**The rates scam, how Land and Property Services works with the banks**

Land and Property Services [“LPS”] is the part of the Department of Finance which collects the rates from the public.

Some years ago, a change was made and vacant properties were no longer exempt from rates. It was enacted in Article 25A of the Rates [Northern Ireland] Order 1977. Here it is:

**[F1Liability to be rated in respect of certain unoccupied hereditaments**

**25A.**—(1) Subject to the provisions of this Order, if the conditions specified in paragraph (2) are satisfied a person shall be chargeable to rates in respect of a hereditament which is unoccupied.

(2) The conditions are—

(a) the hereditament is one to which Schedule 8A applies; and

(b)the person is entitled to possession of it.

(3) A person shall be chargeable to rates under this Article only in respect of a period during which—

(a)the hereditament is unoccupied, and

(b)

both the conditions specified in paragraph (2) are satisfied.

(3A) **F2**. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(4) For the purposes of this Article a hereditament is unoccupied only if no person is in occupation of any part of it.

(5) For the purposes of this Article a hereditament which is not in use shall be treated as unoccupied if (apart from this paragraph) it would be treated as occupied by reason only of there being kept in or on the hereditament plant or machinery—

(a)

which was used in or on the hereditament when it was last in use; or

(b)

which is intended for use in or on the hereditament.

(6) Schedule 8A (which makes further provision relating to the liability to be rated in respect of certain unoccupied hereditaments) shall have effect.**]**

So to be liable for rates , you have to fall within Schedule 8 [which all ordinary persons would do ] and be entitled to possession of the house.

It has come to my attention that , when a bank or other lender seeks the eviction of the mortgagor they get up to a trick, aided and abetted by LPS, to try to ensure that the home owner pays the rates, even after they have been put out of their home.

The trick works as follows.

There are two remedies usually available to a bank or building society, where the mortgagor has defaulted.

The most obvious is to seek an order for possession of a home . This requires the bank to go to court and seek an Order.

The bank then passes the Order to the Enforcement of Judgements Office. It is responsible for the collection of debts adjudged to be due, and for the actual seizing of land and property. Ultimately, the EJO can employ the police to force an eviction or the seizure of goods. The EJO will contact the householder and , usually , there is an agreement about handing over the keys. In those circumstances the bank obtains possession.

But, in order to avoid liability for rates, the bank , as well as obtaining an order for possession, uses a little known provision on the mortgage agreement. In circumstances where there has been a default in repayment, the bank can, under the terms of the mortgage, appoint a fixed charge receiver. The receiver, frequently an estate agent, is legally acting not for the bank but for the householder. The appointment is made by the bank, without the permission of the mortgagor and frequently without the mortgagor’s knowledge. The receiver’s job is to market the house and find a purchaser. All the costs and liabilities of the receiver are to be the responsibility of the householder. But there is a further consequence. The banks assert that , because the receiver acts for the householder, that person hasn’t really left the property and must still be liable for the rates.

How does this work in practice? It’s simple. The LPS has a decision to make. To whom does it send the rates bill for a repossessed, empty property? The bank will disclaim liability, citing the fixed charge receiver ploy. Rather than take on the bank, the LPS demands payment from the former owner and, if none is forthcoming, LPS issues proceedings.

Anecdotally, I understand that most people pay up.

However , recently the LPS has withdrawn one such set of proceedings in the face of opposition.

The simple explanation for the LPS attitude is that it is easier to take on the ordinary citizen than the banks.

Experience has shown that the LPS takes the word of the bank, that they are not liable , because a fixed charge receiver was in place. The bank’s solicitors, ever keen to make a good buck with the client , will quote cases from England, relating to receivers being appointed to limited companies.

A closer examination of the law in Northern Ireland tells a different tale.

First , regarding receivers, they are appointed under the provisions of the Conveyancing and Law of Property Act 1881. By Section 24 [8] of the Act , a receiver must apply any monies received by him , first, in the discharge of all rents, rates and outgoings whatever affecting the mortgaged property. So it is clear that the law envisages that the receiver is liable at first instance for rates, although he is entitled to be indemnified by the bank in the long run.

Even if there was some substance to the bank’s cunning plan, the Rates Order applies an entirely different test.

One limb of Article 25A is that , in order to be liable, the person must be entitled to “possession”. If a bank has obtained an order for possession and had that order enforced by the EJO, it is impossible to argue that the householder retains possession. Even more so when the receiver Lye, Cheat and Steele, Estate Agents, go in , change the locks , put up a “for sale” sign and advertise it online and in their glossy brochure, usually with the words “vacant possession”. The former owner is certainly not in possession. He may , under the legal fiction, have LCS Estate agents, acting as his agent in the sale of the property but that’s all.

The LPS have tried to get around this difficulty, by employing different tests, in correspondence with householders. “Owner”, “registered owner” , denying that the bank ever repossessed the property , even when the householder was evicted, and so on.

The cumulative effect of all this legalese frequently persuades former owners to capitulate and pay up. The winner in all this are the banks.

So, what should the householder do? Make notes of conversations. Keep all correspondence. Keep your nerve. Don’t pay the rates. Quote the legislation.