



Property Council New Zealand
welcomes you to

“WHEN GOOD TENANTS GO BAD”





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When Good Tenants Go Bad

Presentation to Property Council New Zealand by
17 November 2009

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Agenda

- 🔥 Appointment types – brief overview
- 🔥 Receiver/Liquidator/Administrator as tenants
- 🔥 Tenant in receivership – key issues
- 🔥 Summary

Appointment Types

	Receivership	Liquidation	Voluntary Administration
Ultimate strategy	Recover funds for secured creditor	Recover funds for all creditors	Continue in business, or better return than Liq
Appointor	Secured Creditor, Trustee Company	Shareholders, Court, Creditors	Secured Creditor, Directors, Court, Liquidator
Power of appointment	Trust Deed, GSA	CA 1993	CA 1993
Governing Law	CA 1993, and Receiverships Act 1993	Part 16 of the CA 1993	Part 15A of the CA 1993
Indemnity/Funding	Assets/Appointor	Assets	Assets

Administrator as tenant

- 🔥 Primary objective is to continue in business, or obtain better return than an immediate liquidation
- 🔥 Landlord may become party to a DOCA
- 🔥 If Company is a tenant then it has rights under lease or protection under PLA 2007
- 🔥 Every administration is different, but administrator will determine a strategy quickly
- 🔥 Administrator has obligation to pay rent after 7 days if in possession, but unlikely to adopt any formal lease

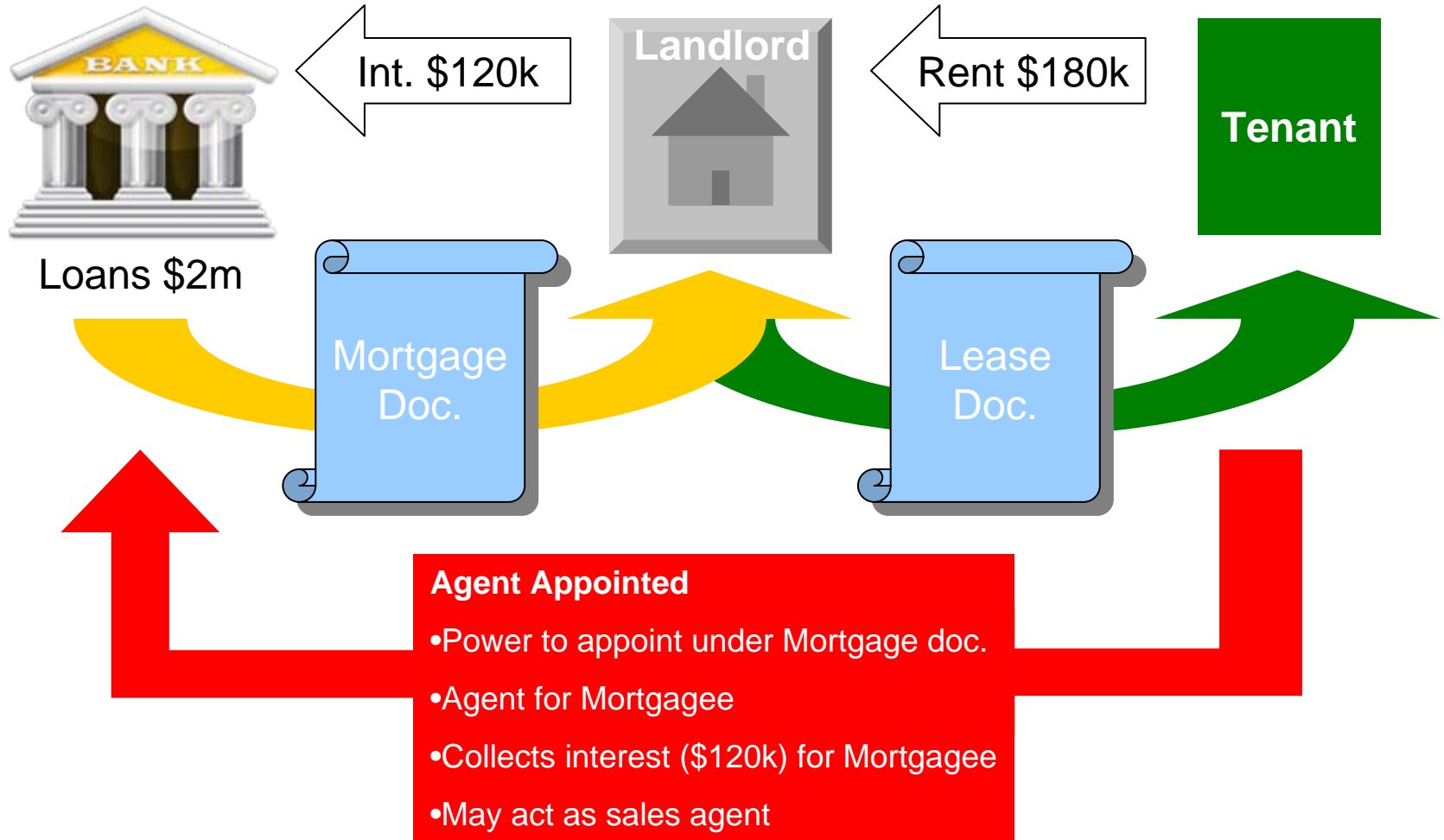
Liquidator as tenant

- 🔥 Primary objective is to realise assets and distribute proceeds to **all** creditors in order of priority
- 🔥 If Company is a tenant then it has rights under lease or protection under PLA 2007
- 🔥 Case by case basis – continuing to trade and sell as going concern?
 - 🔥 Yes – generally rent considered as a cost of realising assets
 - 🔥 No – removal/sale of assets, must provide liquidator reasonable time to vacate (PLA), post-liquidation rent generally considered as unsecured
 - 🔥 However, both subject to availability of funds

