

This guidance is tailored specifically for official receivers. It is discretionary and not designed for use by third parties. This version was the most up to date guidance available to official receivers as at 10 March 2020.

30. Jointly owned tenanted property

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Available on ISCIS (formerly annexed to this chapter):

Note: To access the templates on ISCIS please use 'annex' as your search term in document production and include word documents in the search.

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Introduction

30.1 General

This chapter provides guidance in respect of a property jointly owned by a bankrupt and another where the owners have entered into an assured shorthold tenancy (AST) agreement with a tenant or tenants in relation to the property. The chapter is not intended to be an exhaustive account dealing with every possible scenario which may be encountered when dealing with jointly owned tenanted property, but does provide information relating to those situations that the official receiver is most likely to encounter. Unless stated otherwise, the types of tenancies discussed are ASTs (see paragraph 30.7). Later guidance in this chapter provides information on unusual situations.

The chapter assumes for simplicity that the property is jointly owned by two individuals. Where there are more than two joint owners of a property the guidance is equally applicable. Guidance sometimes differs when both joint owners are bankrupt to when there is a remaining solvent joint owner. Where this is the case, it is made clear within the chapter.

30.2 Bankruptcy cases only

This chapter deals with bankruptcy cases only, and does not specifically refer to company cases, although the guidance within will generally apply to such cases. See the section on unusual situations for some further information on company cases. For information and guidance in relation to solely owned tenanted property, see chapter 29.

30.3 Commercial property

Guidance on dealing with commercial property owned by the bankrupt or a company is dealt with in chapter 28.

30.4 Family home

Where an individual was adjudged bankrupt on a petition presented on or after 1 April 2004, if the bankrupt has an interest in a dwelling-house which is either solely or jointly owned and that dwelling-house was, at the date of the bankruptcy order, the sole or principal residence of the bankrupt, bankrupt's spouse, civil partner, ex-spouse or ex civil partner, the official receiver should refer to the guidance given in chapter 28. This guidance applies even where the property is the sole or principal residence held on a tenancy agreement by that person.

Official Receiver as trustee and definitions

30.5 Introduction

The following guidance deals with the initial action that should be taken by the official receiver, as trustee, where a bankrupt is the joint owner of a property and is acting as a landlord in respect of an assured shorthold tenancy agreement (AST) in relation to that property. The following guidance deals specifically with properties let on an AST, including those which have become statutory periodic ASTs (see chapter 29).

Where the bankrupt is the landlord under a long lease rather than an AST, reference should be made to chapter 28.

30.6 Definitions

The following terms are used in the remainder of this chapter and should be interpreted as follows:

- a beneficial interest is an interest in the proceeds of sale of a property and in the rents and profits which could be earned from the property until its sale. It amounts to an equitable, as opposed to a legal interest in the property. Beneficial interests often arise as a result of contributions to the purchase of, or payments for improvements made to, the property and can arise whether or not the person is the legal owner of the property (see chapter 28)

- the legal estate in relation to a jointly owned property is the title to the property itself which is held by both owners most usually on trust of land for themselves as beneficiaries¹. That joint legal estate cannot be severed
- the reversion of a property is the landlord's interest in a property whilst a tenancy agreement is in place. After a tenancy agreement has been granted over a property, the tenant holds an interest or property right. The landlord has a reversionary interest - the right to regain possession of that property when it reverts to them at the end of the tenancy agreement
- a covenant is a type of legal promise or term of contract to either do or not do something, which is often contained within the terms of a lease or tenancy agreement

1. Trusts of Land and Appointment of Trustees Act 1996

30.7 Assured shorthold tenancy

The standard type of tenancy agreement likely to be encountered by the official receiver is likely to be an AST. This is the standard type of tenancy agreement entered into since 28 February 1997. It was introduced by the Housing Act 1996. For further information on other types of tenancy agreements see chapter 29. In addition, the official receiver may commonly encounter lodgers living with the bankrupt(s), see paragraphs 30.71 to 30.73 for guidance.

Additionally, local authorities, housing authorities, registered providers of social housing and housing action trusts can use different types of tenancies; see chapter 30 and chapter 28.

30.8 Legal title – jointly owned property

Where property is owned by the bankrupt jointly with another, the legal title to the property vests in both those parties as joint trustees and is not severable (see paragraph 30.6). The legal title does not form part of the bankrupt's estate and so does not vest in the official receiver as trustee¹. Even if all the joint owners are bankrupt, it will only be their beneficial interests and not the legal title which will vest in their trustee(s).

1. Section 283(3)

30.9 Beneficial interest – jointly owned property

The bankrupt's beneficial interest in the proceeds of sale of the property, and rent and profits of the property pending sale are severable and do however vest in the

trustee¹. The interests of the parties are normally declared in the conveyance or in a trust deed executed at the time of the conveyance. Such declarations are conclusive of the interests of the parties unless there has been a mistake or fraud.

1. *Re McCarthy (a bankrupt)* [1975] 2 All ER 857

30.10 Vesting of beneficial interest in official receiver as trustee

If the bankrupt is a joint owner of a tenanted property, and the tenancy agreement is in the names of both joint owners, then the legal ownership of the property and the tenancy agreement remain vested in the joint owners and the responsibilities of the landlord remains with them. This is because a joint legal estate cannot be severed and property held on trust by a bankrupt does not vest as part of a bankruptcy estate.

The official receiver's interest, as trustee of the bankrupt's estate, is limited only to the bankrupt's share of the profits from the AST agreement and the bankrupt's share of the reversion of the freehold/leasehold interest at the end of the tenancy (being the bankrupt's beneficial interest). It is this beneficial interest that vests in the official receiver as trustee (see paragraph 30.9).

30.11 Dealing with beneficial interest when both joint owners bankrupt

Where both joint owners of the tenanted property are bankrupt, the official receiver, as trustee, will hold 100% of the beneficial interest in the property. The legal title to the property will remain with the bankrupts as it cannot be severed. The official receiver, on holding 100% of the beneficial interest, will not become the legal owner of the property.

30.12 Joint owners remain landlord of tenanted property

Unlike solely owned property where the official receiver will become the landlord when the property vests in them as trustee, upon the bankruptcy of one or more or all of them, the joint legal owners will remain as the landlords of a tenanted property, and retain all the legal rights and responsibilities under the terms of the AST agreement. It is only the bankrupt's beneficial interest in the property which will vest in their trustee. The legal title of jointly owned property remains vested in the joint owners (even if all joint owners are subject to bankruptcy orders). This is because the

joint legal title to the property cannot be severed and property held on trust by a bankrupt does not vest as part of a bankruptcy estate.

The only interest that will vest in the official receiver as trustee is the bankrupt's beneficial interest in the property, which can be severed.

The official receiver does not have any rights or obligations in relation to any AST agreement created on a jointly owned property as only the bankrupt's beneficial interest in the AST agreement vests in them as trustee. The official receiver cannot seek to bring an AST on a jointly owned property to an end, and will not be required to carry out any landlord duties. (See guidance from paragraph 30.110).

30.13 Property letting is not a trade

The holding of property as a long term investment, including the renting out of that property, is treated as an investment business by HM Revenue and Customs rather than a trading business. In an investment business the property is held to either produce income in the form of rent, long-term capital growth or a combination of both. In a property trading business property is acquired with the intention of being developed and sold for a quick profit, and the properties held are treated as stock. Where property is rented out and the underlying intention is to hold the property for the long-term, then it is generally accepted by HM Revenue and Customs that the business is one of investment rather than trade (see paragraphs 30.96 – 30.104) for information on the tax treatment of rented property).

30.14 Property letting by joint owners is not a partnership

With a property investment business (such as renting out property), joint ownership means each individual has their own property investment business and is taxed on their own share of rental profits and capital gains accordingly. Joint ownership does not affect the underlying business. It will not generally constitute a business partnership unless the joint owners also formally create such a partnership. Joint owners are not necessarily trading together – instead they are both investing in the same property.

30.15 Definition of joint AST agreement

A joint AST agreement arises where there are several tenants under the same AST agreement, with all of the tenants having exclusive possession of the entire property together. Joint tenants take a tenancy of the property as a group at a single rent for

the whole property, with each tenant's interest in the property being exactly the same as that of the others.

30.16 Tenants in common

A joint AST is not the same as 'tenants in common' or a 'licence to occupy'. 'Tenants in common' is where there are several tenants under the same tenancy, where each of the tenants has the exclusive possession of a specific bedroom in addition to the use of the other communal areas of the property. A 'licence to occupy' is the right to possession of the property without any of the legal rights in the property (see paragraph 30.72).

30.17 Requirements for joint AST agreement

There are the following requirements for a joint AST:

- all the tenants must hold the tenancy under one legal document
- the commencement and termination dates must be the same for all the tenants
- all the tenants must be entitled to possession of the entire property; and
- all the tenants must have an equal interest in the entire property

30.18 Liability of tenants in joint AST

The tenants in a joint AST are usually jointly and severally liable for the rent and damages to the property. This means that should either one or some or all of the joint tenants breach any of the terms of the AST agreement, or where there are rent arrears and/or damages to the property, the landlord can elect to claim against all of them jointly or against each one individually for the full outstanding amount. This provides some security for the landlord, as well as additional risk for the joint tenants, as well as any guarantors that the tenants may have.

30.19 Changing joint AST agreements

Where one or more of the joint tenants wishes to leave the property, and/or there are new joint tenants wishing to occupy the place of the old joint tenants, a new AST agreement will need to be concluded. This can be done either by way of a deed of variation that will be attached to the AST agreement, or a new AST agreement can be drawn up.

30.20 Death of a joint tenant

If a tenant dies and the AST is a joint tenancy, the remaining joint tenant or tenants have an automatic right to stay on in the property. If it was a statutory periodic

tenancy (see chapter 29), the tenant's husband or wife (or a person living with the tenant as husband or wife), has an automatic right to succeed if they were living with the tenant at the time of the tenant's death, unless the tenant who died was already a successor themselves. Only one succession is allowed. No one else in the family has an automatic right to succession although other family members can negotiate a new AST agreement with the landlord¹.

1. Housing Act 1988 s39(2)

30.21 Duty of care

When the official receiver is dealing with jointly owned tenanted property they will never hold the full responsibilities of landlord (see paragraph 30.12), but they may be considered to hold some residual duty of care obligations, see paragraphs 30.77 to 30.78.

Initial enquiries and insurance

30.22 Obtain copy of tenancy agreement

On becoming aware that the bankrupt is a joint owner of a tenanted property the official receiver should seek to obtain a copy of the tenancy agreement to determine the details of the AST agreement, The tenanted property questionnaire (ORTPQ) requests a copy of the AST agreement at the initial enquiry stage, see paragraphs 30.22 and 30.23.

The official receiver needs to establish that there is an AST agreement rather than occupation under a licence (see paragraph 30.72).

30.23 Importance of establishing details of ownership

It is important that the official receiver establishes at the earliest opportunity details of;

- the legal owners of the property
- the beneficial owners of the property
- the party (parties) understood to be acting as landlord(s) of the property

This information is requested in the ORTPQ. When the parties listed above are not the same, for example, Mr & Mrs X are the legal owners of the property, but only Mrs

X is understood to be the landlord, it may effect how the official receiver treats the tenancy agreement, see paragraphs 30.203 to 30.210 for details.

30.24 No tenancy agreement

If there is no AST agreement the official receiver should ascertain the following details from the bankrupt;

- the date the tenancy started
- the terms of the agreement (if there are any terms or conditions that have been agreed)
- the rent payable and when the payments are due, and
- the date the tenancy is due to end (if a date has been agreed)

30.25 Default tenancy where no written tenancy agreement

Where there is no written tenancy agreement and the tenancy was created after 28 February 1997, then by default a residential tenancy is most likely to be an AST.

30.26 Tenancy agreement in names of joint owners of property

Where an AST agreement is in the names of both joint owners of the property, whether both joint owners are bankrupt or not, the joint owners remain as landlords of that property, and retain all the legal rights and responsibilities under the terms of the AST agreement (see paragraph 30.12).

30.27 Tenancy agreement in name of bankrupt as joint owner only

Where an AST agreement is in the name of the bankrupt only and not the other solvent owner, then the official receiver needs to establish why the agreement is only in the bankrupt's name before a decision can be made on how to treat the agreement and rent collection. See paragraph 30.203.

30.28 Tenancy agreement in name of bankrupt as joint owner and a third party who is not joint owner

Where an AST agreement is in the name of the bankrupt and a third party who is not a joint owner, then the official receiver needs to establish why the agreement is in the bankrupt and non owner's name before a decision can be made on how to treat the agreement and rent collection. See paragraph 30.210 for further information.

30.29 Property jointly owned by bankrupt but bankrupt's name does not appear on tenancy agreement

Where an AST agreement is not in the name of the bankrupt even though the bankrupt is a joint owner, then the official receiver needs to establish why the bankrupt's name is not on the agreement before a decision can be made on how to treat the agreement and rent collection. See paragraphs 30.203 to 30.210 for further information.

30.30 Initial enquiries – creditor's petition cases

When dealing with a creditor's petition case, a tenanted property is most likely to be discovered if contact is made with the bankrupt(s) either by telephone or face to face at the interview or on an inspection. As soon as a tenanted property is discovered then the examiner or case support officer should seek to complete the tenanted property questionnaire (ORTPQ). As much information as possible should be obtained to enable enquiry letters to be sent to all relevant parties. Where the bankrupt(s) cannot provide the information they should be encouraged to call back within the next 24 hours with the information needed. If the bankrupt(s) cannot provide all the information needed within 24 hours, then a copy of the questionnaire may be sent out and the bankrupt(s) asked to return it with any other information requested within 7 days.

30.31 Initial contact – adjudicator cases

In an adjudicator case it is likely that the bankrupt(s) will highlight a tenanted property in their application to the Adjudicator in bankruptcy. The existence of a tenanted property should therefore be discovered during the initial review of the application. Alternatively at the initial contact stage when asked whether there are any assets in jeopardy, or whether there are any matters requiring immediate attention, the bankrupt may make reference to a tenanted property. Immediately on discovering the existence of a tenanted property the examiner should complete the tenanted property questionnaire (ORTPQ) with the bankrupt(s) over the

telephone. As much information as possible should be obtained to enable enquiry letters to be sent to all relevant parties as soon as possible. Where the bankrupt(s) cannot provide the information they should be encouraged to call back within the next 24 hours with the information needed. If the bankrupt(s) cannot provide all the information needed within 24 hours, then a copy of the questionnaire may be sent out and the bankrupt(s) asked to return it with the other information requested in time for the interview.

30.32 Insurance position

At the earliest opportunity the official receiver should seek to establish the insurance position in relation to the tenanted property. The official receiver does not have the responsibility of obtaining landlord's insurance as this responsibility remains with the joint owners of the property as landlords (but see following paragraphs).

Enquiries must be made in all cases to obtain details of any insurance policies in force and, wherever possible, a copy should be taken of the relevant policy documents and any current certificates relating to those policies to satisfy the official receiver that that is the case. See chapter 14 for guidance on continuing existing insurance policies.

30.33 Insurance – both joint owners are bankrupt – no insurance in place

Where the official receiver is aware that there is no insurance in place and both owners are bankrupt, public liability insurance is required to protect the official receiver from any legal liability in case of personal injury being sustained by a third party.

Where no insurance is in place and there is equity in the property then the official receiver should also obtain sufficient buildings insurance to protect the underlying interest. Where the property has negative equity, then the official receiver will only need to obtain public liability insurance. The mortgagee should be informed where the official receiver decides not to obtain insurance. The bankrupts should also be informed that the official receiver will not be taking out buildings insurance and that it remains their responsibility as landlords to obtain landlord's insurance.

Reference should be made to chapter 14 for advice on how to obtain cover under the Willis Insolvency Open Cover Insurance Facility.

30.34 Insurance – where remaining solvent joint owner

Where there are one or more joint owners of the tenanted property, who are not subject to bankruptcy proceedings, the official receiver should inform the bankrupt and joint owners that it is their responsibility to obtain landlord’s insurance, including public liability insurance.

