



## Land Registration Act 2002

### Scope of this guide

This guide gives advice on the land registration aspects of transactions by administrators and administrative receivers appointed under the provisions of the Insolvency Act 1986 and receivers appointed under the provisions of the Law of Property Act 1925. It is aimed at administrators, administrative receivers, conveyancers and other legal advisers and you should interpret references to “you” accordingly. Land Registry staff will also refer to it.

## Administration and receivership

**Update** – This edition of the guide replaces the March 2003 edition. Sections 3, 4.2, 4.4, 5.4 and 9 have been amended as a result of the Enterprise Act 2002.

### Contact details

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# Administration and receivership

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# 1 Abbreviations and terms used

In this guide:

“administrator” is an administrator appointed under the provisions of s.8 and Sch B1, IA 1986;

“administrative receiver” is a receiver or manager appointed under the provisions of ss.28 to 49, IA 1986;

“CA 1985” means the Companies Act 1985;

“debenture” is the mortgage or charge, whether legal or equitable, under which the administrative receiver or the receiver is appointed;

“IA 1986” means the Insolvency Act 1986, as amended;

“IR 1986” means the Insolvency Rules 1986;

“LPA 1925” means the Law of Property Act 1925;

“LPA receiver” is a receiver or manager appointed under the provisions of s.109, LPA 1925;

“LRA 1925” means the Land Registration Act 1925, as amended;

“LRA 2002” means the Land Registration Act 2002;

“LRR 2003” means the Land Registration Rules 2003;

“Sch B1” means Schedule B1 to the Insolvency Act 1986 (inserted by the Enterprise Act 2002).

## 2 Introduction

This guide gives advice on the land registration aspects of estate transactions by administrators and administrative receivers appointed under the provisions of the IA 1986, and receivers appointed under the provisions of the LPA 1925. It deals specifically with company administration and receivership. For matters relating to personal insolvency, please see Practice Guide 34 – *Personal insolvency*.

## 3 Administrators

### 3.1 Appointment and powers

An administrator is a person appointed under Sch B1 to manage the affairs, business and property of a company. An administrator must be an insolvency practitioner (paragraph 6 of Sch B1).

An administrator can be appointed by either:

- an administration order made by the court (under paragraph 10 of Sch B1)
- the holder of a qualifying floating charge (under paragraph 14 of Sch B1) or
- the company or its directors (under paragraph 22 of Sch B1).

A qualifying floating charge is one which either:

- states that paragraph 14 of Sch B1 applies to it
- authorises its holder to appoint an administrator, or
- authorises its holder to appoint a receiver who would be an administrative receiver.

A person holds a qualifying floating charge if he holds either:

- a qualifying floating charge which relates to the whole or substantially the whole of the company’s property
- a number of qualifying floating charges which together relate to the whole, or substantially the whole, of the company’s property, or
- charges and other forms of security which together relate to the whole, or substantially the whole, of the company’s property, and at least one of which is a qualifying floating charge.

Where the administrator is appointed by the court, the appointment takes effect at a time appointed by the order, or if no time is appointed, when the

order is made (paragraph 13(2) of Sch B1).

Where the administrator is appointed by the holder of a floating charge, the company or the directors, the appointment takes effect when the appointor files in court a notice of appointment accompanied by the prescribed documents (paragraphs 19 and 31 of Sch B1). The notice must be in form 2.6B (if the appointment is by the holder of a floating charge) (r.2.16, IR 1986), form 2.9B (if the appointment is by the company) or form 2.10B (if the appointment is by the directors) ( r.2.23, IR 1986). The court will issue to the appointor two sealed copies of the notice of appointment, endorsed with the date and time of appointment. The appointor must send one of these to the administrator as soon as reasonably practicable (rr.2.17 and 2.26, IR 1986).

The administrator must perform his functions with the objective of rescuing the company as a going concern or, failing that, achieving a better result for the company's creditors as a whole than would be likely if it were wound up. If neither objective is reasonably practicable, he may realise property in order to make a distribution to one or more secured or preferential creditors (paragraph 3 of Sch B1).

The administrator may do anything necessary or expedient for the management of the affairs, business and property of the company. Without prejudice to the generality of that, he has the powers specified in Schedule 1, IA 1986. These include power to sell and to grant or accept a surrender of a lease. There is no express power to make a gift. A person dealing with the administrator in good faith and for value need not inquire whether the administrator is acting within his powers (paragraphs 59 and 60 of Sch B1). The administrator acts as the agent of the company (paragraph 69 of Sch B1).

### **3.2 Relationship with liquidation and receivership**

An administrator cannot be appointed while the company is in liquidation, except by the court on the application of the liquidator or, in some circumstances, on the application of the holder of a qualifying floating charge. If the court appoints an administrator it will discharge any winding-up order (paragraphs 8, 37 and 38 of Sch B1).

A company that is in administration cannot normally be placed in liquidation (paragraphs 40 and 42 of Sch B1).

Where a company is in administrative receivership an administrator can be appointed only by the court, and only in the limited circumstances set out in paragraph 39 of Sch B1. The appointment of an administrator automatically dismisses any administrative receiver of the company (paragraph 41(1) of Sch B1). An administrative receiver cannot be appointed while the company is in administration (paragraph 43(6A) of Sch B1).

The existence of an LPA receiver does not prevent an administrator being appointed, nor is an LPA receiver automatically dismissed if this happens. However, an LPA receiver must vacate office if required to do so by the administrator (paragraph 41(2) of Sch B1).

### **3.3 Other effects of administration**

While a company is in administration its property remains vested in it, but:

- no security over the company's property can be enforced without the consent of the administrator or the court
- no goods held by the company under a hire-purchase agreement can be repossessed without the consent of the administrator or the court
- no one can start or continue proceedings or any other legal process against the company without the consent of the administrator or the court
- a landlord cannot forfeit a lease belonging to the company by peaceable re-entry without the consent of the administrator or the court (paragraph 43 of Sch B1).

### 3.4 Noting the appointment of an administrator

You can apply to note the appointment of an administrator in the register (r.184, LRR 2003, as amended by The Enterprise Act 2002 (Insolvency) Order 2003). You must supply:

- form AP1
- the fee payable under the current Land Registration Fee Order, and either
- an office or certified copy of the order of the court appointing the administrator and showing the date and time of the appointment, or
- a sealed copy of the notice of appointment in form 2.6B, 2.9B or 2.10B (prescribed under the IR 1986), as appropriate.

You may send us a certified copy of the notice of appointment instead of an original sealed copy, but it must be a copy of a sealed copy showing the date and time of filing.

Note that form 2.12B (although it is headed ‘Notice of administrator’s appointment’) is not sufficient. This form is prescribed under the IR 1986 for cases where an administrator is required to give notice to any person under those rules or the IA 1986. There is no requirement in the IA 1986 or IR 1986 to give notice to Land Registry. It is therefore not the ‘notice of appointment’ referred to in r.184, LRR 2003. That rule refers to the notice filed in court under paragraph 18 or 29 of Sch B1 (ie form 2.6B, 2.9B or 2.10B).

We will make the following entry in the proprietorship register:

“(Date) By [an order of the Court made on] [a notice of appointment filed on] (date) AB of (address) was appointed administrator of XY Limited”.

An application to note the appointment of an additional or replacement administrator may be made in the same way.

To cancel this entry, apply in form AP1, with evidence that the administration has come to an end. There is no fee. The evidence will normally be either:

- an office or certified copy of a court order, or
- a certified copy of an appropriate notice registered with the Registrar of Companies. Depending on the circumstances, this may be any of forms 2.30B, 2.32B, 2.33B, 2.34B or 2.35B, prescribed under rr.2.110, 2.111, 2.113, 2.116, 2.117 and 2.118, IR 1986.

Although administration normally terminates automatically after one year, this period can be extended (see section 3.5 *Dispositions by an administrator*). We will not cancel the entry merely on grounds of the lapse of time without evidence that an appropriate notice has been registered with the Registrar of Companies.

### 3.5 Dispositions by an administrator

Unless the appointment is noted in the register as described in section 4.4 *Noting the appointment of an administrator*, you must supply evidence of the administrator’s appointment when applying to register any disposition made by the administrator.

The evidence must be an office, sealed or certified copy of the court order or notice of appointment, as described in section 3.4 *Noting the appointment of an administrator*. The appointment of an administrator ceases to have effect after one year, unless extended. It can be extended only for a specific time and only by either:

- an order of the court, or
- (once only and for not more than six months), consent of all the secured creditors and a majority of the unsecured creditors of the company (paragraphs 76 to 78 of Sch B1).

Therefore, if a disposition is made by an administrator more than one year after the company went into administration, you must supply evidence that the administrator's appointment has been extended, whether or not his appointment has been noted in the register. The evidence should be either:

- an office copy or certified copy of the relevant order of the court, or
- a certified copy of a notice of extension in form 2.31B.

The administrator can dispose of the company's property free from any floating charge to which it is subject (paragraph 70 of Sch B1). When you lodge such an application our requirements for removing notice of the floating charge will depend upon how it was entered in the register.

Where a floating charge has been entered either:

- as an agreed notice
- by the registrar on first registration of the registered estate, or
- under the provisions of the LRA 1925

we will require a form CN1 signed by the administrator, with panel 12 clearly stating that the disposal is 'pursuant to paragraph 70 of Schedule B1 to the Insolvency Act 1986'.

Where a floating charge has been entered as a unilateral notice, it can be removed by the beneficiary (applying in form UN2), or the registered proprietor, or a person entitled to apply to be registered as proprietor, can apply to cancel it using form UN4, in the usual way (see Practice Guide 19 – *Notices, restrictions and the protection of third party interests in the register*).

The administrator can dispose of the property free from any other charge with the authorisation of the court (paragraph 71 of Sch B1). In such a case you will need to lodge, with the application to register the disposition, an office or certified copy of the court order authorising disposal free from the charge, so that the registration (or notice) of the charge can be cancelled.

### **3.6 Acquisition of an estate by a company in administration**

When, with the authorisation of the court, an administrator has disposed of a company's property free from a charge as described in section 4.5 *Dispositions by an administrator*, the chargee is entitled to their original priority over any new estate the company acquires with the proceeds (paragraph 70(2) of Sch B1).

For that reason, when registering a company that we know is subject to an administration order as proprietor of an estate, we will make the following entry in the charges register:

"(Date) The registered estate is subject to such security or securities as may exist and affect the same by virtue of the provisions of paragraph 70(2) of Schedule B1 to the Insolvency Act, 1986".

We will cancel the entry, or any similar entry referring to s.15(4), IA 1986, if the administrator produces a certificate that no such securities affected the title or, where they did, that they have been discharged. A form CN1 will be required but there will be no fee.

### **3.7 Execution by administrator**

A company in administration executes deeds either by affixing the company seal in the presence of the administrator (paragraph 60 of Sch B1 and paragraph 8 of Schedule 1, IA 1986), or by the administrator signing in the name and on behalf of the company (paragraph 60 of Sch B1 and paragraph 9 of Schedule 1, IA 1986, and s.74(3), LPA 1925).

The following are the suggested forms:

Where the company seal is used:

Executed as a deed by affixing the common seal of *(name of company)* (in administration) in the presence of:

*Common seal of company*

\_\_\_\_\_  
Administrator

Where the company seal is not used:

Signed as a deed by [*the company*] (in administration) by [*name of administrator*], its administrator, pursuant to powers conferred under the Insolvency Act 1986, in the presence of:

*Sign here the name of the company and your own name, eg*

***John Smith Ltd by Jane Brown,  
its administrator***

Signature of witness \_\_\_\_\_

Name (in BLOCK CAPITALS) \_\_\_\_\_

Address \_\_\_\_\_

## 4 Administrative receivers

### 4.1 Definition

An administrative receiver is either:

- a receiver or manager of the whole (or substantially the whole) of a company's property appointed by, or on behalf of, the holders of any debentures of the company secured by a charge which, as created, was a floating charge, or such a charge and one or more other securities, or
- a person who would be such a receiver or manager but for the appointment of some other person as the receiver of part of the company's property (s.29(2), IA 1986).

### 4.2 Appointment

Appointment may be by the court or under powers contained in a debenture. An administrative receiver must be an insolvency practitioner (s.388, IA 1986).

If the appointment is under powers contained in a debenture created by deed, a statutory power arises when:

- the mortgage money has become payable
- the power of sale is exercisable (ss.101(1), 103 and 109, LPA 1925).

The statutory power may be varied, extended or excluded by the debenture, which may contain an express power to appoint (ss.109(3) and 101(4), LPA 1925). Any well drawn debenture will contain express provisions determining when an appointment may be made.

However, an administrative receiver cannot be appointed by the holder of a debenture dated on or after 15 September 2003, notwithstanding any provision contained in the debenture (s.72A, IA 1986, which came into force on that day).

This is subject to limited exceptions set out in ss.72B to 72GA, IA 1986.

The debenture holder may make the appointment under the statutory power by writing under hand.

#### 4.3 Powers of an administrative receiver

The powers given to an administrative receiver by the debenture are deemed to include the powers specified in Schedule 1, IA 1986 except in so far as they are inconsistent with the provisions of the debenture (s.42(1), IA 1986).

The Schedule 1 powers include power to sell and to grant, or accept a surrender of, a lease. There is no express power to make a gift.

#### 4.4 Execution by administrative receiver

An administrative receiver has a statutory power to use the company's seal and to execute any deed in the name and on behalf of the company (s.42(1) and Schedule 1, IA 1986).

The suggested form of execution where the company's seal is not used is:

Signed as a deed by [*the company*] by [*name of administrative receiver*] its administrative receiver, appointed under a [*debenture*] dated [*date*] in favour of [*the debenture holder*] in the presence of:

*Sign here the name of the company and your own name, eg*

***John Smith Ltd by Jane Brown,  
its administrative receiver***

Signature of witness \_\_\_\_\_

Name (in BLOCK CAPITALS) \_\_\_\_\_

Address \_\_\_\_\_

The powers of execution set out at section 6.4 *Execution by LPA receiver* in relation to LPA receivers will normally also be available to administrative receivers, but in practice the statutory power will be used.

## 5 LPA receivers

### 5.1 Definition

An LPA receiver is a receiver appointed under the statutory powers (see section 4.2 *Appointment*) or under an express power contained in a debenture, who does not meet the requirements for an administrative receiver as set out at section 4.1 *Definition*.

### 5.2 Appointment

An LPA receiver can be appointed in the same circumstances and manner as an administrative receiver, as set out in section 4.2 *Appointment*. A body

corporate or an undischarged bankrupt cannot act as receiver of the property of a company (except in the latter case under an appointment made by the court) (ss.30 and 31, IA 1986).

### 5.3 Powers of a LPA receiver

The LPA 1925 gives a receiver very limited statutory powers (s.109, LPA 1925). These powers are almost invariably extended by the debenture and must be extended if the LPA receiver is to have power to dispose of the company's property.

### 5.4 Execution by LPA receiver

An LPA receiver has no statutory power to execute on behalf of the company.

The debenture will normally include a power of attorney in favour of any receiver. Such a power is not a security power and will not survive liquidation (see section 7 *The effect of liquidation on the receiver's powers*). If the receiver executes as attorney, even if the power is under 12 months old, we will need the applicant for registration to lodge with the application a statutory declaration declaring (if such is the case) the following:

- That he or she did not, at the time of the completion of the transaction, know of any revocation of the power or know of the occurrence of any event (such as the winding-up of the company) which had the effect of revoking the power.

Alternatively we will accept a certificate signed by a conveyancer certifying (if such is the case) the following:

- That the applicant did not, at the time of completion of the transaction, know of any revocation of the power or know of the occurrence of any event (such as the winding-up of the company) which had the effect of revoking the power.

Usually the debenture will also give the receiver the right to sell or otherwise dispose of the company's property. Such a power includes the power to execute in the name and on behalf of the company and will survive liquidation (*Barrows v Chief Land Registrar, The Times, October 20, 1977*).

In this case the following form of execution is suggested:

Signed as a deed by [*the company*] by [*name of receiver*] its receiver pursuant to powers granted to [*him/her*] by clause [...] of a [*debenture*] dated [*date*] in favour of [*the debenture holder*] in the presence of:

*Sign here the name of the company and your own name, eg*

***John Smith Ltd by Jane Brown,  
its administrative receiver***

Signature of witness \_\_\_\_\_

Name (in BLOCK CAPITALS) \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

The deed can also, at the direction of the receiver, be sealed by the company using its common seal in the presence of the duly authorised officers of the company, or signed as a deed by a director and secretary or by two directors of the company.

## 6 Register entries on appointment of a receiver

The debenture under which the receiver is appointed should already be registered or noted against the title. As the property remains vested in the company, you cannot have the receiver registered as proprietor of the title nor can you have notice of the receiver's appointment entered in the register.

The receiver will want to ensure that the company's address for service in the register is one at which any notices served by us will be received. The receiver may change the address or add an additional address (a maximum of three addresses are allowed (r.198, LRR 2003)).

If you want to lodge such an application, we require:

- a form AP1
- a certified copy of the appointment of the receiver
- a certified copy of the debenture (if it is not already registered or noted).

No fee is payable for this application.

## 7 The effect of liquidation on the receiver's powers

A receiver is agent of the company. On liquidation this agency comes to an end but the receiver continues to have power to act for the purposes of holding and disposing of the company's property and may use the company's name for that purpose (*Sowman v David Samuel Trust Ltd* [1978] 1 All ER 616).

In a winding-up by the court, any disposition of the company's property after commencement of the winding-up is void unless sanctioned by an order of the court (s.127, IA 1986). However, where a debenture has been created prior to the winding-up, any subsequent disposition by the debenture holder or receiver under powers contained in the debenture does not require an order of the court.

The provisions of ss.238 to 241 and 244 and 245, IA 1986 which relate to transactions at an undervalue, preferences, extortionate credit transactions and the avoidance of certain floating charges, may have the effect of invalidating the debenture wholly or in part. If, when an application based on a disposal by a receiver is being considered, there is any suggestion that the liquidator may be seeking to have the debenture avoided under these provisions, we may serve an appropriate notice giving an opportunity for objection. If the applicant is aware of any such challenge you must disclose it to us when the application is lodged.

If the debenture gives a power of attorney to the receiver, this power is not a security power and it will be revoked by the winding-up of the company. However, the right to sell, or otherwise dispose of the company's property, will include the right to execute in the name and on behalf of the company (see section 5.4 *Execution by LPA receiver*) and such a right will continue after winding-up commences (*Barrows v Chief Land Registrar, The Times, October 20, 1977*).

## 8 Release of an estate from mortgages and charges on a disposition by a receiver

A receiver is agent of the company not of the debenture holder (s.44(1)(a), IA 1986; s.109(2), LPA 1925).

A receiver has no power to discharge the company's property from any mortgage or charge, including the debenture, regardless of whether the mortgage and charge was created before or after the debenture.

