

## **Important notes on the Guidelines about mortgages and charges that have vested in the Crown as bona vacantia**

1. The attached Guidelines give you information about what to do if your property is subject to a mortgage or charge in favour of a company that has been dissolved. In that situation the benefit of the debt due under the mortgage or charge will have passed to the Crown. Please read the Guidelines carefully.
2. Please complete and return the attached questionnaire with **FULL REPLIES**. We cannot deal with the matter until we have **ALL** the required information.
3. If you intend to instruct solicitors to act for you, please let us know their name, address, and reference as soon as possible, and let them see a copy of these Guidelines. As the Treasury Solicitor cannot give you legal advice, you should consider instructing your own solicitor if you have not already done so.
4. Depending upon when the company was dissolved, it is possible that it can be restored to the companies register, and then the benefit of the mortgage or charge would automatically return to the company. If restoration is possible, before making any decisions about how we deal with the mortgage or charge, the Treasury Solicitor may ask the former members or liquidators of the company if they intend to restore the company.
5. **These Guidelines contain general advice and cannot cover every circumstance that may arise. It is not intended to be a complete guide. Each case will be dealt with on its own merits, and the right to vary or depart from these Guidelines at any time without notice is hereby expressly reserved.**

## THE TREASURY SOLICITOR

### BONA VACANTIA DIVISION

#### ***Guidance relating to mortgages and charges that have vested in the Crown as bona vacantia***

##### **Background**

1. When a company that was registered under the Companies Acts is dissolved all of its property in England and Wales (but not its liabilities) passes to the Crown as bona vacantia (meaning “*ownerless property*”) because of Section 654 of the Companies Act 1985.
2. If the company’s last registered office was in England or Wales (other than in the Duchies of Cornwall or Lancaster) we are nominated by the Crown to deal with its property.
3. Bona vacantia property belongs to the Crown, and the Crown is not obliged to deal with it in any particular way. Normally it will be disclaimed (i.e., the Crown gives up its right to the property) or sold, and the proceeds of sale transferred to the Exchequer to deal with in the same way as money raised by general taxation.
4. It is only the assets of a company that pass to the Crown when it is dissolved. Its liabilities are extinguished, and the Crown accepts no liability for the property under the company’s title or otherwise.
5. These Guidelines apply to money that was borrowed from the company, and secured by a mortgage over your property (“mortgages”), and to other debts that were owed to the company and secured over your property (“charges”).

##### **How it works**

##### **Mortgages**

6. To vest in the Crown as bona vacantia, the company must have had a mortgage over your property at the time it was dissolved. In the case of property with a registered title, this can be proved by producing official copy entries and the title plan to your property (which you can get from the relevant District Land Registry), showing the company as a registered owner of the mortgage. In the case of property with an unregistered title, we need to see a copy of the original title deeds to your property.
7. Whether the title to your property is registered or unregistered, it will be necessary for you to trace a copy of the original mortgage deed. If the title is registered, the relevant District Land Registry should be able to provide you with an official copy of the mortgage.
8. If you claim that some, or all, of the amount due under the mortgage was paid to the company before it was dissolved, you must provide evidence of those payments,

together with a Statutory declaration if we consider that to be necessary. If you do not have such evidence the whole sum borrowed as stated in the mortgage deed will have to be paid, together with interest at the rate specified in the mortgage deed.

9. Once we are certain about the amount currently outstanding under the mortgage, the Treasury Solicitor's normal practice is to agree to execute the necessary form to discharge the mortgage, once you have paid to us the amount (including interest) outstanding under the mortgage. In addition we usually require a contribution of £250 plus VAT towards our legal costs, provided there is a clause in the mortgage deed that entitled the company to charge its costs of dealing with the redemption of the mortgage. A copy of our standard Form DS1 for the discharge of registered mortgages is available on our website.
10. If there are no monies outstanding under the mortgage, then there is no bona vacantia interest to vest in the Crown and the Treasury Solicitor is unable to assist. In that situation, in the case of registered land, the Chief Land Registrar has discretion under **Rule 114 of the Land Registration Rules 2003** to accept, and act upon, any other proof of satisfaction of a charge that he may deem sufficient. In the case of unregistered land, a defunct Land Charges entry may be vacated pursuant to a Court Order made under **Section 1(6) of the Land Charges Act 1972**, or otherwise in accordance with the **Land Charges Rules 1974**.

### **Charging Orders**

11. Charging Orders are created under the **Charging Orders Act 1970** for the purpose of enforcing court judgements. They are created in two stages, a charging order nisi followed by a charging order absolute.
12. To vest in the Crown as bona vacantia it must be established that the charge was vested in the company at the time it was dissolved. This can be proved by producing a copy of the Order made by the Court charging your property with the amount owing to the company.
13. If you claim that some or all of the debt owed to the company was paid to the company before it was dissolved, documentary evidence of these payments will be required, together with a Statutory Declaration if we consider that to be necessary. If no such evidence is available, then the whole sum secured will have to be paid, together with interest at the rate specified in the Court Order.
14. Once we are certain about the amount outstanding under the charge our normal practice is to agree to execute the necessary form to discharge the charge from the title to your property, once you have paid the amount (including interest) outstanding. In addition we usually require a contribution of £250 plus VAT towards the Treasury Solicitor's legal costs, provided that the company was entitled to charge its costs of dealing with the redemption of the charge.