Where there is equity in the property and the official receiver establishes that there is no current buildings insurance in place the official receiver should seek to obtain buildings insurance to protect the bankrupt’s beneficial interest.

Where there is no equity in the property no insurance should be obtained and the official receiver should inform the mortgagee that there is no insurance in place.

30.35 Summary of insurance required

	Jointly owned – solvent joint owner (paragraph 30.34)	Jointly owned – both owners bankrupt (paragraph 30.33)
Equity	Full buildings insurance only to be obtained	Buildings and public liability insurance to be obtained
No equity	No insurance to be obtained	Public liability insurance only to be obtained

30.36 Willis Insolvency Open Cover Insurance

Generally speaking, provided that the property is used for residential purposes and certain limits are not exceeded, then the case will be suitable for the premium bordereau for smaller non-trading cases under the Willis Insolvency Open Cover Insurance (see chapter 14, annex B for details on the exclusions to this). If a case is eligible for this cover, then the official receiver is required to add the case to the office bordereau form for each office. In order for an asset to be covered by Willis it must be put on the office bordereau as soon as the official receiver becomes aware of its existence. Only where a case does not fall into these criteria is it necessary to telephone Willis to agree individual insurance cover (see chapter 14). Generally speaking, this will be property rented out to a business for commercial purposes. Where a property subsequently becomes vacant, see paragraphs 30.146 to 30.148.

30.37 Continuation of insurance cover

If the official receiver obtains insurance under the Willis Insolvency Open Cover Insurance Facility, this should be continued for as long as the bankrupt’s beneficial

interest in the property remains vested in the official receiver, or until the bankrupt and the joint owner obtain their own insurance and evidence of this is provided to the official receiver.

Reference should be made to chapter 14 for advice on how to obtain cover. This is done by ensuring the case is added to the premium bordereau for smaller non-trading cases on a monthly basis.

30.38 Cancelling insurance cover

The official receiver's insurance must be cancelled when the property is:

- sold or otherwise disposed of
- an LPA receiver is appointed
- an insolvency practitioner is appointed; or
- disclaimed (only applies when all joint owners are bankrupt)

The official receiver should follow the guidance in chapter 14 when cancelling insurance.

30.39 Jointly owned commercial tenanted property

Where a jointly owned tenanted property is a commercial property, the Willis Insolvency Open Insurance Policy (see paragraph 30.36) will not apply and the official receiver will need to open a quote from Willis for insurance on a case by case basis. In order to provide a quote for insurance to the official receiver the nature of the business undertaken from the premises concerned will need to be provided.

Letters to be sent

30.40 General

As soon as the official receiver has received the completed questionnaire (ORTPQ) from the bankrupt, letters should be sent to the following:

- the bankrupt(s) (see paragraph 30.41)
- the tenant (see paragraph 30.44)
- the joint owner (see paragraph 30.49)
- the mortgagee and any other chargeholder (see paragraph 30.50)
- the letting agent (if applicable) (see paragraph 30.58)

30.41 Letter to the bankrupt

A letter should be sent to the bankrupt following the initial contact or initial enquiries enclosing copies of the letters sent to the tenant and letting agent if appropriate. The letter confirms the official receiver is trustee and states that the bankrupt and joint owner will retain joint legal responsibility for the tenancy agreement, and that the official receiver will not carry out any landlord's duties, even if both owners are bankrupt. The letter also states that the Official Receiver, as trustee, is entitled to the bankrupt's share of the profits from rental income under the terms of the AST (see paragraph 30.105 onwards).

30.42 The bankrupt(s) remain as landlord and entitled to collect rent

The official receiver should be aware that if the bankrupt declines to set aside the rent for the trustee and continues to pay the capital element of the mortgage debt (see paragraphs 30.129 to 30.130), the trustee will need to consider whether to take any action to enforce cooperation, see paragraph 30.200.

In such circumstances to avoid any difficulties in recovery later on, the official receiver as trustee should ask the bankrupt to forward the relevant part of the monies on to them immediately¹.

1. Section 287(3)a

30.43 Bankrupt and joint owner may re-enter property

Unlike solely owned property, the official receiver cannot object to the bankrupt or solvent joint owner moving into the property should any tenant subsequently vacate the property, as it is only the bankrupt's beneficial interest and not the legal interest which vests in the official receiver as trustee.

30.44 Letter to tenant

The official receiver, as trustee, should send an initial enquiry letter to the tenant informing them of the position of the joint owners in relation to the bankruptcy and the property. The letter should make it clear whether or not the joint owner is also subject to bankruptcy proceedings. The letter asks for a copy of the tenancy agreement to be sent to the official receiver if one has not already been obtained from the bankrupt.

The letter tells the tenant that the joint owners retain legal responsibility and will remain as their landlords and will retain any rights and responsibilities in relation to the tenancy agreement, for example collecting rent and carrying out any necessary repairs under the terms of the tenancy agreement.

30.45 Property with a lodger may be classed as a family home

When a 'lodger' is living with the bankrupt in their home, the notice offering the bankrupt and joint owner the option to purchase back the interest¹ should still be sent by the official receiver as trustee when the bankrupt's interest in the property is greater than £1000, as the property is still the family home of the bankrupt (see chapter 28). Additionally the notice to the bankrupt and other interested parties informing them that the property falls under section 283A should be sent².

See paragraphs 30.71 to 30.72 on occupation of property under licence and on income received from a lodger occupying a property under licence.

1. Housing Act 1988 s39(2)

2. Section 284

30.46 Tenanted property is not usually a family home

It is important to remember that a tenanted property is not usually a family home for the purposes of section 283A (see chapter 28), and as such the bankrupt's beneficial interest will not re-vest in the bankrupt after three years, it will remain in the bankruptcy estate until it is dealt with. Tenanted property encountered by the official receiver will normally fall into one of the four categories below:

- a) property purchased as an investment property with the help of a buy-to-let mortgage (see paragraph 30.54)
- b) property purchased as a home with the help of a residential mortgage, with the bankrupt having later obtained the consent of the mortgagee to let the property out (consent to let) (see paragraph 30.54)
- c) property purchased as a home with the help of a residential mortgage, with the bankrupt having later let the property out without the permission of the mortgagee (unauthorised tenancy) (see paragraph 30.55)
- d) property purchased as a home with the help of a residential mortgage, with the bankrupt having later taken in a 'lodger' whilst remaining in occupation (see paragraphs 30.71 to 30.72 and 30.101)

If a property were to be let to a former spouse of the bankrupt, for example, it could be both a tenanted property and fall within the scope of a family home for the purposes of section 283A (see paragraph 30.48).

30.47 Letter MP1 should not be sent

In situations a to c referred to in paragraph 30.46, the letter offering the bankrupt and the joint owner the option to purchase back the interest,¹ which should normally be sent when the official receiver is trustee, should not be sent, as the low cost property conveyancing scheme is for the protection of the bankrupt's home and so is not appropriate when dealing with an investment property.

In addition, the letter to the bankrupt and other interested parties informing them that the property falls under section 283A² should not be sent. Where there is a solvent joint owner, they may be able to purchase the bankrupt's beneficial interest in the property from the official receiver, as trustee, but this should not be offered as a matter of course. See guidance from paragraph 30.151 for details of the circumstances where the official receiver, as trustee, may consider selling the bankrupt's interest in a tenanted property.

1. form MP1

2. form BHNOT

30.48 When tenanted property may be considered to be a family home

When ascertaining the details of any tenancy agreement the official receiver should give consideration to the relationship of the tenant to the bankrupt. Where the occupier is the bankrupt's spouse, civil partner, ex-spouse or ex-civil partner and the property is the sole or principal residence of that person then the property may be considered to be a family home¹. In such circumstances it is unlikely a formal tenancy agreement as described in this chapter exists as the occupier is likely to be the joint owner. In such circumstances it may be appropriate, where the bankrupt's interest in the property is greater than £1000, to send the notice offering to purchase the interest in the family home² to the bankrupt and any joint owner (see chapter 28)

1. Form MP1

2. Section 283A(1)

30.49 Letter to joint owner

A letter should be sent to the joint owner following the initial contact or enquiries, enclosing a copy of the letter sent to the tenant. The letter informs the joint owner that they will retain joint legal responsibility for the tenancy agreement, and that the official receiver will not carry out any of the landlord's duties. It also explains that the bankrupt's beneficial interest in the property is vested in the official receiver as trustee and they will be entitled to the bankrupt's share of the rental profits.

The letter suggests that they may want to obtain independent legal advice.

30.50 Letter to mortgagee and other chargeholders

Any mortgagee with a charge over the jointly owned tenanted property should be sent notice in order to protect the official receiver's interest in respect of the charged asset and to make early enquiries into the value of the asset. The notice in tenanted property differs to the standard mortgagee enquiry letter¹, as it asks for a response within 7 days on the most urgent queries. The official receiver needs to know urgently whether or not the mortgagee;

- has consented to the property being let
- wishes to appoint a receiver of rents
- wishes to, or has already taken, any possession proceedings

This information will assist the official receiver in deciding whether or not to consult creditors and apply for an urgent Secretary of State appointment of an insolvency practitioner trustee, see paragraphs 30.74. If the mortgagee intends to appoint a receiver of rents or take possession proceedings quickly, then, without more, it is unlikely that it would be a suitable case for the appointment of an insolvency practitioner as trustee.

1. Form MP2

30.51 Rent collected will not be used to pay mortgage

It is important to let the mortgagee know at an early stage that if the official receiver does collect the bankrupt's share of the rent from the tenant, this will not be used in meeting any capital element in respect of the mortgage payments due in relation to a mortgage loan on the property (see paragraph 30.130) This information is contained in the letter to mortgagee. See paragraphs 30.79 to 30.92 for information on the collection of the bankrupt's share of the rent.

It is important that the mortgagee is clear of their position as such information will assist the mortgagee in deciding whether or not to appoint a receiver of rents or to commence possession proceedings in relation to the property

30.52 Mortgagee has no right to receive rent unless they take action

The mortgagee has no right to receive the rental income arising from the property as long as the mortgagee allows the mortgagor to remain in legal ownership of the property. Whilst the mortgagors (the bankrupt and joint owner) remain in possession, they are free to utilise the rent without need to account to the mortgagee. This is, of course, subject to the right of the trustee in bankruptcy, as the beneficial owner, to receive the bankrupt's share.

The asset that vests in the trustee is the bankrupt's beneficial interest, which comprises the bankrupt's share of profits arising from the property, including the rent received.

30.53 Mortgagee's rights on repossession

As soon as a receiver of rents of a jointly owned tenanted property is appointed, or the mortgagee takes possession, it becomes the mortgagee's responsibility to carry out the duties of the landlord, and their right to collect the rental income, including arrears^{1, 2}. See paragraphs 30.174 to 30.180 for more information on a receiver's powers.

1. Landlord and Tenant (Covenants) Act 1995 section 15(1)

2. Cockburn v Edwards [1881] 18ChD 449

30.54 Position of mortgagee when buy to let/consent to let given

The mortgagee is bound by the terms of the AST agreement and so cannot evict the tenant if they repossess the property without giving proper notice¹ in the following situations:

- if the tenancy has been granted with the consent of the mortgagee, either on
 - a buy-to-let mortgage, or
 - a residential mortgage where the mortgagee has subsequently consented to the mortgagor renting out the property
- if the tenancy was already in place prior to the mortgage being granted²

- where the mortgagee has acknowledged a tenancy by their actions after it being granted without their consent³

1. Housing Act 1988 section 21

2. Land Registration Act 2002 sections 28 to 32

3. Underhay v Read [1888] 20 QBD 209

30.55 Position of mortgagee when consent to let not given

An AST agreement is not binding on the mortgagee when the following criteria are met:

- where a property is rented out after a mortgage is obtained on the property, without the mortgagee's consent, and
- the mortgagee has not acknowledged the tenancy by any positive action (for example, receiving rent directly from tenant). Inaction by the mortgagee with the knowledge that there is an unauthorised letting on the property of the bankrupt does not amount to positive action¹

If both the above criteria are met, the mortgagee is free to sell the property with vacant possession², and without giving the tenant proper notice³. How that is achieved is, of course, for the mortgagee to consider.

1. Parker v Braithwaite [1952] ALL ER 837

2. Rust v Goodale [1957] Ch 33 at 44

3. Housing Act 1988 section 21

30.56 Likelihood of mortgagee appointing receiver of rents where consent to let not given

It is unlikely that a mortgagee will appoint a receiver of rents when they have not given the bankrupt permission to rent out the property. This is because to do so may bind the mortgagee to a tenancy that they are not currently bound by¹ (see paragraph 30.55). The likely action, if any action is to be taken by the mortgagee, will be to commence possession proceedings in relation to the property.

1. Keech v Hall (1778) 1 Doug KB 21

30.57 Mortgage terms and conditions

Some mortgage deeds may contain a clause entitling the mortgagee to security over the rent. In practice this is usually the right to collect the rent directly from the tenant. This is only likely where a specific buy-to-let mortgage has been obtained. Official receivers should proceed on the basis that the mortgage does not contain such a clause. If the letter to the mortgagee prompts them to notify the official receiver of such a clause, a copy of the mortgage terms and conditions should be requested for verification.

30.58 Letter to letting agent

Letting agents assist a landlord in finding a suitable tenant for a property and in drawing up a tenancy agreement and other related matters. If a letting agent has been appointed by the bankrupt, the type of service provided will depend on the terms of the contract. The services range from the collection of rent only, to a full management service where the agent is responsible for arranging any repairs, safety inspections (see guidance from paragraph 30.110) and dealing with tenants. Generally the charges of a letting agent are deducted as a percentage of the rental income received. A letter should be sent to the letting agent to ascertain details of the rental agreement, including whether the agent holds any rent or other money.

The letter explains that the AST agreement and the agreement between the letting agent and the joint owners will not vest in the trustee. Instead the joint owners will remain as landlords of the property. The letter requests that the bankrupt's share of any balance held on account, after the deduction of the costs of the tenancy agreement, should be forwarded to the official receiver.

30.59 Need for care when dealing with letting agents

The official receiver as trustee should be careful, when dealing with letting agents of jointly owned property, that they do not interfere with the collection of rent. If the official receiver interferes with the collection of rent, they may inadvertently create a new tenancy agreement between the official receiver and the tenant on similar or completely new terms to that of the original agreement. This may occur if the official receiver allows the letting agent to become their agent, by asking them to collect rent on behalf of the official receiver.

30.60 Letting agent as a creditor

If the letting agent is owed money by the bankrupt at the date of the bankruptcy order, then the agent is a creditor in the proceedings for that amount. The agent should not be allowed to deduct this debt from the bankrupt's share of future rent

collected although, in practice, this may prove to be difficult to prevent, especially if the agent were to be able to claim a lien on the future rent receipts. In certain circumstances, where the services of the letting agent are required for the future management of the property and the amounts are not significant, it might be preferable to permit such deduction as being in the best interests of the creditors.

Deposits

30.61 Rent deposits

It is a common requirement of an AST agreement that the tenant pays a security deposit to the landlord. The security deposit is a refundable charge and is usually one months rent. The deposit will normally be held to protect the landlord against any damage caused by the tenant during the tenancy.

Tenants have a responsibility to make sure that the property is in as good a condition when they move out as it was when they moved into it, subject to normal/fair wear and tear. When the tenant leaves, the landlord is entitled to check the condition and contents of the property, and if all is well the full amount of the deposit should be returned to the tenant. Where damage, other than usual wear and tear, has occurred the landlord may be entitled to withhold all or part of the deposit to restore the property to the original position.

30.62 Tenancy Deposit Scheme

Where the tenancy agreement has been entered into after 6 April 2007, the landlords must protect the deposit within a tenancy deposit scheme. This applies to all AST agreements where the annual rent does not exceed £25,000¹. The deposit must be protected within 14 days of the landlord receiving it.

If the landlords reside in the same property as the tenant, the tenancy cannot be an AST and so any deposit taken in these situations does not need to be placed in a tenancy deposit scheme (see paragraphs 30.71 to 30.73) on licences).

For further information on tenancy deposit schemes see chapter 29.

1. Housing Act 2004 section 213

30.63 Deposits taken when both joint owners bankrupt

Where both joint owners are bankrupt, legally it remains the responsibility of those joint owners as landlords to protect the deposit. The joint owners should be left to arrange any inspection of the property and the return of the deposit to the tenant. If the deposit monies are not protected, the tenant will have a claim in the bankruptcy proceedings¹. As the bankrupts remain responsible for the tenancy, the official receiver should not take control of the deposit.

1. Section 382

30.64 Deposits taken when remaining solvent joint owner

Where there is a solvent joint owner who is also landlord, both the joint owners remain jointly and severally liable for the deposit to the tenant. If the deposit monies are not protected, the solvent joint owner will be liable for the repayment of the deposit, and the tenant will also have a claim in the bankruptcy proceedings¹. As the bankrupt and the joint owner remain responsible for the tenancy, the official receiver should not take control of the deposit.

1. Section 382

30.65 Disputes over return of deposit

If an agreement about how much of the deposit should be returned cannot be reached, tenancy deposit schemes offer a free service to help resolve disputes. Dealing with disputes and the return of the deposit remains the responsibility of the bankrupt(s) and any joint owner.

Deciding how to proceed with property

30.66 Decision on receipt of initial information

Where possible the official receiver, as trustee, needs to obtain sufficient information to make an immediate decision on how to best proceed with the property.

The official receiver should attempt to ascertain:

- information from the mortgagee to ascertain whether the mortgagee intends to appoint a Law of Property Act receiver or to take possession of the property, see paragraphs 30.68 and 30.69

- information in relation to any charges on the property and a value of the property to ascertain whether there is any equity in the property

30.67 Information to establish whether property is onerous is not needed

The official receiver, as trustee, cannot disclaim a jointly owned property as the legal title remains vested in the joint owners (see paragraph 30.12), and it is unlikely that the bankrupt's beneficial interest, which will vest in the trustee, will be onerous.

Therefore the official receiver should not make enquiries of the bankrupt, any solvent joint owner or the tenant at the initial stages regarding any onerous obligations which the bankrupt(s) may have.

The decision as to whether or not to disclaim the bankrupt(s) beneficial interest still lies with the official receiver as trustee, see paragraphs 30.182 to 30.195.

30.68 Information in relation to the mortgagee's intentions

To assist the official receiver on their appointment as trustee, the official receiver, should ascertain if the mortgagee intends to appoint a receiver of rents or commence possession proceedings in relation to the property.

If the mortgagee intends to appoint a receiver of rents or take possession quickly then without more, it is unlikely that an insolvency practitioner trustee will be appointed in the place of the official receiver, unless there is significant equity in the property.

30.69 Receiver of rents already appointed

If a receiver of rents has been appointed then a letter should be sent to the mortgagee asking for a copy of the document of appointment. The receiver should be informed that as the property is jointly owned, the legal interest in the property and tenancy agreement do not form part of the bankruptcy estate, and that any future queries regarding the tenancy agreement should be addressed to the bankrupt(s). The letter should also state that as the official receiver considers that the mortgagee has the right to receive the rent and the bankrupt(s) do not act as landlords they will be taking no further action.

30.70 Interaction with income payments agreement/order (IPA/IPO)

All income receivable from an AST agreement forms part of the beneficial interest that will vest in the official receiver as trustee of the bankrupt's estate. Investment income which forms part of the beneficial interest cannot be treated as the bankrupt's income for IPA/IPO purposes as it will vest in the trustee and should therefore be collected by the official receiver as trustee. All rent and other income from an investment property should be apportioned between the bankrupt and joint owner and the bankrupt's share collected from the bankrupt by the official receiver in accordance with the guidance contained in paragraphs 30.105 to 30.109. See chapter 35 for guidance on IPA/IPOs.

Lodgers and occupation under licence

30.71 Income from a lodger

Income received by the bankrupt from a lodger residing in the bankrupt's property under licence, does not form part of the beneficial interest and so does not vest in the official receiver if they become trustee. This is because a licence is not a property right, but is an agreement between the licensee and licensor. Such a licence cannot be sold. If the property were to be sold, the licence would terminate. Payments made by a lodger should be classed as income when calculating the disposable income of the bankrupt for the purposes of an IPA/IPO, see chapter 35.

30.72 Occupation of property under licence

A licence is not a type of tenancy agreement (which is a property right), instead it is a contractual right to occupy space for a period of time. A licence does not give the tenant any legal interest in the land; it is simply the permission to occupy the land for an agreed term and will usually come about when there is no right to exclusive possession. When someone lets a room in their house out to a lodger, this is under licence rather than a tenancy. The main difference between a tenancy and a licence is that as a tenancy gives the tenant an interest in the land that interest is binding on any subsequent purchaser of the property. With a licence, if the landlord sells the property, then the tenant no longer has any right to occupy, as their agreement was with the landlord, and not attached to the land¹.

1. Ashburn Anstalt v WJ Arnold & Co [1988] 2 WLR 706

30.73 AST requires there to be exclusive possession

The general rule as to whether an arrangement is a tenancy or a licence is whether the occupier has a right of exclusive occupation, that is, whether they can keep other people, including the landlord, (unless the landlord is exercising rights to enter under the terms of the tenancy) out of defined premises. There can be no tenancy without the granting of exclusive possession. This means that a tenancy can only be granted over whole lockable premises rather than just a room in a home which the landlord has promised not to enter; the ability to secure the premises is essential in defining exclusive possession. Also see paragraphs 30.15 to 30.20 regarding joint AST agreements where more than one person rents a property.

Insolvency practitioner appointments

30.74 Tenanted property with equity

Where the only asset in a case is a tenanted property with sufficient equity, then an appointment of an insolvency practitioner trustee should be sought as soon as possible. Where there are other assets in a case which would attract an insolvency practitioner along with a tenanted property, then an appointment should be sought via the Secretary of State rota (See chapter 45). An appointment of a trustee may be considered urgent if the property (including the AST agreement) can be regarded as an asset in jeopardy. When dealing with jointly owned tenanted property, the bankrupt and joint owner remain as landlords with the ability to deal with the property including collecting the rent and ending the tenancy. There is a risk that the bankrupt(s) will not cooperate in handing over their rent, and so an early insolvency practitioner appointment is considered to be the most appropriate course of action.

A mortgagee in relation to the property should be given seven days to reply to the initial enquiry letter (see paragraph 30.50) as to whether or not they wish to appoint a receiver of rents or to take possession proceedings in relation to the property. If the mortgagee has not replied within seven days, the letter should be followed up with a telephone call to be certain that the mortgagee has been given sufficient opportunity to consider the contents of the letter prior to an insolvency practitioner being appointed trustee.

An insolvency practitioner appointment may be appropriate even if the mortgagee has indicated that they are going to appoint a receiver of rents or take possession (see paragraph 30.53) if they have not indicated when they will take that action although this state of affairs should be explained to the insolvency practitioner nominee when they are offered the case.

30.75 Tenanted property with little or no equity

Where the initial enquiries made by the official receiver establish that the property has no or very little equity, then the case could still be offered to the next insolvency practitioner on the rota. An insolvency practitioner may accept the appointment purely on the basis of the bankrupt's share of the profits from the ongoing rental income and possible future increases in property prices.

If the mortgagee has indicated that they are going to appoint a receiver, then the case should not be offered to an insolvency practitioner.

30.76 Providing information to insolvency practitioner

When an insolvency practitioner accepts an appointment, as trustee, then it is not necessary to send any (further) initial letters to third parties. The insolvency practitioner should be provided with a copy of the tenanted property questionnaire (ORTPQ) relating to the property as a matter of urgency so that they are in possession of all relevant information relating to the property and the tenancy agreement.

Duty of care

30.77 Duty of care to visitors and trespassers

A duty of care is owed between an occupier of premises and their lawful visitors¹, and an occupier also owes a limited duty of care to trespassers². The question of who is an occupier depends upon the particular facts of each case but generally it would be the person who is in actual occupation for the time being, or who has possession or physical control of the premises. Accordingly, it will normally be the tenant that has the duty of care.

The official receiver should establish whether or not public liability insurance is held by the bankrupt(s), as landlord, and should ensure that where all joint owners are bankrupt, such insurance is put in place where none is in existence, see paragraphs 30.32 to 30.36. When both joint owners are bankrupt it could be argued that the official receiver is in control of the premises and so liable for any breach of the duty of care, legal action could then be taken against the official receiver as trustee.

Where there is a remaining solvent owner, that person would be liable for any breach of the duty of care as they would be in control of the premises with the official receiver's interest only being in part of the beneficial interest rather than the full beneficial interest.

1. Occupiers Liability Act 1957 section 2

2. Occupiers Liability Act 1984 section 1

30.78 Duty of care in relation to defective premises when bankrupt is a landlord

In all cases where the insolvent and joint owners are a landlord there is likely to be a duty of care upon them in relation to defective premises¹. Legislation provides that a duty of care is owed by a landlord to visitors, and possibly trespassers, where the premises are let under a tenancy agreement, which places the landlord under an obligation to the tenant for the maintenance or repair of the premises or where the landlord has the right to enter the premises and carry out such repairs. The duty arises when there has been a breach of that obligation to repair (or failure to exercise the right of repair) which has led to the defect in the premises which caused an injury to, or damage to the property of, the tenant or visitor or any other person who might reasonably be expected to be affected by defects in the premises. This duty only applies if the landlord knew, or ought in the circumstances to have known, of the relevant defects. When both joint owners are bankrupt it could be argued that the official receiver is in control of the premises and so liable for any breach of the duty of care, legal action could then be taken against the official receiver as trustee. See chapter 11 for more information.

The official receiver should ensure public liability insurance is held by the bankrupt(s), and if not, it should be obtained as a matter of urgency on all tenanted properties when all joint owners are bankrupt, see paragraphs 30.32 to 30.36 for further information.

1. Defective Premises Act 1972 section 4

Collection of rent

30.79 Calculating the bankrupt's share of rental profits

The official receiver, as trustee, will need to calculate how much of the bankrupt's share of the rental income they are entitled to as trustee. This should be calculated as the total rent paid by the tenant less any allowable direct costs covering the landlord's obligations to arrive at a net profit figure. Further information on calculating this figure is provided from paragraph 30.109.

30.80 When to commence collection of the bankrupt's share of rent

The official receiver, as trustee, should collect the bankrupt's share of the rent less direct costs from the bankrupt as soon as they become trustee. The bankrupt's share of the rent should be collected in full from the date of the bankruptcy order, including any arrears arising prior to the order, if received by the bankrupt after the making of the bankruptcy order (see paragraph 30.85). The official receiver should ensure that any rent that was held by the tenant or letting agent is also accounted for.

The bankrupt's share of the profits from rental income should be collected whether there is a current AST agreement in place or not. But an invalid tenancy should not be validated by this action, were that to be possible to avoid.

30.81 Collection of bankrupt's share of rent when fixed term of AST has expired

A tenancy is still current if an AST has ended but the landlord has allowed it to continue verbally, as by default, the tenancy continues as a statutory periodic AST with the same terms and conditions as the former agreement¹ (see chapter 29). In this situation the bankrupt's share of the rent should continue to be collected.

1. Housing Act 1988 section 5

30.82 When collection of the bankrupt's share of rent should cease

The official receiver should only cease to collect the bankrupt's share of the rent after allowing for direct costs in the following circumstances:

- when the mortgagee appoints a receiver of rents (see paragraph 30.174 to 30.180)
- when the mortgagee takes possession (see paragraph 30.163 to 30.173)
- when the bankrupt's beneficial interest in, or the property itself is sold to a third party (see paragraphs 30.151 to 30.162)

The official receiver, as trustee, should continue to collect the bankrupt's share of the profits from the rental income even after the bankrupt receives their discharge as the

bankrupt's beneficial interest in the jointly owned property and the tenancy agreement are assets that vest in the official receiver as trustee from the date of the bankruptcy order.

30.83 Collection of bankrupt's share of rental profits whilst awaiting mortgagee's reply

The bankrupt's share of the rental income should be collected by the official receiver, as trustee, in the circumstances detailed in paragraph 30.80 whilst waiting for the mortgagee to reply or to take other action. The mortgagee does not have any right to the rent until it either a) enters into possession of the property or b) appoints a receiver of rents. In the meantime, the bankrupt's share of the profits from the rental income should be collected for the benefit of the bankrupt's estate.

30.84 Need for timely collection of bankrupt's share of rent

The official receiver should not allow the profits from rental income to build up over a period of time but instead should arrange to collect the monies on a monthly basis (or for the same period referred to in the AST). If the mortgagee appoints a receiver of rents or enters into legal possession of the property, the receiver will be entitled to collect any rents that have yet to be collected by the official receiver, including any arrears, and consequently this rental income would be lost to the bankruptcy estate¹. See paragraph 30.169.

1. Law of Property Act 1925 section 190(3)

30.85 Rent arrears

When dealing with a jointly owned property where the tenant is in arrears of rent at the date of the bankruptcy order, it remains the bankrupt and joint owner's responsibility to collect those arrears. This is because the monies are due to the landlords under the tenancy agreement which is not an asset that vests in the trustee. It is the beneficial interest in the property which vests in the trustee, which includes any rental profits under the terms of the AST agreement.

Where rent arrears are collected by the bankrupt and joint owner, the official receiver, as trustee, should then claim the bankrupt's share of those arrears after allowing for the payment of any direct costs, see paragraphs 30.105 to 30.130 on allowable costs.

30.86 How to collect the bankrupt's share of rent

The official receiver should collect the bankrupt's share of the rental profits by requiring the bankrupt to send the monies to them on a monthly basis (or a different period of time depending on the terms of the AST) along with a copy of any receipts for deductions made from the rental income. If a letting agent has been used to collect the rent, ideally the bankrupt's share of the net rent should be remitted to the official receiver by the agent (as this affords greater protection in its collection).

30.87 How to account for rent collected

All of the bankrupt's share of rental profit collected by the official receiver, as trustee, in respect of a jointly owned tenanted property should be banked in the estate account in the usual manner. This applies even where the bankrupt is the joint owner of more than one tenanted property. It is the responsibility of the local office to ensure that the profits from the rental income due in relation to a particular tenanted property have been received.

To ensure that the official receiver can account for the amount of the bankrupt's share of rental profits received in respect of each property, a schedule of payments received should be kept. Information relating to expenses considered allowable in respect of each property should also be retained on the schedule. This information is necessary to assess whether a property interest is a valuable asset or onerous, leading to the possibility of it being disclaimed.

30.88 Deposit to be held in a tenancy deposit scheme

The bankrupt and joint owner must ensure that where a deposit was taken after 6 April 2007 and it has been retained, that it is preserved in one of the government schemes for rental deposits (see paragraphs 30.61 to 30.65). If the bankrupt has retained a deposit in a bank account rather than a proper scheme, then the official receiver, as trustee, should release the funds to the joint owner for securing (see following paragraph)

All reasonable costs associated with maintaining the tenant's deposit in a tenancy deposit scheme should be allowed as a deduction from rental income.

30.89 Official receiver to release any deposit held by bankrupt

The official receiver should ensure that where a deposit is held by the bankrupt (other than in a deposit scheme), and these monies can clearly be identified as the original deposit money at the date of the order, then the monies should be released to the solvent joint owner to protect. Where both joint owners are bankrupt, then the deposit will need to be released to the bankrupts with a letter informing the bankrupts that they have a responsibility as landlords to place the monies in a recognised deposit scheme. The letter should be copied to the tenant so that the tenant knows that the monies have been returned to the bankrupts.

30.90 Responsibility for repairs and maintenance of the property

The official receiver is not responsible for any repairs or maintenance of the property. These remain the responsibility of the bankrupt and joint owner as landlords. When calculating the amount of the bankrupt's beneficial interest in the rent, deductions can be allowed for actual costs of repairs and maintenance carried out by the landlords.

30.91 Local Authority action against hazardous property

The Housing Act 2004 provided for a new system of assessing the condition of residential premises. A local authority must review the housing conditions in their area and if they consider a property should be inspected with a view to determining whether a hazard exists, they must arrange for such an inspection to take place¹.

If a Local Authority inspects a property and finds it to be dangerous, it can take enforcement action by serving improvement notices, prohibition orders, or hazard awareness notices. There are also emergency measures that may be taken, or in worse case scenarios, slum clearance declarations or demolition orders may be obtained. Generally, a notice will firstly require the landlord to put the hazard right². If the official receiver is notified of or served with one of the above notices, they should write back notifying the authority that as the property is jointly owned, only the bankrupt's beneficial interest vests in the official receiver, and that the bankrupt and joint owner remain responsible for the property. A copy of the correspondence should be sent to the other joint owner/owners.

Where the bankrupt receives such a notice, an allowance should be made for the bankrupt to pay for the costs of rectifying the hazard from the rent.

1. Housing Act 2004 sections 1 to 4

2. Housing Act 2004 sections 5 to 10

30.92 Property cannot be claimed as exempt

As a jointly owned tenanted property is considered to be an ‘investment’ rather than a business (see paragraph 30.13), the ‘tool of the trade’ exempt property provisions are not applicable¹. Any other items used for the purposes of the investment (for example furniture in furnished rented property), cannot be claimed by the bankrupt as exempt property, as they are not required to meet a basic domestic need of the bankrupt or their family. The only exception to this would be where the bankrupt’s spouse, civil partner, ex-spouse or ex-civil partner was living in the rented property as a tenant (see paragraph 30.48).

It can also be argued that the property is not ‘necessary to the bankrupt for use personally’, as with a business that provides equipment for hire. See chapter 24 for further information.

1. Section 283(2)

Leaseholds, ground rent, and service charges

30.93 Dealing with leaseholds that are tenanted

When the official receiver encounters property owned by the bankrupt on a jointly owned leasehold basis, which has subsequently been let out on an AST, there are very few differences to dealing with jointly owned freehold property. When the leasehold property is jointly owned, the legal title does not vest in the official receiver as trustee, and so it is not the official receiver’s responsibility to determine whether the lease allows the bankrupt to sub-let the property or not.

30.94 Ground rent on leasehold property

When dealing with jointly owned leasehold property, the lease usually contains a requirement to pay ground rent, either annually or monthly. It is effectively a rent charge for the underlying freehold land where the leasehold is situated. The official receiver, as trustee, should allow the ground rent as a deduction from the rental income when calculating the bankrupt’s beneficial interest in the AST on a jointly owned leasehold property.

30.95 Service charges on leasehold property

Service charges are a requirement to pay, for example, for the upkeep of a communal area, and are often payable on flats owned on a leasehold basis. Service charges should be allowed as a deduction from the rent by the official receiver, when calculating the bankrupt's beneficial interest as trustee.

Taxation

30.96 Taxation of profits

Any profits from renting out a property are taxable and are treated as income for income tax purposes, see chapter 59. Generally speaking, profits are considered to be all rental income received less all allowable expenses (as specified by HM Revenue and Customs on [Directgov](#). Where a tenanted property is jointly owned, it is the obligation of the bankrupt, and the joint owner, to account for the tax due to HM Revenue and Customs from the rental income. Taxation is an allowable cost by the bankrupt when accounting to the Official Receiver, as trustee, for their share of the profit.

30.97 Taxation due when two or more parties are landlords

When the property being rented out is owned and rented out by two or more individuals, the tax due is on the profits each individual has earned. On the tax return, each individual should show their share of the rental income and expenses and their share of the profit or loss.

When dealing with jointly owned property, any solvent joint owner will be responsible for their own tax return accounting for their share of the rental profit, and the official receiver should submit a tax return on behalf of the bankrupt for the rental income and profit received from the bankrupt's beneficial interest.

30.98 Accounting for taxation on rental income

As explained in paragraph 30.13, property letting is not considered to be a trade by HM Revenue and Customs, but is considered an investment, and the official receiver must account to HM Revenue and Customs for tax due on any investment income

(see chapter 59). Rental income is not classed as 'earnings' and so is not subject to National Insurance Contributions. The official receiver, as trustee, should complete the tax return for the bankrupt's share of the rental income and profit. Tax returns are due by 31 January in the year following the end of the tax year. All rental income is accounted for on a standard tax period of 6 April to 5 April. Therefore if the bankruptcy order was made on 2 May 2009, income tax is due from the official receiver on any income received in the tax year 6 April 2009 to 5 April 2010, and the tax return and payment would be due by 31 January 2011.

For further information see the [HM Revenue and Customs website](#)

30.99 Allowable deductions for taxation purposes

Should the official receiver need to complete a tax return for the bankrupt, the official receiver will need to provide a breakdown of the rent received by the bankrupt, the allowable deductions made, and the final rental profits paid to the official receiver. The bankrupt is asked to provide copy receipts for any deductions made from the rent in the letter sent to the bankrupt.

Allowable deductions from rental income for taxation purposes are based on actual expenses incurred in that taxation period. Note it is the period the expense was incurred in or invoiced in and not the date it was actually paid that is relevant for tax purposes. Deductions from rental income are allowed for:

- letting agent's fees
- building and contents insurance
- maintenance and repair costs (but not improvements)
- rent, ground rent and service charges
- utility bills (such as gas, water, electricity)
- council Tax
- services the landlord pays for (such as gardening or cleaning)
- legal fees (for drafting tenancy agreements etc)
- accountant's fees
- interest on property loans (mortgages)
- other direct costs of letting the property such as stationery, advertising, telephone calls

If the annual rental income received is less than £15,000 before deducting expenses, then only the total for the expenses needs to be entered onto the tax return and not a breakdown of each expense. See [working out your rental income](#) for more information on allowable expenses.

30.100 Calculating taxation – bankrupt owns more than one property

When the bankrupt has more than one tenanted property, all the rental income received should be added together for taxation purposes. Income tax is due on the rental income due in the relevant period minus allowable deductions (see paragraph 30.99). All of the rental income for that period is added together and then all of the allowable expenses are added together and deducted from the income figure, leaving the amount of net profit made in that period. Tax is payable on the net profit. A loss from one property can be offset against the profit from another property.

30.101 Taxation - Rent a room scheme

When the bankrupt is renting out a room in their home (under a licence rather than tenancy agreement, see paragraphs 30.71 to 30.73), then tax is not payable provided the total income generated is £4,250 or less a year. This includes rent and any other income paid by the lodger for meals, bills etc. Tax is only payable on anything received above the £4,250 allowance. This allowance will still apply to the official receiver (see chapter 59).

30.102 Taxation - Holiday lets, letting overseas property

Holiday lets and foreign letting taxation is generally calculated in the same way as for AST's. Tax is payable on income from overseas property whether or not the money received in rent is brought into the UK. Holiday lets are now treated the same for tax purposes as residential lettings – prior to 6 April 2010, a capital allowance for the replacement of furniture was available. The landlord can now only claim a wear and tear allowance of 10% of net rent, which is claimable on all furnished lettings.

See [working out your rental income](#) for more information. With foreign property, the income needs to be declared on the foreign pages of the tax return. Where more than one foreign property is held, it is classed as one business, and all foreign rental income and deductions are taken together. Where a UK rental property is also held this is kept separate from overseas property, and they are treated as two separate businesses for tax purposes.

30.103 VAT

A property investment business does not need to register for VAT, as the letting of residential property is an exempt supply for VAT purposes. The letting of holiday accommodation is standard rated for VAT (currently payable at 17.5% of all taxable

supplies), although it is unlikely to reach the threshold for compulsory registration. In the tax year 2009/2010, the threshold for compulsory registration was £68,000. See the [Directgov](#) website for further information on VAT.

30.104 Taxation records

The official receiver needs to keep all records for the rental income received for 6 years after the tax year they are for. This should include any papers relating to the calculation of the bankrupt's beneficial interest in a property and the AST and papers relating to receipts of rental profit from the bankrupt, and LOLA records that have been provided to, or generated by the official receiver.

Calculating a bankrupt's beneficial interest in a jointly owned tenanted property

30.105 What is the bankrupt's beneficial interest?

The interest of the official receiver, as trustee, in a jointly owned tenanted property where there is a jointly owned AST agreement, is limited to the bankrupt's beneficial interest, see paragraph 30.9. This beneficial interest comprises the bankrupt's interest in the proceeds of sale on the reversion of the freehold/leasehold at the end of the tenancy and the bankrupt's share of any profits from the AST.

30.106 Calculating the bankrupt's share of beneficial interest

The interests of the parties in a jointly owned property are normally declared in the conveyance or in a trust deed executed at the time of the purchase of the property. HM Land Registry has, since April 1988, provided a box on the relevant form (note Form TR1) for the transferees to declare how the beneficial interest in a property will be held. Generally where the property is a jointly owned property it defaults to a beneficial joint tenancy. Such declarations are conclusive of the interests of the parties unless there has been a mistake or fraud.

The usual declaration will be that the bankrupt and the joint owner are joint trustees of the property in equal shares. When dealing with a property owned by two joint owners, of which only one is subject to bankruptcy, unless evidence is shown to the contrary, the official receiver as trustee should claim 50% of the rent after the direct costs of the AST have been paid. If one party claims a larger share of the beneficial interest it is for that party to produce evidence to show that the original intention of an equal split of the beneficial interest has changed or did not accurately reflect the intentions at the date of purchase^{1, 2}. Case law indicates that it will be an exceptional case where the beneficial interest was found to be different to that originally intended.

1. *Stack V Dowden* [2007] BPIR 913

2. *Kemott V Jones* [2010] ALL ER (D) 244

30.107 Expenditure post bankruptcy order to be taken into consideration

On the making of the bankruptcy order the beneficial interest in the property will be severed and any increase in value of the property as a result of expenditure by a solvent joint owner should be taken into account to calculate the respective beneficial interests of the parties¹.

1. *Re Pavlou (a bankrupt)* [1993] 3 All ER 955

30.108 Calculating the bankrupt's interest in property – equity in property

In order to calculate the bankrupt's beneficial interest in the jointly owned tenanted property, the official receiver, as trustee, will need to establish the amount of any equity in the property. The official receiver should obtain a valuation of the property from the bankrupt and consider the accuracy of the valuation taking into account the property market and their own knowledge of housing prices in the area concerned (see also chapter 28). In calculating the bankrupt's interest in a property, consideration should be given to the amount due in respect of mortgage loans or charges and other debts secured on the bankrupt's interest in the property. Any interest in an assigned endowment policy must also be taken into account when calculating the interest.

30.109 Calculating the bankrupt's beneficial interest in an AST

The official receiver, as trustee, will also need to calculate how much of the bankrupt's share of the rental income from a jointly owned tenanted property that they are entitled to collect as trustee. This should be calculated as the total rent paid by the tenant less any allowable direct costs (see paragraphs 30.106 to 30.128) covering the landlord's obligations to arrive at a net profit figure.

The total net figure should then be divided into the appropriate percentage between the joint owners depending on the percentage of the beneficial interest each joint owner is entitled to (see paragraph 30.106).

30.110 Landlord duties under an AST

The bankrupt and joint owner retain all of the landlord's obligations as an AST granted on a jointly owned property does not vest in the official receiver as trustee¹. These obligations are prescribed by the tenancy agreement and legislation, and are considered to be allowable direct costs of the tenancy agreement. Under an AST the landlord's obligations will usually be to:

- allow the tenant peaceful enjoyment of the property² (see chapter 29)
- hold any deposit paid by the tenant in a government authorised tenancy deposit scheme (see paragraph 30.111)
- insure the property and any fixtures or furniture provided by the landlord, and provide a copy of the insurance policy to the tenant (specific landlord insurance including public liability is needed, see paragraph 30.112). This should already be in place so a copy of the policy should be obtained, held, and renewed if it expires (see paragraphs 30.32 to 30.36)
- keep the exterior structure in good repair and repair and keep in good working order the installations in the property relating to heating, gas and sanitation³ (see paragraphs 30.113 to 30.121)
- comply with Gas Safety (Installation and Use) Regulations 1998 to have a gas safety check on the property annually⁴ (see paragraph 30.122)
- ensure smoke alarms are fitted on each storey and a carbon monoxide alarm in each room in which solid fuel is used⁵ (see paragraph 30.123)
- ensure the electrical installation complies with legislation (a certificate is valid for between 1 and 5 years, depending on the electrician's recommendations)^{6, 3} (see paragraph 30.124)
- if it is a furnished let, ensure furnishings comply with fire safety regulations^{7, 8} (see paragraph 30.125)

1. Landlord and Tenant (Covenants) Act 1995 section 3(1)(b)

2. Markham v Paget [1908] 1 Ch 697

3. Landlord and Tenant Act 1985 section 11

4. Gas Safety (Installation and Use) Regulations 1998 regulation 36

5. Smoke and Carbon Monoxide Alarm (England) regulations 2015

6. Electrical Equipment (Safety) Regulations 1994

7. Consumer Protection Act 1987 section 11 and 46

8. Furniture and Furnishings (Fire Safety) Regulations 1988

30.111 Costs of maintaining deposit

The bankrupt and joint owner must ensure that where a deposit was taken since 6 April 2007 and it has been retained, that it is preserved in one of the government schemes for rental deposits. All reasonable costs associated with maintaining the tenant's deposit in a tenancy deposit scheme should be allowed as a deduction from rental income.

30.112 Landlord's obligation to insure

The bankrupt and joint owner remain responsible for obtaining landlord's insurance (see paragraph 30.32), and all reasonable costs of obtaining and continuing suitable landlord's insurance should be allowed as a deduction from rental income.

30.113 Landlord's responsibility for repairs under the Landlord and Tenant Act 1985

Repairs of a cosmetic nature, such as redecorating, should not be considered as being essential. The landlord's responsibility in relation to repairs to a tenanted property is provided for in legislation¹ and includes;

- to keep in good repair the structure and exterior of the property (including drains, gutters and external pipes)
- to keep in repair and proper working order the installations in the property for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity)
- to keep in repair and proper working order the installations in the property for space heating and heating water (the heating including pipes, radiators and boiler)

If the tenancy agreement contains a covenant that the tenant be responsible for these things rather than the landlord, it has no effect².

In determining the standard of repair required, regard must be had to the age, character and prospective life of the property and locality in which it is situated³. Repairs of a cosmetic nature, such as redecorating, should not be considered as being essential.

1. Landlord and Tenant Act 1985 section 11

2. Landlord and Tenant Act 1985 section 11(4)

3. Landlord and Tenant Act 1985 section 11(3)

30.114 Repairs required under an AST

Reference should be made to the terms of any AST agreement in place to see if there are any further repairs specified in the agreement that the landlord is responsible for according. For example, this may include arranging for an alarm service engineer to attend and rectify a fault in a burglar alarm system fitted to the property. The cost of rectifying the fault should be met from the rental income.

30.115 Allowing for repairs and maintenance

The following paragraphs give some guidance on what type of repairs are considered essential for the bankrupt and joint owner to arrange and so what type of repairs should be an allowable deduction, by the official receiver as trustee, from rental income prior to calculating the bankrupt's share of rental profit.

30.116 Repairs that are not necessary

Where one of the repairs referred to in paragraph 30.113 above is required under 'the landlord's repairing covenant', it is not, however, to be construed as requiring the landlord¹;

- to carry out works or repairs for which the tenant is liable by virtue of their duty to use the premises in a tenant-like manner, or would be so liable but for an express covenant on their part
- to rebuild or reinstate the premises in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident; or
- to keep in repair or maintain anything which the tenant is entitled to remove from the property

For a definition of covenant, see paragraph 30.6.

1. Landlord and Tenant Act 1985 section 11(2)

30.117 Repairs needed – case law

The repair of the structure and exterior includes the reinstatement of decorations damaged by the work of repair¹, but not damage to decorations and furnishings caused by condensation which was not due to structural damage². Saturation of the plaster is considered to be damage to the structure³.

'The structure of the dwelling house' has been said to 'consist of those elements which give it its essential appearance, stability and shape' but not to extend to 'the many and various ways in which the dwelling house will be fitted out, equipped, decorated and generally made to be habitable'; it is not limited to load-bearing elements; it does not include a separate garage, gates, internal plaster and door furniture but does include windows, including their sashes, cords, frames and essential furniture⁴. Floor joists included in the lease of the flat were part of the 'main structure' of the building and so within the landlord's repairing obligations⁵.

In addition, repairs to slabs in a back yard were found to not be covered⁶.

1. *McGreal v Wake* (1983) 13 HLR 107

2. *Quick v Taff-Ely Borough Council* [1986] QB 809

3. *Staves v Leeds City Council* (1990) 23 HLR 107

4. *Irvine v Moran* (1990) 24 HLR 1

5. *Marlborough Park Services Ltd v Rowe* [2006] EWCA Civ 436

6. *Hopwood v Cannock Chase District Council* [1975] 1 All ER 796

30.118 Paying for repairs and other essential costs

The bankrupt cannot claim an allowance from future rent to refund the costs of repairs already paid for prior to the bankruptcy order. Only payments made after the date of the bankruptcy order should be allowed to be deducted from the rent received from the tenant post bankruptcy.

The bankrupt cannot claim monies that have already been paid into the estate account back from the official receiver towards future expenses. Instead the bankrupt should be allowed to deduct the monies from future rental payments until sufficient funds have been recovered to pay for the expenses.

30.119 When joint owners cannot afford or refuse to pay for repairs

Where the bankrupts or a bankrupt and solvent joint owner either cannot afford to pay for repairs or refuse to pay for repairs, the official receiver, as trustee, is not required to provide any funds already collected as rental profit towards the cost of repairs. The bankrupt's share of rental profits which have already been collected are held for the benefit of creditors and there is a risk that if the official receiver releases some of these funds, it will put the creditors in a less favourable position. The

bankrupt and any joint owner are legally responsible for the property and any repairs, and the official receiver is not liable if the repairs are not carried out.

30.120 Example of allowance for repairs

A tenant is paying £500 a month rent to 2 joint owners, one of whom is bankrupt. After allowing for monthly insurance and letting agent's fees, the net income is £400, of which the bankrupt is entitled to £200 a month which they paying to the official receiver, as trustee of their bankruptcy estate, as their share of the beneficial interest. The bankrupt notifies the official receiver that the boiler needs repairing at a cost of £1,000, and provides a written quotation to evidence this. The cost of this will be met from the next two and a half months rent (2 x £400, plus £200 in the third month). The bankrupt would not need to send any monies in to the official receiver for the next two months, and in the third month only £100 would be due.

30.121 Service agreements

Where the bankrupt/joint owner has maintained a service agreement on something such as the heating system or a burglar alarm system, the official receiver should allow the reasonable cost of maintaining that agreement as a deduction from the rent when calculating the bankrupt's share of rental profit.

30.122 Gas safety

The bankrupt and joint owner as landlords are required to ensure that all gas appliances and flues are in good order so as to prevent the risk or injury to any person lawfully occupying the premises. The official receiver should allow for the cost of an annual safety check to be carried out by a 'Gas Safe Register' registered tradesman¹ (see [gassafe](#)). A copy of the issued safety certificate should be issued to the tenant within 28 days of the check.

If the bankrupt informs the official receiver that there is no current gas safety certificate, the official receiver should write to the bankrupt and joint owner informing them that as landlords they are legally responsible for obtaining one. Where the property being inspected is an average size home, (e.g. one domestic boiler, one gas fire and one gas cooker), where the equipment passes the safety check, the cost of obtaining a certificate should not be greater than £200.

1. Gas Safety (Installation and Use) Regulations 1998 regulation 35(2)

30.123 Smoke and Carbon Monoxide Alarms

On 1 October 2015 The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 came into force in respect of rented properties in England (for Welsh properties see below). Private sector landlords are required from 1 October 2015 to have at least one smoke alarm installed on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (eg a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy.

The requirements will be enforced by local authorities who can impose a fine of up to £5,000 where a landlord fails to comply with a remedial notice.

For Welsh tenanted properties, those built since 1992 must be fitted with mains-powered, inter-linked smoke detectors/alarms but landlords are advised to provide at least battery operated alarms in older properties.

It remains the bankrupt and joint owner's responsibility as landlords to ensure the property is fitted with the appropriate smoke and carbon monoxide alarms.

Reasonable costs in relation to the supply and fitting of smoke alarms in the property should be treated as an allowable expense.

30.124 Electrical safety

The bankrupt and joint owner as landlords are required to ensure that any electrical system and appliances supplied is safe when a tenancy begins, and remain safe throughout the tenancy^{1, 2}. This is usually achieved by obtaining a periodic electrical certificate on the property from a qualified electrician, normally every 1 to 5 years depending on the electrician's recommendation³.

If the bankrupt informs the official receiver that there is no current electrical safety certificate, the official receiver should write to the bankrupt and joint owner informing them that as landlords they are legally responsible for obtaining one. The cost of the assessment and certificate should not cost more than £200 in an average home and is an allowable deduction from the rental income (see paragraph 30.113).

1. Landlord and Tenant Act 1985 section 11

2. Electrical Equipment (Safety) Regulations 1994

3. Code of Practice for In-Service Inspection and Testing of Electrical Equipment

30.125 Fire safety of furnishings

Legislation provides for levels of fire resistance for domestic upholstered furniture, furnishings and other products containing upholstery, including the measures to be taken to improve the fire safety of materials¹. Fire resistant furniture carries a symbol

that confirms that it is fire resistant. It remains the responsibility of the bankrupt and joint owner to ensure any furniture complies with current regulations.

Where the AST agreement is in relation to a furnished property and the bankrupt/joint owner are aware that furniture does not reach the fire safety requirements the costs of replacing the required furniture is an allowable cost in the calculation of the bankrupt's beneficial interest in the AST.

1. Furniture and Furnishings (Fire Safety) Regulations 1988

30.126 Ground rent and service charges on leasehold property

When dealing with jointly owned leasehold property, the lease usually contains a requirement to pay ground rent, either annually or monthly and may also require the payment of a service charge in relation to the upkeep of communal areas (see paragraphs 30.94 and 30.95). The official receiver, as trustee, should allow the payment of ground rent and any service charge as a deduction from the rental income when calculating the bankrupt's beneficial interest in the AST on a jointly owned leasehold property.

Ground rent differs from payments in respect of a mortgage loan secured on the property, where the capital element of the mortgage repayment is not an allowable cost (see paragraph 30.130 to 30.131), in that it is a requirement for payment which is attached to the leasehold property.

30.127 Improvement notice, prohibition orders, hazard awareness notice

Where the bankrupt and joint owner receive a notice from the Local Council¹ requiring the landlord to put a hazard in relation to the property right, the cost of rectifying the hazard should be considered as an allowable cost by the official receiver, as trustee, in calculating the bankrupt's beneficial interest in the tenancy agreement (see paragraph 30.91).

1. Housing Act 1988 sections 5 - 10

30.128 Letting agent's costs

Where the bankrupt and joint owner have employed a letting agent, reasonable costs under the terms of the contract with the letting agent should be allowed by the official receiver, as trustee, when calculating the bankrupt's beneficial interest in the AST.

Where a letting agent is acting for the landlords, the official receiver should allow a reasonable amount as a deduction from the final rent to pay for a final inspection and inventory (see paragraph 30.145).

30.129 Dealing with the mortgage loan

A distinction needs to be drawn between the capital repayment element on a mortgage loan and the interest repayment element. Most jointly owned tenanted properties are purchased as an investment and financed with a buy-to-let mortgage, which are usually interest only mortgages. The interest only element of a mortgage payment in respect of a mortgage loan is an expense for which the borrower receives no benefit.

The capital element of the mortgage goes towards paying off the borrowers' debt. As the debt has been reduced by the same amount as the capital repayment element, the borrowers have benefitted by that amount and at the end of the mortgage loan period the borrowers will own the property. By contrast the interest element of the repayment has no corresponding benefit and so it may be treated as an expense that can be deducted from the rental payment.

30.130 Payment of capital element of mortgage loan repayment is not an allowable expense

The official receiver, as trustee, is able to collect the bankrupt's share of the rent, after deductions for the allowable costs of letting the property under an AST agreement for the benefit of the bankrupt's creditors. Allowable costs would include the interest element of the mortgage repayment made but should not include any payment in respect of the capital element of the mortgage loan payments.

This is consistent with HMRC, who allow the mortgagee interest element as an allowable expense when calculating the tax due on a landlord's rental profit.

30.131 Position of solvent owner

If the joint owner of a tenanted property is solvent and the bankrupt fails to pay any mortgage loan payment due in respect of a mortgage loan on the property from their share of the rent, then in practice the whole of the mortgage loan payment will fall to be paid by the solvent owner.

30.132 Both joint owners bankrupt

Where both owners of a jointly owned tenanted property are bankrupt then 100% of the rental income, less the allowable costs of renting the property under the terms of the AST agreement (but not the including any capital element if any payments in respect of the mortgage loan on the property) should be collected by the official receiver, as trustee, for the benefit of the insolvent estates.

Disposal or ending of an assured short hold tenancy agreement

30.133 Introduction

The following guidance deals with the ending of an AST and covers ways that the tenancy may be ended by either the tenant, mortgagee, bankrupt or joint owner. In addition, the guidance deals with the disposal of the bankrupt's interest in the jointly owned property when the tenancy is continuing.

30.134 Ways that a tenancy may be brought to an end

When the official receiver is trustee, they will, at some point, want to dispose of their interest in a jointly owned tenanted property. An AST agreement and/or the official receiver's interest in a jointly owned tenanted property will be brought to an end following the occurrence of any of the following events:

- an insolvency practitioner is appointed as trustee (see paragraphs 30.136 to 30.137)
- the tenant decides to leave or is evicted from the property (see paragraphs 30.138 to 30.149)
- the official receiver, as trustee, sells the bankrupt's interest in the property to a solvent owner, third party or back to the bankrupt (see paragraphs 30.151 to 30.162)
- the mortgagee takes possession action against the property (see paragraphs 30.163 to 30.173)
- the mortgagee appoints a receiver of rents (see paragraphs 30.174 to 30.180)
- the official receiver, as trustee, disclaims their interest in the bankrupt's beneficial interest in the property (exceptional circumstances only) (see paragraphs 30.182 to 30.195)

30.135 Landlord and Tenant Act 1987 and disposal of tenanted property

When a jointly owned property let on an AST agreement is disposed of, it is not classed as a 'relevant disposal' for the purposes of the Landlord and Tenant Act 1987. Part 1 of this act gives 'qualifying tenants' of certain premises the right of first refusal to acquire a landlord's interest in premises, when a landlord proposes to make a 'relevant disposal'. The official receiver does not need to be concerned with these obligations when disposing of property let on an AST because a tenant on an assured tenancy (which includes ASTs) cannot be a qualifying tenant¹ (see chapter 28).

1. Landlord and Tenant Act 1987 section 3(d)

Appointment of insolvency practitioner

30.136 General

When there is a tenanted property (with or without equity), the solvent owner or third party has not expressed a desire to purchase the interest, and the official receiver believes an insolvency practitioner may accept an appointment as trustee, the case may be offered to an insolvency practitioner. Where there are other assets that would attract the appointment of an insolvency practitioner as trustee, then the official receiver should give consideration to seeking an appointment..

Where there are other assets that would attract the appointment of an insolvency practitioner to act as trustee, but disputes or ongoing issues relating to the AST agreement are ongoing, necessitating a more urgent trustee appointment, then a Secretary of State appointment of an insolvency practitioner trustee should be considered. See chapter 45 for guidance on Secretary of State rota appointments.

30.137 Appointment of insolvency practitioner, mortgagee enquiries

Prior to seeking the appointment of an insolvency practitioner to act as trustee, enquiries should be made of any mortgagee to ascertain whether they intend to appoint a receiver of rents or to take possession proceedings in relation to the property (see paragraph 30.50). If the mortgagee is going to take imminent action, an insolvency practitioner is unlikely to accept the appointment unless there is significant equity in the property or there are other assets in the bankrupt's estate, as any future rental income will no longer be available for collection by the trustee.

Tenant is evicted or decides to leave

30.138 Eviction under Housing Act 1988 Section 21

Under the Housing Act 1988, a landlord who has granted an AST has a legal right to get their property back at the end of the tenancy. To legally terminate an AST in England and Wales at the end of a fixed term, the landlord must serve a section 21¹ possession notice personally on the tenant and must give the tenant a minimum of two months notice. The notice can be served in one of two circumstances, either at the end of the agreement or during the running of the agreement (see chapter 28), provided that it does not seek to terminate the tenancy any earlier than the day the agreement ends. If the tenant fails to vacate the property after proper notice, possession action is needed to evict them. Not until an order for possession is made by the court would the tenancy actually terminate.

As the official receiver is not the landlord of jointly owned tenanted property, they cannot serve a section 21 notice evicting the tenant.

1. Housing Act 1988 section 21

30.139 When bankrupt or joint owner serves a section 21 notice to quit

Where the bankrupt or joint owner serves notice on a tenant bringing a tenancy to an end, the official receiver as trustee should continue collecting the bankrupt's share of the profit from the rent until the tenant vacates the property. Once the property is empty, the bankrupt and joint owner are free to deal with the property as they wish including entering into a new AST, moving into the property, or handing the keys to the property to the mortgagee. The official receiver retains a beneficial interest in the bankrupt's share of property, which in the absence of rent, is the value of the reversionary interest (see paragraph 30.6) in the underlying property, see guidance from paragraph 30.105 and chapter 28 for calculating the value of a bankrupt's beneficial interest.

30.140 When tenant leaves before end of tenancy agreement

If a tenant wishes to leave the property, they should give proper notice to the bankrupt and joint owner as landlords. The notice should be in writing¹ and comply with the period specified in the tenancy agreement. If a tenant leaves without giving

the landlord proper notice, then they are liable for the rent for the unexpired period of the tenancy. When those monies are paid to the landlords, the official receiver, as trustee, should claim the bankrupt's share of the profits from the rent for the benefit of the estate (see guidance from paragraph 30.109).

1. Protection from Eviction Act 1977 section 5(1)a

30.141 When tenant leaves after tenancy has expired

When the initial tenancy period has expired, and the tenancy has become a statutory periodic tenancy (see chapter 28), then the tenant should give notice of one period of that tenancy¹. A tenancy period is usually determined by the period that rent is paid for. Thus if the rent is paid per calendar month, the tenant should give one calendar months notice in writing to the landlord, subject to a statutory minimum of not less than four weeks notice before the date on which it is to take effect².

1. *Lemon v Lardeur* [1946] K.B. 613

2. Protection from Eviction Act 1977 section 5(1)b

30.142 When tenant leaves – retaining deposit for rent owed

When the tenant leaves the property without giving proper notice, owing rent for the notice period, then the bankrupt and joint owner as landlords can claim an amount from the deposit for the outstanding rent.

When the bankrupt and joint owner recover rent from the tenant's deposit, the official receiver, as trustee, should claim the bankrupt's share of the profit from that rent.

30.143 When tenant leaves – deposit

If the tenant leaves the tenanted property then the bankrupt and joint owner will need to deal with the return of the deposit. Where damage, other than usual wear and tear, has occurred the landlord may be entitled to withhold all or part of the deposit to restore the property to the original position. Any deduction from the deposit is not to compensate the landlord for damage; it is to pay to make good the damage. The official receiver should not normally claim any portion of a deposit that is withheld by the bankrupt and joint owner, as the monies will normally be used to affect repairs.

30.144 When tenant leaves – tenant is creditor for lost deposit

If the deposit has not been retained by the bankrupt or joint owner, and the tenant vacates the property at the end of the tenancy agreement, the tenant will be a creditor in the bankruptcy proceedings for the amount of any deposit lost (see paragraphs 30.63 and 30.64). The solvent owner, if any, also remains jointly and severally liable to the tenant for the lost deposit.

The tenant may attempt to withhold the last month's rent due under the tenancy agreement to recoup the lost deposit. As the official receiver is not the landlord, only the bankrupt and joint owner can pursue the tenant for the outstanding rent.

30.145 Where tenant leaves – inspection

The bankrupt and joint owner may carry out or arrange for an inspection of the property when the tenant leaves. Where a letting agent is acting for the landlords, the official receiver should allow a reasonable amount as a deduction from the final rent to pay for a final inspection and inventory.

30.146 When tenant leaves – insurance position where solvent joint owner

When the tenant of a jointly owned property leaves the official receiver will need to review the insurance position regarding the property, see paragraphs 30.32 to 30.36. Where there is a solvent joint owner, insurance should only have been obtained by the official receiver when there is equity in the property. When there is a solvent joint owner, insurance remains the responsibility of that solvent owner. The official receiver does not need to consider disclaiming the bankrupt's beneficial interest in the property in this instance (see paragraph 30.182).

30.147 When tenant leaves – insurance position, both owners bankrupt

When the tenant leaves the official receiver will need to review the insurance position regarding the property, see paragraphs 30.32 to 30.36. Where there is an empty property in a bankruptcy estate, there are specific insurance requirements that may necessitate an inspection and the securing of those premises. Where both joint owners are bankrupt the official receiver will need to ascertain what public liability insurance is in place (and buildings insurance where there is equity in the property) (see chapter 14, annex A). Where there is no insurance in place relating to an empty

building and the bankrupts' have indicated it is not their intention to obtain insurance, the official receiver will need to seek the permission of the bankrupts to gain access to and possibly secure the property to meet insurance requirements, as the official receiver is not the legal owner, and is unlikely to have a set of keys. This should only be considered when both joint owners are bankrupt as only then would the official receiver have a potential public liability risk as the owner of 100% of the beneficial interest (see paragraph 30.33).

Insurance cover is available for unoccupied buildings from Willis Ltd, provided that within 30 days of the building becoming unoccupied the code of practice referred to in chapter 14, Annex A for securing that building is followed. The official receiver should consider disclaiming the bankrupt's beneficial interest in the property prior to the 30 day period expiring if they decide to disclaim rather than insure the property on an ongoing basis at a cost to the estate (see paragraph 30.148 below).

30.148 When tenant leaves – insurance or disclaimer, both owners bankrupt

Where the property is in negative equity, both joint owners are bankrupt, and the estate is no longer in receipt of rental income, the obligation on the official receiver to obtain public liability insurance on the property may mean that the property has become onerous (see paragraph 30.184). In the first instance, the mortgagee should be asked to take responsibility for the insurance. Only if the mortgagee does not wish to take possession of the property or obtain insurance, and where the property has become onerous, should the official receiver, as trustee, consider disclaiming their beneficial interest in the property to protect the estate from ongoing insurance costs.

Where the property has some equity, both joint owners are bankrupt, and the estate is no longer in receipt of rental income, the obligation on the official receiver to obtain public liability insurance may not mean that the property has become onerous (see paragraph 30.184). In the first instance, the mortgagee should be asked to take responsibility for the insurance. Only if the mortgagee does not wish to take possession of the property or obtain insurance, an insolvency practitioner cannot be found to act as trustee, and where the property has not become onerous, should the official receiver, as trustee, consider obtaining buildings and public liability insurance on an ongoing basis. A jointly owned tenanted property is not suitable for transfer to LTADT.

30.149 When tenant leaves – council tax

Council tax is a tax set by local councils to help pay for local services. There is one council tax bill for each dwelling, whether it is rented or owned. Generally speaking, the occupier(s) of the property are the liable person(s) for payment of the tax¹.

When the tenant(s) vacate(s) a property and it is left unoccupied, the legal owner is, generally speaking, the person liable for payment of the council tax. A property is exempt from council tax where the liable person (legal owner) is a trustee in bankruptcy² or the property has been taken into possession by the mortgagees (see chapter 28)³. When dealing with jointly owned property, the official receiver only holds the bankrupt's beneficial interest (see chapter 28), although this is most likely sufficient to be considered a "material interest"⁴ and so a jointly owned property will be considered an exempt property and not chargeable where no one is in occupation of the property.

1. Local Government Finance Act 1992 section 6

2. Council Tax (Exempt Dwellings) Order 1992 article 3 Class Q

3. Council Tax (Exempt Dwellings) Order 1992 article 3 Class L

4. Local Government Finance Act 1992 section 6(5) and (6)

30.150 When bankrupt and/or joint owner moves into a previously tenanted property

Should the official receiver discover that the bankrupt or joint owner has moved into the property without the mortgagee's permission, then the official receiver should write to the mortgagee informing them. There is no restriction upon the bankrupt or joint owner moving into the property after a tenant vacates the property, provided that the mortgagee consents. The official receiver should not get involved in any negotiations as they do not hold the legal title to the property.

As a tenanted property would not normally be a family home at the date of the bankruptcy order, the bankrupt's beneficial interest will not re-vest in the bankrupt at any point. A letter should be sent to the bankrupt and joint owner informing them that although they have moved back in to the property, the bankrupt's beneficial interest will not re-vest in them but will remain as part of the bankruptcy estate until the interest is sold¹. Upon sale, any surplus will be paid to the bankruptcy estate.

If there is equity in the property it is likely that the case will have been handed over to an insolvency practitioner to act as trustee.

1. Section 283A

Sale of the bankrupt's beneficial interest

30.151 General

The main point to remember when dealing with a jointly owned tenanted property is that it is not a qualifying property under section 283A. If the bankrupt, (or their family), did not live in it at the date of the bankruptcy order. There is no reason for the official receiver to consider selling a tenanted property back to the bankrupt or joint owner as a matter of routine, as they do not need it for living in.

30.152 Sale of interest to a solvent owner or third party

The official receiver, as trustee, can sell the bankrupt's beneficial interest in the property to a solvent owner or third party. As a rule, and as the property is an investment rather than the bankrupt's home, it should only be sold if to do so would benefit the creditors over and above what would be achieved by the official receiver retaining the property. A sale of the bankrupt's beneficial interest under the low cost conveyancing scheme will not apply as it is an investment property (see chapter 28). In the absence of alternative local arrangements, a separate quote from TLT Solicitors (solicitors appointed by The Insolvency Service under the property conveyancing scheme) for their fees can be obtained by the official receiver (see chapter 28). The purchaser will either need to take out a new mortgage loan for the purchase of the property, (where the existing mortgagee will not allow the legal title to be sold without the mortgage loan being redeemed), or will need to take on responsibility for the current charges secured on the property (see paragraph 30.159), depending of the circumstances of the sale.

Where the property is jointly owned by the bankrupt and another person, it is only the bankrupt's beneficial interest in the proceeds of sale (and rent and profits until sale) which vests in the trustee. The legal estate remains vested in the joint owners. If the property is to be sold, it will be necessary for the bankrupt and co-owner to convey the legal estate under their own signatures. If, as is likely, the official receiver as trustee is not arranging the sale, they may be asked by the solicitors dealing with the sale to sign a deed of concurrence to confirm that, as one of the beneficial owners, or otherwise (as necessary) in their capacity as trustee, they agree to the sale. Such a deed is not strictly necessary but the official receiver may sign it if they are satisfied that the sale is in order, to facilitate the sale and, in particular, that the arrangements for the payment to them of any surplus on the sale which is due to the estate are satisfactory. The official receiver should seek a small fee for dealing with

the transfer, based upon their time costs, unless an asset realisation will accrue (see chapter 48 for more information on fees)¹.

1. Insolvency Regulations 1994 schedule 2, table 2 & 3

30.153 Sale to solvent owner or third party – calculating beneficial interest

Before the transfer of the legal title or beneficial interest to a solvent owner or third party can proceed (subject to contract), the official receiver has to agree on the value of the interest being transferred. For details on how to calculate the bankrupt's beneficial interest in the property see guidance from paragraph 30.105.

30.154 Sale of beneficial interest – remaining term of tenancy

Once the official receiver, as trustee, has established the bankrupt's beneficial interest in the sale proceeds of the property and has established the bankrupt's interest in the profits from the AST (see paragraph 30.109), consideration will need to be given to the remaining term of the AST. The payment from the solvent owner or third party will need to compensate the estate for the loss of this rental income. For example if there is six months left to run on an AST and the tenant has been a reliable payer of the rent then the official receiver should look to receive the bankrupt's share of the proceeds of any likely sale of the property and the profit from that six months rent. The official receiver may consider accepting a lower amount for the rental income as there is no guarantee that the tenant will not default on rental payments. Ultimately, the best should be done for the creditors.

30.155 Example of calculating beneficial interest

A bankrupt is the joint owner of a property let on an AST. The property was purchased by both owners in equal shares. The solvent owner has expressed an interest in buying the bankrupt's beneficial interest in the property valued at £200,000 with a mortgage loan charge of £175,000 (£25,000 equity). The monthly rent on the AST is £500 per month and there are 4 months remaining on the agreement. Allowable costs in relation to the AST have been calculated at £50 per month. The tenant is a reliable payer and there is no reason to consider they will default in the payment of rent.

- bankrupt's potential beneficial interest in sale proceeds (not including any costs of sale) is $\text{£}25,000 \div 2 = \text{£}12,500$
- bankrupt's beneficial interest in profits from rent is $(4 \times \text{£}500) - (4 \times \text{£}50) \div 2 = \text{£}900$

The bankrupt's beneficial interest in the property is $\text{£}13,400$ ($\text{£}12,500 + \text{£}900$). The solvent owner offers the official receiver $\text{£}12,000$. The official receiver, as trustee, accepts this offer as there is no guarantee that all the rent will be received or that a sale price of $\text{£}200,000$ would be achieved.

30.156 Independent legal advice

Whenever the solvent owner or a third party expresses a desire to purchase the beneficial interest from the official receiver, as trustee, they and the bankrupt should be encouraged to seek independent legal advice. This is particularly appropriate where the bankrupt is likely to keep the mortgage loan in their name following the sale (see paragraph 30.156), or where the bankrupt wishes to buy the interest back after their discharge (see paragraph 30.161).

Where a property is in negative equity, or has little equity, the purchase of the beneficial interest may not be in the best interests of the bankrupt, solvent owner or third party. If the bankrupt agrees to acknowledge the mortgage debt post bankruptcy, and they subsequently default on the mortgage loan following the purchase of the beneficial interest by a third party, the mortgagee could take action against the bankrupt to recover the debt (see paragraph 30.159).

30.157 Discussion between mortgagee and bankrupt

If the bankrupt wishes to take on joint responsibility for the mortgage post bankruptcy when a solvent owner or third party intends to purchase the bankrupt's interest in a tenanted property, the official receiver should distance themselves from any negotiations between the bankrupt and the mortgagee to avoid any future adverse criticism.

30.158 Mortgagee's consent to sale

Prior to the official receiver agreeing to sell the bankrupt's beneficial interest in the property to a solvent owner or third party, the solvent owner or third party will need to obtain consent from the mortgagee to the transfer of the legal title. The mortgagee may require the bankrupt or solvent owner/third party to come to an arrangement in relation to the existing mortgage debt (see following paragraph).

30.159 Bankrupt to take over mortgage post-bankruptcy

Should the mortgagee be prepared to consent that the bankrupt's beneficial interest in the legal title be transferred to the solvent owner or third party, it is likely that the bankrupt and/or solvent owner will be asked to sign an agreement to take over the mortgage loan. Should the bankrupt sign such an agreement this effectively means the bankrupt will not be released from the mortgage debt on their discharge from bankruptcy. For this reason the official receiver should encourage the bankrupt to seek independent legal advice before proceeding in this way (see paragraph 30.156).

30.160 When bankrupt moves into a previously tenanted property, IPA/O calculation

The official receiver needs to make it clear that if the bankrupt were to move into the property after they, or the joint owner, purchases the beneficial interest, and then take on a lodger to help with the mortgage payments, the official receiver would assess the rent received from that lodger as part of the bankrupt's income, available for inclusion in any calculation for an IPA/IPO entered into before discharge, or in any variation of the amount to be collected under an existing IPA/IPO continuing post discharge (see following paragraph)

30.161 Selling interest to bankrupt post discharge

The bankrupt (or bankrupts) may wish to buy back the beneficial interest in the property after discharge from bankruptcy for various reasons, for example, their credit rating may restrict future mortgage products being available. Whether there is still a tenant in the property or not, it may be possible to sell the beneficial interest back to the bankrupt following their discharge, provided they are not subject to an IPA/O which will restrict the amount of available income the bankrupt has. In addition to the payment for the legal fees and the bankrupt's share of any equity (or £1 if negative equity), the discharged bankrupt will also need to pay an amount equal to their share of any rent that will be lost to the insolvent estate where the property is still being rented out post discharge. The official receiver should base this calculation on the bankrupt's share of rental profits over a reasonable period (see paragraphs 30.153 to 30.155 above). The official receiver should ensure that the bankrupt is

encouraged to get independent legal advice before proceeding with the transfer (see paragraph 30.156). The bankrupt will also need to obtain the necessary permission of the mortgagee, see paragraphs 30.146 to 30.148.

30.162 Termination of insurance after sale of interest

If the bankrupt's beneficial interest in a jointly owned property is sold the official receiver should ensure that any insurance taken out is cancelled to prevent further costs accruing. See paragraphs 30.32 to 30.36 on insurance.

Mortgagee possession

30.163 Mortgagee's right to take possession

A mortgagee usually has the power to take possession of a property over which they hold a secured charge when the borrowers (mortgagors) breach the terms of the mortgage loan¹. Where the mortgagors have not obtained permission from the mortgagee to grant a tenancy over that property, they are usually in breach of the mortgage terms and so granting an unauthorised tenancy is usually sufficient grounds for repossession. Failing to make mortgage payments will also make the mortgagors in breach of the terms of their mortgage loan.

1. Law of Property Act 1925 section 101

30.164 Mortgagee's right to actual possession when consent to let granted

When a mortgagee has given consent to the mortgagor to let a property to tenants, or the mortgage is a buy-to-let mortgage, the mortgagee's right to repossess the property is set down in the terms of the mortgage loan (paragraph 30.163), but they are bound by any AST agreement. This prevents the mortgagee from obtaining vacant possession (i.e. evicting the tenant), without following the proper notice period¹. See paragraphs 30.138 to 30.139.

1. Housing Act 1988 section 21

30.165 What constitutes possession

Where a mortgagee takes actual possession of a property, there is no doubt as to their intention to take possession and they assume the liabilities of a mortgagee in possession (see paragraph 30.167). Where the mortgagee gives notice to the tenant to pay rent to them, it is also clear that they intend to go into receipt of rents and profits. This is equivalent to taking possession¹. This is also the case if they give notice to the tenant not to pay rent to the mortgagors². The mortgagee must either take possession or leave the mortgagors in possession³.

1. *Horlock v Smith* [1842] 11 LJ Ch 157

2. *Mexborough UDC v Harrison* [1964] 2 All ER 109

3. *Heales v M'Murray* [1856] 23 Beav 401

30.166 Mortgagee not in possession

A mortgagee cannot be said to be in possession when they merely receive a sum equal to the rent from the mortgagors' agent, when the agent has not served on the tenant any notice on the mortgagee's behalf¹. The mortgagee must act in such a manner to substitute themselves for the mortgagors in the control and management of the property. The mortgagee does not assume possession by insuring the property or by making arrangements with the tenant if the tenant does not recognise the mortgagee as landlord².

1. *Noyes v Pollock* [1886] 32 ChD 53

2. *Ward v Carttar* [1865] LR 1 Eq 29

30.167 Landlord's duties when mortgagee in possession

When a mortgagee is in possession of a tenanted property, the bankrupt and joint owner are no longer actively in control of that property, and are no longer entitled to collect rent. The mortgagee will assume the role of manager of that property¹, effectively becoming the landlord. When a mortgagee takes possession of a tenanted property, they also take on responsibility for that tenancy, including the collection of rent².

1. *Kendle v Melson* [1998] 193 CLR 46

2. *Cockburn v Edwards* [1881] 18 ChD 449

30.168 Council tax when mortgagee in possession

A property is exempt from council tax where the liable person is a mortgagee in possession (see chapter 28)¹.

1. Council Tax (Exempt Dwellings) Order 1992 article 3 Class L

30.169 Mortgagee's right to rent arrears

When a mortgagee enters possession, they are entitled to collect any rent arrears that exist at the date of possession¹. The mortgagee is entitled to arrears of rent whether falling due before or after the mortgage was granted. The mortgagees are also entitled to receive rents held by a letting agent (see paragraph 30.58). Any rent collected by the mortgagee in possession should be used firstly in paying the current outgoings such as insurance and repairs. The balance will then be applied by the mortgagee in payment of the interest on the mortgage loan, followed by the capital². The consequence of this on the official receiver, as trustee, is that if they do not collect the bankrupt's share of any rent arrears in a timely fashion, the rent arrears may be lost to the estate.

1. Landlord and Tenant (Covenants) Act 1995 section 15(1)

2. Webb v Rorke [1806] 2 Sch & Lef 661

30.170 Mortgagee's right to sell when tenancy not binding

When a mortgagee in possession exercises its right to sell the property, and a tenancy was granted by the mortgagors without the mortgagee's consent, then the tenancy is void against the mortgagee. Where a tenancy agreement is void against the mortgagee, it is also void against any purchaser from the mortgagee¹. The mortgagee would normally obtain vacant possession prior to selling a property either by peaceful entry of the property or by obtaining an order for delivery of the land. See paragraphs 30.172 and 30.173 below on the repossession process. The mortgagee may choose to sell a property with a sitting tenant.

1. Rust v Goodale [1957] Ch 33 at 44]

30.171 Mortgagee's right to possession when tenancy is binding

Where a tenancy is binding on a mortgagee, the mortgagee must give a minimum of two months notice to the tenant to evict them¹ see paragraph 30.138.

1. Housing Act 1988 section 21

30.172 Repossession process – overview

Before a mortgagee can obtain actual possession of a property by evicting a tenant, the mortgagee must obtain a court order. If the mortgagee is not aware of the tenant's details, notice needs to be served on the property, addressed to "the occupiers" of the hearing date, at least five days before the hearing. There are various options open to the court at the possession hearing, but if the mortgagee proves grounds for possession, and the application is not defended, the court will most likely make a possession order.

The possession order will give the occupier a date by which they should leave, which is usually 28 days after the hearing, although it may only be a few days in some cases. If the occupants have not left by the date on the possession order, then the mortgagee will need to go back to court and obtain a warrant for possession before they can evict the occupants. This usually happens only one or two weeks after the date to leave on the possession order.

30.173 Repossession process – enforcing the order

The court's bailiffs will execute a warrant for possession and will change the locks to secure the property. They can break into the property if it is empty at the time they attend.

Receiver of rents

30.174 Mortgagee in possession entitled to appoint receiver of rents

A mortgagee in possession may relieve itself of its position and responsibility by appointing a receiver of rents under its statutory power¹ and the court may appoint a receiver of rents after a mortgagee has taken possession if the circumstances render it just and convenient. The receiver would be the agent of the mortgagee not the mortgagor in this instance (see paragraph 30.176).

1. Anchor Trust Co v Bell [1926] Ch 805 at 817

30.175 Mortgagee's right to appoint a receiver of rents

A mortgagee has the right to appoint a receiver of any rents and profits of a property on which they hold a secured charge when the borrowers (mortgagors) breach the terms of their mortgage loan, see paragraph 30.163. This right is enshrined in the Law of Property Act 1925¹ and it is also normally contained in the terms of the mortgage deed. Failing to make mortgage payments will make the mortgagors in breach of the terms of their mortgage loan. Where the mortgagors have not obtained permission from the mortgagee to grant a tenancy over that property, the mortgagee will not normally appoint a receiver of rents as to do so will be acknowledging and giving validity to that tenancy.

1. Law of Property Act 1925 section 101(1)iii and section 109(1)

30.176 Receiver of rents is agent of mortgagors

It is worth noting that when a receiver of rents is appointed either by the mortgagee (under the terms of the mortgage loan) or by the court (under the Law of Property Act 1925), they act for the mortgagors (the borrowers) and not the mortgagee¹. The receiver is therefore unable to bring possession proceedings against the mortgagors being the same person. Instead, if possession proceedings are taken following the appointment of a receiver, it will be in the name of the mortgagee.

1. Law of property Act 1925 section 109(2)

30.177 Receiver's duties to repair property

Where a receiver of rents is appointed by the mortgagee, they are responsible for paying the running costs of that property from the rents received as follows¹;

- all rents, taxes, rates and outgoings whatever affecting the mortgaged property
- keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage of which they are receiver
- in payment of their commission, and of premiums on fire, life and other insurances, and the cost of executing necessary repairs directed by the mortgagee
- in payment of the interest accruing in respect of any principal money due under the mortgage
- towards discharge of the principal money, if so directed by the mortgagee

1. Law of Property Act 1925 section 109(8)

30.178 Council tax when receiver of rents appointed

A property is exempt from council tax where the liable person is a mortgagee in possession (see chapter 28)¹. Generally speaking, when a receiver of rents has been appointed, they are an agent of the mortgagor, however, when the mortgagors are bankrupt, it is likely this agency has been brought to an end, and the mortgagee can be considered in possession. Where the local authority is seeking payment of council tax from the bankrupt(s), the official receiver should suggest that the local authority seek guidance from the receiver as to whether they are now acting on behalf of the mortgagee in possession under the powers of the mortgage deed.

1. Council Tax (Exempt Dwellings) Order 1992 article 3 Class L

30.179 Receiver's duty to manage property

The receiver's duty of care was tested in a case where the receiver had failed to serve notice under a rent review clause in a lease, which meant that the rent was not increased and income was lost¹. The judge found that the receiver had failed to come up to the standard of care required of a receiver. The receiver had regarded their function as to do what they were told by the lender but that was an unhappy misapprehension of the function of a receiver; for although they were appointed by one party, their function was to look after the property of which they were receiver for the benefit of all those interested in it. The receiver took over the management of the properties from the borrowers and it was held that failure by the borrowers to take steps to alert the receiver to the rent review clause did not amount to contributory negligence.

1. Knight & Anor v Lawrence [1991] BCC 411

30.180 Checking validity of receiver appointment

Where the official receiver receives notice of the appointment of a receiver of rents, they should request a copy of the relevant appointment document. This may take the form of a court order or of a document signed by the mortgagee provided the power of sale has become exercisable¹. When the official receiver is satisfied the appointment is valid, they should write to the mortgagee and receiver confirming that they have accepted that the appointment is valid and that they will no longer attempt to collect the bankrupt's share of the rental profits after allowable deductions.

1. Law of Property Act 1925 section 109(1)

30.181 Transfer of case to LTADT following appointment of receiver

Where a receiver of rents is appointed and the property is the only outstanding asset matter, the case may be transferred to the LTADT if the property is unlikely to be disposed of within 12 months (probable where rent is being received). However, if the property is likely to be disposed of by the receiver of rents within 12 months, the case should remain with the local official receiver to deal with. The official receiver will need to consider each case individually.

A Form A and Form J restriction should be registered against all jointly owned property in which the bankrupt has a beneficial interest (see chapter 7). The official receiver should check that these restrictions are registered prior to any transfer of the case to LTADT (see chapter 7)

Disclaimers

30.182 Disclaimer not usually appropriate in jointly owned properties

The legal title to a jointly owned property and a related AST agreement do not vest in the official receiver, as trustee, and it is not possible, consequently, for those items to be subject to disclaimer. In jointly owned properties, it is the beneficial interest (the right to receive a financial benefit) in the property or the AST agreement that vest in the official receiver, as trustee. It is rarely necessary to disclaim a beneficial interest as there are not normally any onerous obligations attached to such an interest.

The position might, though, be different if both (all) the joint owners are bankrupt (see following paragraph).

30.183 Disclaimer – where both joint owners bankrupt

Where both joint owners of a tenanted property are bankrupt it is possible that any obligations relating to the property (and related tenancy agreement) might fall to the official receiver as sole beneficiary. In this case, where there are onerous obligations in excess of any value to the estate of the property (and/or benefit from the tenancy agreement) (see following paragraph), then it would be appropriate to issue a disclaimer of the interest of the bankrupts in the property and the tenancy.

30.184 A tenanted property as onerous property

The official receiver will need to balance the value of the beneficial interest to the estate (including any equity in the reversion and the rental profits from the tenancy agreement) against any expenses or liabilities the official receiver, as trustee, may have in relation to the property to establish if the beneficial interest is onerous. Where these expenses/liabilities are greater than the bankrupts' beneficial interests then the property is likely to be onerous.

30.185 Mortgagee to appoint receiver – onerous property

The official receiver should initially seek to establish if the mortgagee intends to take possession proceedings or appoint a receiver of rent when dealing with jointly owned onerous property. A disclaimer should not initially be issued where the mortgagee has indicated they are going to appoint a receiver. When dealing with onerous property, it is imperative that it is dealt with quickly and so the mortgagee should be pressed for a time by which they will appoint a receiver or take possession. Onerous property should not be left whilst the mortgagee makes a decision on how to proceed. The mortgagee should be informed that if they have not dealt with the property by a certain date, a disclaimer will be issued.

30.186 Wording of disclaimer

The notice of disclaimer should contain a description of the jointly owned property sufficiently detailed to ensure that there can be no doubt as to the property being disclaimed¹. As it is only likely that a disclaimer will be issued where both joint owners are bankrupt, a disclaimer should be issued by the official receiver, as trustee, disclaiming the bankrupt's beneficial interest in each bankruptcy case. For this purpose, there is no such thing as a joint disclaimer. In relation to the interest in a jointly owned tenanted property, a suitable wording would be:

“.....the beneficial interest in the [freehold/leasehold] premises known as and situated at [address of property] comprising [e.g., a two-storey terraced house] and a tenancy agreement granted to [name of tenant] on [date of tenancy agreement] of the aforementioned premises from [date of commencement of tenancy] at an [annual/monthly] rent of [£].”

1. Rule 19.2 (1)(d)

30.187 Disclaimer following collection of rent

The collection of the bankrupts' share of the rental profits does not preclude the official receiver, as trustee, from disclaiming the bankrupts' beneficial interest in both the property and tenancy agreement at a later date. Irrespective of an intention to disclaim the bankrupts' beneficial interests in tenanted property, the official receiver, as trustee, should arrange initially for the collection of the rental profits for the benefit of the insolvent estates. Once the disclaimer has become effective, the right to collect the bankrupts' share of the rental profits, including any rent arrears, comes to an end.

30.188 Disclaimer – effect

Disclaimer brings to an end the official receiver's interest in the bankrupt's beneficial interest in the property including the tenancy agreement from the date of the disclaimer, and discharges the trustee from all personal liability in respect of the property as from the commencement of their trusteeship¹. A disclaimer will not end an AST agreement, or end the bankrupts' duties as landlord, although the bankrupts will no longer be entitled to any of the rental profit which forms part of the beneficial interest in the property.

Effectively, the bankrupts will remain as legal owners of the property, holding the full beneficial interest on trust for the Crown (see paragraph 30.191).

1. Section 315(3)

30.189 Disclaimer – effect on tenant's rights

The disclaimer does not bring to an end the rights and obligations of any third parties interested in the property. The tenant will not lose their rights of occupation under the tenancy.

After a disclaimer has been served, it remains the bankrupts' responsibility to collect the rental income, but they are not entitled to any surplus rental profits which forms part of the beneficial interest. The tenant will probably still wish to pay the rent to preserve their rights under the tenancy agreement. It is possible that the mortgagee, who still retains security on the property post disclaimer, will either apply for a vesting order in relation to the beneficial interest, or more likely take immediate action to appoint a receiver of rents or to obtain possession of the property.

A copy of the disclaimer should be served on the tenant and anyone else known to be living in the property or with a right to occupy it¹ (see also chapter 42).

1. Section 318

30.190 Disclaimer – effect on guarantor of tenant

Disclaimer of both the bankrupts' beneficial interest in the property and tenancy agreement by the official receiver does not affect the rights or liabilities of any other person. It has been held that a guarantor of a tenant remained liable notwithstanding disclaimer¹.

1. Hindcastle Ltd v Barbara Attenborough Associates Ltd [1997] A.C. 70

30.191 Disclaimer – property vests in Crown Estate

The effect of a disclaimer is to determine (end) the insolvent's interest in the property (being the beneficial interest), effectively leaving the beneficial interest without an owner (see chapter 42). Assuming no vesting order is made (see chapter 42), the interest would become bona vacantia (see chapter 54), and would vest in the Crown. Property that is [bona vacantia](#) is dealt with by the Government Legal department (GLD). The GLD is not required, as a matter of law, to assert a claim to the property, which is, or may be, bona vacantia.

Both bona vacantia property and property under escheat (see chapter 42) in the Duchies of Cornwall (which covers the modern county of Cornwall) and Lancaster (which covers the modern county of Lancashire and parts of Merseyside, Greater Manchester, Cheshire and Cumbria) falls to the respective Duchy. The solicitor to these Duchies is [Farrer & Co](#)

By accepting rental profits, the Crown Estate may take on some duty of care in relation to the property. Instead, the most likely course of action is that the mortgagee will exercise control to protect their interest.

30.192 Disclaimer – effect on mortgagee's rights

As a disclaimer does not end third party rights or liabilities, the mortgagee will retain its security over the property, and its right to appoint a receiver of rents or take possession².

A copy of the disclaimer should be served on the mortgagee¹.

1. Section 318

2. Scmla Properties Ltd v Gesso Properties (BVI) Ltd [1995] NPC 48

30.193 Disclaimer – vesting orders

Where the official receiver, as trustee, disclaims both joint owner bankrupts' beneficial interests in a freehold or leasehold reversion, then any person with an interest in the beneficial interest may apply for a vesting order to vest in them the bankrupts' beneficial interest¹, (see chapter 42). This will include the tenant, any other occupiers, and the mortgagee. The court may also consider the bankrupts to have an ongoing interest in the disclaimed beneficial interest, as the bankrupts will retain the legal title to the property and also the landlords' responsibilities following disclaimer of the beneficial interest.

1. Section 320

30.194 Disclaimer – insurance

Following disclaimer, the official receiver, as trustee, will no longer have any rights or liabilities in respect of the property. Any insurance taken out by the official receiver on the tenanted property should therefore be cancelled.

30.195 Disclaimer – letter to tenant

Along with serving notice of the disclaimer on the tenant, the official receiver should also write to the tenant informing them that although the legal title remains vested in the bankrupts, the official receiver no longer has a beneficial interest in the property. The official receiver should provide the tenant with the mortgagee's contact details and suggest that the tenant contacts the mortgagee regarding the tenancy. If the official receiver is aware of a deposit being held, they should inform the tenant of its whereabouts and how to obtain the funds when the tenancy ends.

Unusual circumstances - companies

30.196 Company in liquidation as joint landlord of a tenanted property

In company cases, assets do not vest in the liquidator unless a specific order is sought from the court vesting the assets in the liquidator¹. This is an extremely rare occurrence. The assets remain as property of the company (in liquidation). The company and joint owner will remain as landlords of the property. As the official receiver is the liquidator of the company, it is prudent to act appropriately to protect

them from any residual liability as sent to the tenant giving written notice that the company (in liquidation) and joint owner remain as landlords, but that the official receiver is the liquidator of the company and has the powers of liquidator as provided by legislation to deal with the company's assets². The official receiver, as liquidator, should ensure that the company, as joint landlord, complies with the duties and obligations as landlord or otherwise seeks to end the tenancy agreement.

Also see chapter 7 for guidance on registering a form J restriction to protect the company's interest in a jointly owned property.

1. Section 145

2. Insolvency Act 1986 schedule 4

30.197 Dissolution of company

A company that owns property is not suitable for early dissolution and indeed, the official receiver will not be able to apply for their release as liquidator until any property owned by the company is sold (or otherwise dealt with) and, thereafter, the proceeds of sale dealt with (see chapter 48). Where the company is joint owner of a freehold or leasehold property, the asset that belongs to the company is the beneficial interest. Where a receiver of rents is appointed, or the mortgagee takes possession, dissolution should be deferred to prevent the beneficial interest becoming bona vacantia (see chapter 54).