On a sale by a receiver the purchaser must ensure that a release is obtained for all mortgages and charges from which that purchaser is to take the property free. This includes the need to obtain a release from the debenture itself and from any mortgages and charges dated after it.

## 9 Evidence required to support an application for registration based on a disposition by receiver

If your application for registration is based on a disposition by a receiver, in addition to the normal evidence, we will require:

- **the debenture or a certified copy of it** [this will already be with us if the title is registered and the debenture is registered or noted]
  - we will check that the debenture has been registered under s.395, CA 1985, that it is properly executed and that it contains the appropriate provisions to allow the receiver to be appointed and to carry out the disposition.
- **evidence that the power of appointment of a receiver under the debenture has arisen**
  - we will usually accept a certificate by, or on behalf of, the chargee that the power of appointment under the debenture has arisen
  - if the debenture is dated on or after 15 September 2003, and the appointment is not made by the court, we also require evidence that one of the exceptions in ss.72A to 72GA, IA 1986, applies.
- **the instrument of appointment of receiver or a certified copy of it**
  - if joint administrative receivers are appointed the appointment must state whether they can act jointly and severally (s.231(2), IA 1986).
- **a release or discharge from all mortgages or charges, including the debenture, from which the applicant is to take the property free**
  - if the title is already registered the release or discharge will need to cover only mortgages or charges, which have been protected in the register.
- **if the receiver executes as attorney, evidence of non-revocation**
  - (see section 5.4 *Execution by LPA receiver*).
- **details of any challenge to the validity of the debenture by a liquidator of the company, including the name and address of the liquidator**
  - (see section 7 *The effect of liquidation on the receiver's powers*).

## 10 Enquiries and comments

If you have a particular concern which is not covered by this guide, please

contact Land Registry in advance of the transaction – see the *Contact details* panel on the front cover of this guide. If the transaction is particularly complex it may be better if you make your enquiry in writing at the Land Registry office which will process your application.

If you have any comments or suggestions about our guides, please send them to:

Registration Change Group  
Land Registry  
Lincoln's Inn Fields  
London  
WC2A 3PH  
(DX 1098 London/Chancery Lane WC2).

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## Land Registry advisory policy

We offer advice to our customers through our publications and enquiry services and through the day-to-day handling of applications.

We provide factual information including official copies of registers, title plans and documents, searches and details of our forms and fees.

We provide procedural advice to explain how the land registration system works and how to make applications correctly. This includes:

- advice in advance of an application, where this is requested
- where an application is defective, advice as to the nature of the problem and what options, if any, are available to put it right
- an approval service for estate layout plans and certain other land registration documents.

There are limits to the advice that we will provide. We will not provide legal advice.

This means that:

- we will not approve the evidence to be produced in support of a registration application before we receive the application
- apart from procedural advice, we will not advise on what action to take
- we will not recommend a professional adviser but can explain how to find one.

We provide advice only about real cases, not about theoretical circumstances. We will not express a view on questions where the law is complex or unclear except where the question arises on a live registration application.

In providing this factual information and procedural advice we will:

- be impartial
- recognise that others may be affected by what we say
- avoid any conflict of interest.

## Remember

- **If the application is by an administrator, have you supplied the administration order?**
- **If the application is by a receiver, have you supplied evidence of their appointment?**
- **If a receiver has acted as an attorney, has the evidence of non-revocation been lodged?**
- **Have you enclosed the correct fee (see the current land negotiation Fee Order)?**
- **Have you used a form AP1?**
- **Important: please check clerical details in all forms and deeds (especially charges and mortgages) and pay particular attention to all dates, property descriptions, title numbers, and full names of parties, especially where they appear in more than one deed.**

**Please note that Land Registry may be unable to process applications that are incomplete or defective and your application will risk losing its priority if we have to return it to you – see Practice Guide 49 – *Rejection of applications for registration* for more information.**

Peter Collis  
Chief Land Registrar

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