### **Limitation of Actions**

15. The Treasury Solicitor's right to seek repayment of a mortgage or charge may be subject to the provisions of the **Limitation Act 1980**. If the company was dissolved more than 12 years ago, this may be relevant. The summary set out in these guidelines does not aim to be comprehensive. The law of limitations relating to mortgages and charges is complex, and you would be well advised to take independent legal advice. In particular, difficult questions may arise about when time starts to run, and whether the limitation period has been extended by acknowledgement of the debt and/or part payment of the debt. The limitation periods relating to the principal sum and interest payable may also vary.

16. Mortgages and charges will generally become statute-barred 12 years after the date at which they became repayable if no payments have been made or demanded. In the case of legal mortgages (as opposed to equitable mortgages) that vest in the Crown before the end of the 12<sup>th</sup> year of the limitation period, the limitation period is extended to 30 years. However, as a concession, in the case of legal mortgages we will not usually take advantage of the 30-year limitation period applicable to the Crown. In the case of a charging order nisi the limitation period is 6 years, unless and until a charging order absolute was made. If the mortgage or charge is statute-barred then there will be no bona vacantia interest to vest in the Crown and it should be treated as if there are no monies outstanding.

### **Money laundering**

17. In accordance with good practice, and with the aim of preventing money laundering, the Treasury Solicitor operates in accordance with the principles laid down in Part VII of the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003.
18. For that reason, the Treasury Solicitor makes such enquiries as are deemed necessary to comply with the Act and the Regulations, including obtaining evidence of identity from those with whom we do business and retaining such evidence in accordance with our record-keeping procedure.

### **Proof of identity**

19. As part of considering your application, we will need to see satisfactory proof of identity including:
- current passports or UK photocard driving licences of all the parties applying for the grant; and
  - a utilities bill or bank statement (not more than 3 months old) addressed to each of the parties at their home address.
20. Either the originals must be produced or copies certified as true copies by a practising solicitor, accountant, doctor or high street bank manager. The copies should be certified by stating that:
- 'I hereby certify that this document represents a true and complete copy of the original now produced to me'*
21. The person certifying the documents should sign and date them, and state their full name and business address.
22. If one or more of the parties involved is a company, we will need the same proof of identity for the officers or members of the company with whom we are dealing.

### **Please note**

23. You should take professional advice on the important information in this document. It is not our role to give you legal advice. We provide this information as guidance only. We accept no liability for its accuracy and we reserve the right to change or depart from the guidance at any stage.

### **Further information**

You can find copies of all the documents referred to in these Guidelines, and more information about bona vacantia from our website at [www.bonavacantia.gov.uk](http://www.bonavacantia.gov.uk). Information is also available in large print, audio tape and Braille formats.

**Please Note**

**The purpose of these guidelines is to set out our approach to the property and rights that pass to the Crown as bona vacantia. This document is not an Act of Parliament and it should not be read or interpreted like one. It is intended to provide general guidance only, and it is not a statement of policy.**

**We will consider each matter on its facts and decide each case on its merits. Our decisions will be based on all the information available to us and we will tell applicants about our decisions as soon as possible. When dealing with any property and rights that pass to the Crown, we act fairly and impartially but in such a way as to not prejudice the interests of the Crown. We aim to be fair in all our dealings and not to take an unfair advantage or to favour one party over another.**

All rights reserved

These Guidelines are subject to Crown Copyright and must not be altered, amended, deleted or added to.

©

## QUESTIONNAIRE

<u>Questions</u>	<u>Answers</u>
<p>1. Do you have a copy of the mortgage or charge? If you do, please provide a copy of it. If you do not, please state what steps you are taking to obtain a copy of it.</p> <p>2. If the title of the property in question is registered at HM Land Registry please supply up to date official copy entries of the title and the title plan.</p> <p>3. If for any reason you have not provided a copy of the deed or charging order with this questionnaire, please state:</p> <p style="padding-left: 40px;">a) The name of the company, b) Its company number, and c) Where its last registered office was.</p> <p>4. Have you repaid any of the amounts repayable under the mortgage or charge? If you have, please state how much and provide evidence of this.</p> <p>5. If you have instructed a solicitor to deal with this matter, please give the name, address and reference of the solicitors who will be dealing with this matter on your behalf.</p> <p>6. Are you intending to sell your property? If so, please give us full details of the proposed sale.</p> <p>7. Have you enclosed the necessary proof of identity?</p>	

The above answers are true to the best of our belief and knowledge.

Signed: ..... Date: .....

Name: [in BLOCK CAPITALS]

Address: