



Banking & Payments
Federation Ireland

A Residential Tenant's Guide to Receivership

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ABOUT THIS GUIDANCE BROCHURE

The Banking & Payments Federation Ireland (BPFi) is the principal voice of the banking and financial services sector in Ireland.

We have designed this guide for tenants of a property where:

- A bank or financial institution has appointed a receiver over the property in which you, the tenant, live; and
- The receiver has asked you to pay your rent to him or her.

WHAT IS A RECEIVER?

The law provides banks and other creditors (those who are owed money) several different remedies where a borrower does not meet his or her debt obligations in full. Appointing a receiver is one of the more important and widely used remedies.

A receiver is someone appointed by a bank to collect income (such as rent) from assets owned by a borrower so that this money can be used to pay what the borrower owes the bank. The receiver might be an accountant, solicitor or real estate professional.

There are several different types of receiver and somewhat different legal rules apply to each type. These are the most important types of receiver:

- A receiver appointed by a bank on foot of a mortgage. This type of receiver is sometimes called a “receiver of mortgaged property” or a “receiver of rent”. This is the type of receiver you (as tenant) are most likely to encounter.
- A receiver appointed over a company (where the company is said to be “in receivership”). This type of receiver is sometimes called a “corporate receiver”.
- A receiver appointed by the National Asset Management Agency (NAMA) under its statutory powers.

RECEIVER OF MORTGAGED PROPERTY

If your landlord is an individual (not a company) and a receiver has contacted you, the most likely reason is that he or she has been appointed in relation to a mortgage your landlord has over the property you live in. That means the receiver is most likely to be a receiver of mortgaged property, so this guide focuses on that category of receiver. It is possible that the receiver belongs to another category described above and, if so, the receiver's letter will indicate that (if it does not, the receiver will clarify the point if you request that).

A receiver of mortgaged property:

- Is appointed by a bank in relation to a mortgage your landlord has put in place over the property you live in;
- Has basic functions that are set out in legislation - if the landlord signed the mortgage before 1st December 2009, the legislation is the Conveyancing Act 1881; the Land and Conveyancing Law Reform Act applies to mortgages signed from 1st December 2009 on;
- (Most likely) has additional functions that are contained in the mortgage document itself; and
- Is regarded as an agent of your landlord (that is, the receiver has power to act on behalf of the landlord under the mortgage document) even though the receiver is appointed by the bank.

All of your landlord's obligations to you under your lease and under law (for example, the Residential Tenancies Act 2004) remain the responsibility of the landlord and are not affected by the receivership. In general, neither the bank nor the receiver take over the landlord's obligations to you.

Generally, the appointment of the receiver does not change your obligations under your lease. However:

- You must pay the rent to the receiver if appointed and you are entitled to a receipt for that payment if you request it;
- You should not pay your rent to your landlord while a receiver remains appointed;
- If you fail to meet your obligations under the lease, it is possible for the receiver to enforce them instead of your landlord.

Other Questions You May Have

If I pay my rent to the receiver can I be sure my landlord cannot claim the rent is unpaid to him/her?

Yes, you can. Once you pay the receiver the rent that means you have met your obligations to pay that rent under your lease. The receiver will give you a receipt for the rent and it is important you keep the receipt. Once you produce a receipt, your landlord cannot pursue you for the rent you have paid to the receiver.

My landlord is putting me under pressure to pay rent to him or her directly; what do I do?

Do not pay rent to your landlord if a receiver has been appointed. Contact the receiver straight away. If you experience serious harassment or threats of violence from your landlord, we recommend you also notify the Garda Síochána and consider calling Threshold (see "Useful Contacts" below). In some cases a receiver may seek a court order directed to your landlord to stop him or her interfering with the collection of rent.

My dwelling needs urgent repairs carried out; who is to do this?

We recommend you contact the receiver in the first instance. While there is no legal obligation on the receiver to carry out repairs, the receiver may, with the bank's permission, use rent he or she collects to carry out limited urgent repairs and maintenance.

What about the deposit I paid under my lease - who pays that back to me?

Your landlord remains liable to return your deposit to you (unless you forfeit it, for example, by not paying your rent or by damaging the landlord's property). The receiver is not liable to repay the deposit you paid to your landlord. Very occasionally, however, a receiver may pay deposits back to tenants (for example, if the receiver wishes tenants to agree to end their leases early to enable the bank sell the landlord's property in vacant possession). However, the receiver has no legal obligation to do this.

If you enter into a tenancy when a receiver has already been appointed, you should ensure that the lease makes clear at the outset who is responsible for the return of your deposit at the end of the tenancy.

Will the receiver keep the landlord's insurance in place?

The mortgage document usually means your landlord has promised the bank to keep your dwelling insured to a certain standard and for certain risks only (this standard is not necessarily the same as the standard set out in your lease and will not cover any contents in the dwelling, and may not cover third party liabilities). The receiver must use the rent to keep any insurance required by the mortgage in place (before he or she uses it to pay what your landlord owes the bank).

Routine queries about my dwelling: who will answer these, my landlord or the receiver?

We strongly recommend you contact the receiver in the first instance.

Can the receiver use his powers under the mortgage to terminate my lease (that is to end it early)?

Normally, the receiver can only terminate your lease in the same circumstances as your landlord can. For example, if the receiver wishes to do this he or she must give you advance notice and the length of that notice must meet the standards set out in your lease and in the Residential Tenancies Act. However, in certain exceptional circumstances, the law gives the bank additional powers to terminate a lease. For example, a bank can ask a court to terminate a lease if it proves it was put in place without the bank's consent and that it reduces the value of the bank's security. Also, the bank can disregard a lease where it requires the tenant only to pay a rent which is well below market value, or if it contains other terms that would not make good commercial sense for the landlord.

Do I lose my rights under the residential tenancies act if a receiver is appointed?

Normally no, but see the exceptional circumstances mentioned above.

THIS IS A GENERAL GUIDE ONLY

This guide is designed to give you general guidance. The law on receivers is complex and this leaflet does not amount to legal advice to you.

This leaflet is for tenants of dwellings in the Republic of Ireland (the law is different in Northern Ireland and elsewhere).

If you need legal advice, we recommend you consult a solicitor. Threshold may also be able to offer you guidance. (See "Useful Contacts" below.)

USEFUL CONTACTS

Private Residential Tenancies Board

W: www.prtb.ie

Threshold

W: www.threshold.ie

Citizens Information

www.citizensinformation.ie

Banking and Payments Federation Ireland

www.bpfi.ie

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Banking & Payments
Federation Ireland

Nassau House
Nassau Street
Dublin 2
Ireland

+353 (1) 6715311
info@bpfi.ie

www.bpfi.ie

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