Unusual circumstances – property abroad

30.198 Tenanted property abroad

When the official receiver encounters a tenancy where the property is overseas, reference should be made to archived guidance in chapter 43 on establishing the value of the property. The law that governs the tenancy will be that of the country in which the property is located. As only the beneficial interest vests in the official receiver as trustee, the joint owners remain as the landlords of the property, and so the property should be dealt with similarly to any other property held abroad, i.e. seek to appoint an insolvency practitioner, or failing that register the official receiver's interest in the property, or sell that interest. The only real difference is that the official receiver as trustee has the right to the bankrupt's share of rental profits, for which the bankrupt and joint owner remain responsible for collecting. GOV.UK provides guides

to buying and renting properties in a number of European and other countries worldwide.

Unusual circumstances – non cooperation issues

30.199 Bankrupt failing to cooperate with the official receiver

The official receiver is entitled to the bankrupt's share of the rental profits as they form part of the beneficial interest which vests in the official receiver as trustee. The bankrupt is obliged to deliver up their share of the rent collected (less expenses) as part of their duty to deliver possession of their estate to the trustee¹. See guidance from paragraph 30.105 on calculating the bankrupt's beneficial interest.

Where the bankrupt defaults in the payment of rent to the official receiver, a letter should be sent to the bankrupt chasing payment and attempting to ascertain the reasons for non payment. Where the bankrupt continues to default on rental payments, without reasonable explanation, a further letter should be sent warning of the consequences of failing to pay the rent (see paragraph 30.200) and the bankrupt should be advised to seek legal advice if they are in any doubt as to the position of the official receiver's entitlement to their share of the rent. See paragraphs 30.129 to 20.130 regarding the payment of amounts in relation to a mortgage loan on the property.

1. Section 291

30.200 Action to be taken to enforce cooperation

Where the bankrupt continues to fail to cooperate after a letter has been sent chasing unpaid rent, and refuses to hand over their share of the rent (less expenses), the official receiver should take appropriate enforcement action, depending on the reasons for the default in payment (see following paragraph). The bankrupt has a duty to deliver possession of their estate to the official receiver¹, failure to do so is contempt of court.

Where the bankrupt is landlord of a jointly owned tenanted property, and is failing to cooperate with the official receiver, reference should be made to chapter 19 and chapter 47.

1. Section 291

30.201 Tenant defaults in payment of rent to joint owners

Where the bankrupt claims that the tenant has defaulted in the payment of rent to the joint owners, the official receiver will have to consider asking if the bankrupt has any evidence of non payment, such as letters from the tenant explaining their situation. The default in payment may be as a consequence of a change in circumstances of the tenant since the date the tenancy agreement was signed (e.g. the tenant is no longer in employment). Where the bankrupt notifies the official receiver of a change in the tenant's circumstances, and subsequent difficulty in meeting rental payments, the official receiver will need to take these reasons into consideration before commencing any enforcement action against the bankrupt in respect of the non collection of rental profits. See paragraph 30.85 on rent arrears, and guidance from paragraph 30.133 for information on dealing with the disposal or ending of an AST.

30.202 Tenant paying mortgagee directly

Where the tenant pays rent directly to the mortgagee whilst the official receiver is entitled to receive the bankrupt's share of that rent, the official receiver can recover the bankrupt's share of the rent directly from the mortgagee¹ who are not entitled to receive the rent unless they appoint a receiver of rents or take possession proceedings in relation to the property under the terms of the mortgage loan. By attempting to collect the bankrupt's share of the rental profit from the mortgagee, it may prompt the mortgagee into taking early action under the terms of their charge to protect their security.

1. Gledhill v Hunter [1880] LR 14 Ch D 492

Unusual circumstances – tenancies not in names of joint owners and post bankruptcy tenancies

30.203 Jointly owned property, AST agreement in sole name of bankrupt or joint owner

Legal advice has been received as to whether or not one of two owners of a property can enter into an AST on the property. Advice received is that one owner cannot, as all positive dealings with the land require both joint owners. It is possible that arguments can be raised that one party had the authority on behalf of both of them or, was acting as an agent for the other.

Where the bankrupt jointly owns property with another, but the AST agreement is in the bankrupt or joint owner's sole name, how the official receiver treats that AST depends on the intention of the joint owners as to how the beneficial interest in the property would be split between them at the time the agreement was created (see paragraph 30.106). Enquiries need to be made by the official receiver to establish why the AST agreement is in the sole name of one party, and evidence sought to back up those claims. Case law indicates that it will be an exceptional case where the beneficial interest was found to be different to that originally intended at the date of purchase of the property^{1, 2}.

1. *Stack V Dowden* [2007] BPIR 913

2. *Kernott V Jones* [2010] ALL ER (D) 244

30.204 Jointly owned property, AST agreement in sole name – payment of mortgage loan

When deciding how to treat an AST agreement, the official receiver should consider what the rental income received so far has been used for. If the rental monies have been used to discharge a debt in the bankrupt and joint owner's name (e.g. the mortgage loan is in joint names and the rent has historically been used to pay the mortgage loan), and the monies were not used by the person solely named as landlord on the AST agreement, this is an indication that the beneficial interest in the property and profits from the AST are held in equal shares by both parties. The official receiver should therefore, in the absence of other information, give consideration to treating the agreement as though it is jointly owned by the bankrupt and joint owner (i.e. the AST will not vest in the official receiver as trustee). In this instance, both parties would be benefiting from the rental income up to the date of the bankruptcy order, as it is being used to discharge a debt they are both liable for jointly and severally.

30.205 Jointly owned property, AST agreement in sole name – claim of sole beneficial interest in property

Where the property is jointly owned by the bankrupt and a solvent owner, but the AST agreement is in the sole name of one party, it is possible that the beneficial interest in the property belongs to one party only. If this is the case, both parties hold that interest on trust for the beneficiary. A claim to the sole beneficial interest is the most likely reason for a valid claim to the entitlement to the sole rental profits, as the entitlement to receive rent follows the reversionary interest in that property². It will be for the individual who is claiming the sole beneficial interest to evidence that the beneficial ownership is different to the legal ownership¹ (see also paragraph 30.203).

The official receiver will need to investigate any claim to a sole beneficial interest in the property in considering whether to accept the AST agreement as a sole agreement or a joint agreement in both parties' names. If there is a valid reason for the beneficial interest in the property to be owned by one party (see following paragraph), then it may be considered to be a sole AST and the official receiver should treat the AST as a solely owned AST agreement. Where this is the case and the bankrupt is considered to have the sole interest in the AST, the official receiver would seek to claim all the rental income and act as landlord (see chapter 29).

1. *Stack V Dowden* [2007] BPIR 913

2. Landlord and Tenant (Covenants) Act 1995 section 3

30.206 Factors to consider in calculating beneficial interest

In considering the beneficial interest held by each party the 'whole' of the parties' conduct in relation to both the property and the AST should be considered¹. Factors to consider will include the initial contributions made to the purchase price of the property (see chapter 28) and any amounts paid by either party to significant improvements to the property. The critical question to be answered is, whether or not, it can be inferred from the parties conduct a joint intention that, over time, the original split (usually 50:50) has changed.

1. *Stack V Dowden* [2007] BPIR 913

30.207 Jointly owned, no claim to beneficial interest

If there is no claim to the sole beneficial interest in the property by one party, the official receiver should question why the AST agreement was placed in that parties' sole name and, if there is no valid reason, treat the agreement as though it is held in equal proportions by the bankrupt and joint owner. Where this is the case, the official receiver, as trustee, should seek to collect the bankrupt's 50% share of the rent (in the absence of any information to the contrary regarding the share held by each party) less allowable expenses notifying the other joint AST owner as appropriate (see paragraph 30.109).

If the official receiver believes the AST agreement is a jointly owned, then they will need to give the joint owner and the bankrupt, written notice of the official receiver's decision to treat the agreement as if it were in joint names. The official receiver, as trustee, should also give written notice to the bankrupt and joint owner that they will be seeking to collect the bankrupt's 50% share of the rent less allowable expenses, and that they remain responsible for the landlord's duties.

30.208 AST agreement in name of third party

Where an AST agreement, on a jointly owned property is created in the sole name of a third party, whilst it is not likely to be a legal lease (tenancy) as it was not created by the legal owners of the property, it is probably what is known as an equitable lease and the tenant is likely to be considered by the courts to have a valid AST agreement.

Where an AST is created in the name of a third party, the official receiver should only consider treating the agreement as though that third party is the sole landlord entitled to the full benefits of the rent, when that third party has clearly evidenced ownership of 100% of the beneficial interest in the property, and the owner of the legal title simply holds the property on trust for that third party (see also paragraphs 30.106 and 30.203). If this is the case, the official receiver should treat the property as though it is held in trust and consequently it would not form part of the bankruptcy estate. Legal advice may be needed to verify the third party's claim to 100% of the beneficial interest. Also see chapter 29 on tenancy by estoppel.

Such an agreement is unlikely to be legally binding on any mortgagee of the property unless the consent of the mortgagee to the agreement was obtained prior to it being granted.

30.209 AST agreement in name of third party – action by official receiver

The official receiver should seek to ascertain the reason why an AST agreement on a jointly owned property was placed in the name of a third party. The factors

discussed in paragraphs 30.106 and 30.203 to 30.207 should be considered. Where no underlying reason can be established for the agreement to have been placed in the name of a third party, the official receiver should inform the third party, as trustee, that in their opinion the bankrupt has a beneficial interest in the property and that includes an interest in profits from any AST agreement granted on the property, and as such, the official receiver is entitled to the appropriate proportion of the rental profit. The official receiver should treat the AST agreement as though it was created in the names of the joint owners and claim the bankrupt's share of the profits from the rent income from the person who actually collects the rent.

30.210 AST agreement in name of bankrupt and third party

Where an AST agreement, on a jointly owned property is created in the name of the bankrupt and a third party who is not the joint owner, whilst it is not likely to be a legal lease (tenancy) as it has not been created by the legal owners to the property, it is probably what is known as an equitable lease and the tenant is likely to be considered by the courts to have a valid AST agreement.

Enquiries need to be made by the official receiver to establish why the AST agreement is in the name of the bankrupt and a third party, and evidence sought to back up those claims. The official receiver should only consider treating the agreement as though that third party has a valid interest as joint landlord, when that third party can evidence that they own a share of the beneficial interest in the property, see paragraphs 30.204 to 30.207. The beneficial interest held by the non bankrupt joint owner will also need to be taken into consideration.

Such an agreement is unlikely to be legally binding on any mortgagee of the property unless the consent of the mortgagee to the agreement was obtained prior to it being granted.

30.211 Tenancy created post bankruptcy

Where a bankrupt or solvent joint owner creates a new AST agreement after a bankruptcy order is made, the agreement is valid as the legal estate remains vested in the joint owners. This is the case whether the AST agreement is created before or after a trustee is appointed, and whether both joint owners are bankrupt or not. As soon as the official receiver becomes aware of such an agreement they should attempt to ascertain details of the agreement so that they may collect the bankrupt's share of the profits from the rental income.

Where the agreement is created by a solvent owner only, and they claim the bankrupt is not entitled to any of the rent, see paragraph 30.209.

30.212 New AST agreement is not a disposition of property

Where the bankrupt disposes of property between the presentation of the bankruptcy petition and the vesting of the estate in the trustee, this disposition is void unless made with the consent of, or ratified by, the court¹. It is not considered that the creation of a new AST agreement, which is in itself a property right, is a disposition of the bankrupt's share of their beneficial interest in the property. The bankrupt's beneficial interest in the property still vests in the trustee upon their appointment, the difference is that the bankrupt's share of the rental profits will also form part of that beneficial interest. As the legal title to the property remains vested in the joint owners, they remain free to deal with the property as they wish.

Additionally, as the beneficial interest already forms part of the estate, the official receiver as trustee does not need to claim the bankrupt's share of the rent as after acquired property².

1. Section 284(1)

2. Section 307

30.213 AST agreement created post bankruptcy – action to take

Where the joint owners enter into a new AST agreement post bankruptcy the official receiver should consider informing the mortgagee of the new agreement to ensure that the mortgagee is kept informed.

Where a new AST has been entered into, the official receiver, as trustee, will need to consider the insurance position, see paragraphs 30.32 to 30.36.

A letter should be sent to the bankrupt requiring them to send in their profits from the rental income on a monthly basis, see paragraph 30.41.

30.214 Tenancy created post bankruptcy – protection of deposit

It remains the bankrupt and joint owner's responsibility as landlords to protect any tenancy deposit taken from the tenant (see paragraphs 30.61 to 30.65).

Annulments and stays

30.215 Annulment applications

The official receiver may be informed that the bankrupt, as joint owner of a tenanted property has made an application to court for an annulment of the bankruptcy order (see chapter 8). Where the official receiver is trustee they will need to consider, on a property by property basis, what action needs to be taken pending the outcome of the hearing.

30.216 Stay of advertisement

Where a stay of advertisement (chapter 8) is ordered pending the annulment hearing, the official receiver should ask the bankrupt to hold their profits from the rental income to the order of the trustee pending the outcome of the hearing. If the official receiver considers the stay of advertisement will jeopardise the collection of the bankrupt's share of the rent, they can apply to the court for directions¹.

¹. Rule 13.4

Houses of Multiple Occupancy

30.217 Definition

A building or part of a building is a 'House of Multiple Occupancy' (HMO)¹ if it meets one of the following conditions:

- it meets the "standard test" which is;
 - it consists of one or more units of living accommodation not consisting of self contained flats
 - the living accommodation is occupied by persons who do not form a single household
 - the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it
 - their occupation of the living accommodation constitutes the only use of that accommodation
 - rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation
 - two or more of the households who occupy the living accommodation share one or more basic amenity for example student accommodation or a shared

house, or the living accommodation is lacking one or more basic amenity (a toilet, personal washing facilities or cooking facilities)

- it meets the “self contained flat test”, i.e. it consists of a self contained flat, and meets conditions 1) a) to f) above
- it meets the “converted building test”, i.e. it is a converted building, and meets conditions 1) a) to e) above
- a HMO declaration is in force
- it is a converted block of flats, i.e. a building or part of a building which has been converted into and consists of self contained flats, if the building work undertaken did not comply with the appropriate building standards, and still does not comply with them, and less than two thirds of the self contained flats are owner occupied²

1. Housing Act 2004 section 254

2. Housing Act 2004 section 257

30.218 Landlord's additional obligations in relation to HMO

All HMOs are subject to additional regulation such as maintenance of the common parts, a duty to display the landlord's details in the common parts, and compulsory mains electric smoke alarms. The landlord needs to be a fit and proper person and there needs to be adequate amenities in place¹.

1. Housing Act 2004 section 67

30.219 Mandatory licensing of HMOs

Since 6 April 2006 mandatory licensing of certain higher risk HMOs came into force¹. Under the national mandatory licensing scheme an HMO must be licensed if it is a building consisting of three or more storeys and is occupied by five or more tenants in two or more households.

1. Housing Act 2004 section 55

Selective compulsory licensing

30.220 Selective compulsory landlord licences in certain areas

In addition to certain HMO's requiring a licence, certain areas of the country which suffer from low housing demand and significant and persistent anti-social behaviour can also introduce local regulation requiring compulsory licensing of all private rented accommodation¹. The local authorities which currently have such areas are:

- Salford City Council
- Middlesbrough Council
- Manchester City Council
- Gateshead Council
- Sedgefield Borough Council
- Burnley Council
- Bolton Council
- Blackburn Council
- Leeds City Council
- Easington Council
- Hartlepool Council
- London Borough of Newham

1. Housing Act 2004 sections 79 and 80

30.221 Selective compulsory licenses and HMO licences

When the official receiver encounters a jointly owned rented property in one of the areas referred to in paragraph 30.220, or a jointly owned property requiring a mandatory HMO licence, it remains the responsibility of the joint owners to obtain such licences. The bankrupt and joint owner should hold an appropriate licence issued by the local authority, and are responsible for ensuring the property complies with all requirements imposed by the local authority. A letter should be sent to the bankrupt and joint owner confirming that the requirement to obtain and maintain a licence remains their responsibility as landlords of the property.

Where the bankrupt and joint owner need to make an application for a compulsory licence or HMO licence, the fee can be deducted from the rental income prior to calculating the bankrupt's share of the rental profits (see paragraph 30.109).