Receiver as tenant

- Primary objective is to realise assets (either individually or on a going concern basis) to repay secured creditor(s)
- If Company is a tenant then it has rights under lease or protection under PLA 2007
- Every receivership is different, but receiver will determine a strategy quickly re trading on / shut down
- Receivers have obligation to pay rent after 14 days if in possession, but unlikely to adopt any formal lease
- Options include sale of business in situ, or removal of assets, often depending on stance of the landlord

Receivers of Rent



Tenant in receivership – key issues

-  Receivers' rights as a tenant
-  Receivership timeframes
-  Landlord's rights as a creditor
-  Receivers' strategy – trade or close
-  Other issues
-  Your strategy as Landlord

Receivers' rights as a tenant

- Receivers have 14 days to determine if they require the premises going forward – right to cancel lease and not liable for rent in 14 day period
- Ability to enforce rights as tenant under PLA
- Right to enforce lease agreement and PLA (however unlikely as enforcement beyond 14 days means they are locked in for full lease term)
- Relief against cancellation (if going concern)
- Assignment of lease (if going concern)
- Peaceful enjoyment during occupation

Receivership timeframes

- 🔥 Numerous activities at the start of a new receivership
- 🔥 Landlords are usually high on list of priorities, depending on whether there is a formal lease agreement in place and if rent is up to date
- 🔥 Receivers have 14 days to determine if they require the premises going forward
- 🔥 If trading on (to sell business as a going concern) receiver requires:
 - 🔥 short lease term(s) (i.e. weekly or monthly)
 - 🔥 indefinite terms (i.e. may last weeks or years)
 - 🔥 rent payment in line with lease term
- 🔥 If exit then will try and complete quickly to minimise cost

Landlord's rights as a creditor

- 🔥 **Distrain is no longer lawful (Distress and Replevin Act 1908 repealed)**
- 🔥 Landlord's claims for arrears are generally unsecured by nature – stand in line
- 🔥 Post receivership, may evict a receiver however must act in accordance with the PLA
- 🔥 Landlord may have a claim for “damages” for loss of future rent over and above current re-letting value – normally unsecured
- 🔥 Landlord can accept lack of performance and call on any existing personal guarantee and indemnity

Receivers' strategy – trade or close

- 🔥 Receivers strategy is to maximise recoveries

Continue trading and sell as a going concern

- 🔥 Assess viability and immediate cash position – need to negotiate reduction for trading period?, or pay rent out of sale proceeds?
- 🔥 If purchaser of business wants premises then they may adopt lease (by assignment) or negotiate a new lease with a landlord as part of SPA
- 🔥 Landlord must not unreasonable withhold consent (ss 224-226, PLA)
- 🔥 Receiver may assist in negotiation process between purchaser and landlord to facilitate agreement as part of sale

Receivers' strategy – trade or close

- 🔥 Receivers strategy is to maximise recoveries

Closure of the business

- 🔥 If unable to sell as going concern – removal and/or auction of assets
- 🔥 Must be given reasonable timeframe to remove assets
- 🔥 Auction of assets least attractive option for all parties
- 🔥 Landlord may want to purchase assets or leasehold improvements in this situation

Your strategy as Landlord

All situations are unique, however in light of the above:

- 🔥 Always contact the receiver and discuss their strategy
- 🔥 Be prepared to negotiate a new arrangement for the receivers' tenure, remembering:
 - 🔥 Sale as a going concern is a win / win and best scenario
 - 🔥 this is not a adoption of the existing lease
 - 🔥 put your best foot forward but be reasonable, if faced with unreasonable risk, receivers may walk away
 - 🔥 bigger picture, to keep the business open and trading

Your strategy as Landlord (continued)

- 🔥 allow the receiver flexible terms
- 🔥 trust reputable receivers, (they will pay rent while in occupation, it is a cost of the receivership and has priority)
- 🔥 If no underlying business then receivers will look to close down and exit as efficiently as possible, PLA reasonable time to vacate

Summary

- 🔥 If Company is a tenant it has rights under lease or protection under PLA 2007
- 🔥 Receiver has obligation to pay rent after 14 days if in possession, unlikely to adopt lease
- 🔥 Receiver will want to work with landlord if premises critical to sale of business – win / win
- 🔥 If no sale can be achieved then exit may involve auction or removal of Company assets
- 🔥 Communication is critical
- 🔥 If in doubt seek, independent advice