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Fixed Charge Receivership



The Society of Chartered Surveyors Ireland is the leading organisation of its kind in Ireland for professionals working in the property, land and construction sectors. As part of our role we help to set, maintain and regulate standards – as well as providing impartial advice to governments and policymakers. The Society has over **4,000 members and is closely linked to RICS**, the global professional body for Chartered Surveyors with over **100,000** members worldwide who operate out of **146 countries**, supported by an extensive network of regional offices located in every continent around the world.

To ensure that our members are able to provide the quality of advice and level of integrity required by the market, **Society of Chartered Surveyors Ireland/RICS** professional qualifications are only awarded to individuals who meet the most rigorous requirements for both education and experience and who are prepared to maintain high standards in the public interest. With this in mind, it's perhaps not surprising that the letters **MSCSI/MRICS** are the mark of property professionalism in Ireland and worldwide.

Fixed Charge Receivership

Overview

There has been a significant increase in the level of appointments of Fixed Charge Receivers in Ireland in recent years, largely due to the economic downturn.

The purpose of this guide is to explain what Fixed Charge Receivers are, their functions and responsibilities.

The Issues

The large decline in property values has created an enormous overhang of distressed property loans in the Irish property market. The issues facing the banks who hold these loans is not merely one of value. In many cases the properties are facing challenges relating to:-

- Compliance
- Service Charge Voids
- Municipal Rate Liabilities
- Unregulated Occupancy
- Management Company Issues
- Tax
- Marketable Title
- Unsuitable Planning
- Vacancies
- Tenancy Issues

In summary, the ability of the financial institutions to realise their security by disposing of the asset is often restricted by a myriad of problems.

More fundamentally, even without these issues there may be significant doubt as to how to sell the asset and if offered for sale, assess any demand for it.

The Solution

Increasingly the financial institutions are turning to property professionals to solve the problem. By directly appointing Chartered Surveyors as Fixed Charge Receivers, as is common practice in the UK, they gain access to professional experience in dealing with the various issues that may act as a barrier to sale.

Chartered Surveyors deal with these issues every day in their normal course of business and the benefits accruing to the financial institution of appointing a Chartered Surveyor as a Receiver over a property asset is that they fully understand all aspects of managing and disposing of the asset - property and financial.

What is a Fixed Charge Receiver?

A fixed charge receiver is a receiver appointed by a lender over a fixed asset i.e a property, rather than a business, where the mortgage has gone into default. They are not to be confused with insolvency practitioners who traditionally handle a floating charge over the assets of a company.

In simple terms, a fixed charge is a mortgage over a property. When a mortgagor (i.e the borrower) defaults on the loan on the property, the mortgagee (ie the financial institution), requires a professional to take charge of the asset and appoints a Fixed Charge Receiver. When appointed, the Fixed Charge Receiver assumes the full responsibilities and rights of the owner of the property. A Chartered Surveyor, acting as a Fixed Charge Receiver, has the property market expertise and experience to act on their behalf in such a professional capacity.

Chartered Surveyors can provide a range of property professional services including the sale, letting and management of the asset.

Services include

- Asset sales
- Lettings
- Professional advice
- Valuations
- Property management
- Tenancy reviews
- Rent reviews
- Rent & service charge collection
- Maintenance programmes
- Asset management
- Boundary mapping
- Financial appraisals

Chartered Surveyors are fully qualified and experienced professionals who have demonstrated their property expertise in accordance with international standards.

They have the skills, knowledge and expertise in property that makes them successful Fixed Charge Receivers.

Appointment of a Receiver

Fixed Charge Receivers are appointed by financial institutions and other lenders who have secured their loans by a legal charge on their property (i.e. a mortgage). NAMA also appoints Fixed Charge Receivers under the National Asset Management Agency Act 2009.

A Receiver may be appointed by the lender in the circumstances where in accordance with the terms of the mortgage there has been an event of default, the required notices have been served and the default has not been remedied within the notice period allowed. An event of default will typically involve a failure to pay interest, or to amortise or repay the loan.

Appointment is straightforward as long as the obligation to pay has arisen and there is a power to appoint either in the Mortgage itself or arising from the legislation. As most of the distressed mortgages were put in place prior to the 2009 Act coming into force, appointments are usually pursuant to the Mortgage deed.

The appointment process is straightforward. The financial institution sends a copy of the mortgage to the Fixed Charge Receiver's solicitor and proof that the ability to appoint has arisen, and they agree commercial terms. They agree a date and a time when the appointment is to commence and execute the appointment deeds.

A Property Receiver can be removed or replaced by the lender at any time.

Powers of a Fixed Charge Receiver

The powers of the Fixed Charge Receiver are usually set out in the mortgage deed under which the receiver is appointed and in the Land and Conveyancing Law Reform Act 2009.

These powers typically include the ability to collect rent, manage the property and the power to sell.

The advantage of appointing a Fixed Charge Receiver is that it places the mortgagor/lender at an arms length basis in terms of the enforcement of the mortgage.

NAMA receivers have greatly enhanced powers under the NAMA Act 2009.

Duties of the Fixed Charge Receiver

The Fixed Charge Receiver has multiple duties of care; to the lender, the borrower and potentially to guarantors.

The Fixed Charge Receiver has a duty to obtain a fair price of the asset and in some cases a duty to repair and make essential repairs. There is a risk that Receivers unfamiliar with the property market may underestimate the extent of duties involved. Chartered Surveyors understand the property market and can answer the important questions i.e. - are there special purchasers, should the asset be sold in one lot or multiple lots, will simple improvements add significantly to the price that might be achieved?

Tax Issues

There may be concern over the tax implications that may come with a property and lenders may feel that a traditional Insolvency Practitioner is more suited to a property receivership because of potential tax complications. However at its essence, a Fixed Charge Receivership is about property. Any property transaction will have tax implications including, but not limited to, Stamp Duty, VAT, Capital Gains Tax (CGT) and potentially tax on income derived from the property. Chartered Surveyors deal with these issues constantly during property transactions and during a Fixed Charge Receivership will have to decide, as would any owner of property, to what extent advice from a specialist tax advisor is required when completing a transaction. This is no different to seeking specialist advice from a lawyer on title issues or a planning consultant on planning issues.

Why appoint a Chartered Surveyor as a Fixed Charge Receiver?

Chartered Surveyors are property professionals who have demonstrated competence and experience in accordance with international standards and are regulated by the Society of Chartered Surveyors Ireland and RICS, the global professional body for Chartered Surveyors.

Appointing a Chartered Surveyor means that the lender can be assured that the property services provided will be carried out by a licensed, qualified and experienced professional who will ensure the maximum return and minimise losses and inefficiencies.

The benefits of appointing Chartered Surveyors as Fixed Charge Receivers:

- ✔ Qualified professionals with expert market and property knowledge
- ✔ Competent and experienced professionals in the provision of all types of property services
- ✔ Regulated professionals committed to ongoing training and professional development
- ✔ Abide by strict codes of professional and ethical conduct

A new statutory property services licensing system has been introduced in Ireland under the Property Services (Regulation) Act 2011, which requires any person or company providing property services to be fully licensed in accordance with the Act. The penalties for persons or companies not holding such licenses include heavy fines and imprisonment.

Chartered Surveyors meet and exceed the statutory requirements for licensing to provide property services as required by the legislation.

Chartered Surveyors are property experts and can manage all aspects of the Property Receivership process thus often reducing the need for extra professional services and fees.

Further Information:

Visit the Society of Chartered Surveyors Ireland website for further information and a full list of Chartered Surveyors who provide Fixed Charge Receivership services.

www.scsi.ie/fcr

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Dating back to 1895, the Society of Chartered Surveyors Ireland is the independent professional body for Chartered Surveyors working and practicing in Ireland.

Working in partnership with RICS, the pre-eminent Chartered professional body for the construction, land and property sectors around the world, the Society and RICS act in the public interest: setting and maintaining the highest standards of competence and integrity among the profession; and providing impartial, authoritative advice on key issues for business, society and governments worldwide.

Advancing standards in construction, land and property, the Chartered Surveyor professional qualification is the world's leading qualification when it comes to professional standards. In a world where more and more people, governments, banks and commercial organisations demand greater certainty of professional standards and ethics, attaining the Chartered Surveyor qualification is the recognised mark of property professionalism.

Members of the profession are typically employed in the construction, land and property markets through private practice, in central and local government, in state agencies, in academic institutions, in business organisations and in non-governmental organisations.

Members' services are diverse and can include offering strategic advice on the economics, valuation, law, technology, finance and management in all aspects of the construction, land and property industry.

All aspects of the profession, from education through to qualification and the continuing maintenance of the highest professional standards are regulated and overseen through the partnership of the Society of Chartered Surveyors Ireland and RICS, in the public interest.

This valuable partnership with RICS enables access to a worldwide network of research, experience and advice.

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