixed Charge Receivership and building out

nara…real estate insolvency defined

the facts

Fixed Charge Receivership and building out

Can a Fixed Charge Receiver (FCR) complete the build out on unfinished, charged, real estate? Unreservedly, yes. And usually at a timelier and more cost effective rate than alternative routes in accessing and exiting a distressed loan.

A Nara fellow is professionally qualified in the sector (frequently a surveyor trained in FCR insolvency) with the relevant breadth of skills necessary.

A FCR acts independently and in relation solely to the charged asset, they are not concerned with other financial claims on the borrower.

For further information on the unique nature of the FCR exit route for corporate and personal loans see our Guide to Property Receivership available FREE from our website: **click here** and, just for corporate debt, compare FCR with Administration available FREE from our website: **click here**.

What are the key issues?

Development projects are one of the most challenging, high risk, real estate asset types. When things go wrong, all stakeholders are exposed and none more so than the lender. The charged security is subjected to a volatile – possibly declining – market and speed of decision is paramount. Outdated appraisals are irrelevant, the cost of site works often differ from the reality and the demand for the end product may be compromised.

Confidence in the borrower's management team may also be evaporating fast and covenant breaches growing. TCF is paramount, but the potential for increased loss is growing.

Whilst the FCR does not have a duty to improve the value of the asset (Silven Properties) if there is an opportunity to achieve a better outcome, then completing the development scheme may be justified. The decision to exit unfinished, or to complete the project (in whole or in part) is difficult and complex, requiring a broad skill set to assess.

Against that strategic background the sector presents additional unique, practical challenges in an enforcement scenario, e.g.

- Compromised build quality – impacting on exit value
- Building control and/or planning non-conformities
- Void building warranty as a consequence of an insolvency "event"
- Disgruntled sub-contractors not willing to provide information or wilfully damaging the property
- Retention of Title claims
- Significant due diligence to establish the facts

A FCR has both the requisite powers and specialist skill to address these issues. They can enable informed strategic decisions, take office and control the case to exit.

These decisions are based upon key hard data, namely: market values; market trends; site risk, including construction and holding costs; project management costs; sales management/cost, and timetabled exit route.

Typical build-out

A typical build out scenario is -

1. Secure a scope of works.
2. Engage with planning consultants if conditions have not been satisfactorily discharged and/or if non-conformities have been identified.
3. Undertake a competitive tender utilising the full scope of works.
4. Secure finance from appointor or third party. Agree structure of facility.
5. Appoint suitable contractor and agree appropriate contract terms.
6. Agree warranty provider and suitable package.
7. Monitor build out, stage payments (if applicable) complete scheme and reach practical completion.
8. Manage end sales process.

Fixed Charge Receivership advantages

FCRs have -

- detailed knowledge of real estate and are therefore best placed to deal with matters of development;
- a wealth of experience in insolvent real estate;
- the skills to carry out much of the work themselves, eliminating the need to delegate to other professionals and as a result can drive down costs;
- a market-facing discipline as well as a direct interface between the job at hand and the lender, further assisting reduced costs;
- a hands-on role, providing instantaneous decision making and direct communication with contractors, leading to better and faster decision making;
- the ability to receive warranties, handle insurance claims and enter into overdrafts/obtain development funding;
- specialist teams that deal with development build outs with work often done in-house, preventing the need for vetting and further costs.

Conclusion

FCRs are extremely effective in dealing quickly with unfinished development schemes, they can provide extensive knowledge and experience at a competitive, transparent cost.

Nara members are at the forefront of suggested legislative changes in the UK and have the knowledge, skills and expertise to navigate the most complex of projects during a fast changing legal and regulatory landscape.

The FCR and Administration routes are not mutually exclusive and there is nothing to prevent the appointment of an Administrator, as well as a FCR. In complex cases the Administration of the borrower as well as the appointment of a FCR, is a mutually symbiotic relationship. It allows each discipline to concentrate in their specialist areas, avoids unnecessary duplication of costs and drives better exit outcomes.

Does a FCR have the requisite powers?

Yes. Charges normally provide the FCR with the power to contract, borrow and do ‘anything that is necessary and incidental’ to managing and realising the asset (including build out): but beware the (rare) badly drawn Charge.

Can a FCR obtain the necessary Warranties and Insurance?

FCRs can obtain warranties and in most cases, property insurances can be assigned and dealt with by a Receiver.

Can a FCR effectively fund a build out?

FCRs usually have the power to borrow money on behalf of the borrower. They are able to enter into overdrafts and are in a good position to obtain justifiable development funding.

Does electing for a FCR over an Administrator disadvantage lender in respect of contractor disputes?

No, there is no disadvantage as FCRs are normally not affected by breach of contracts. They continue to act independently without distraction or incurring costs that an Administrator might have to incur in dealing with such disputes.

What is the VAT position for the FCR route?

Specific rules apply to VAT and the FCR route. Nara has been at the forefront of precipitating those arrangements with HMRC. In most cases the FCR can offset VAT, but in residential schemes this may not necessarily be relevant. Advice should therefore be sought on a case by case basis from a Nara FCR in relation to VAT.

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about Nara

Nara is the trade association representing fixed charge receivers. Formed in 1995 to establish and maintain standards, we are a founding member of the Registered Property Receivership Scheme run jointly by us, Insolvency Practitioners Association and the Royal Institution of Chartered Surveyors.

We offer training for lenders as well as practitioners, produce Practice Guidance Notes, a Code of Practice, a helpline and lobby on behalf of receivers.

To join Nara as a Lender for FREE please contact us at **membership@nara.org.uk**

For further information on our training courses contact us at **admin@nara.org.uk**

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