

THE TREASURY SOLICITOR

BONA VACANTIA DIVISION

Guidance about Adverse Possession of Land and Buildings that are Vested in the Crown as Bona Vacantia where the Title is Registered

Background

1. When a company that was registered under the Companies Act is dissolved, all its property in England and Wales (but not its liabilities) pass 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.

What we can do for you

3. These guidelines give you information about claiming adverse possession to land and buildings that have passed to the Crown as bona vacantia. These guidelines only apply to land and buildings with a registered title. Separate guidelines are available in the case of land and buildings with an unregistered title. The word “occupier” means a person who is in *adverse possession* of the property. Adverse possession is a technical expression, which means that the occupier must be in factual possession of the property, with the necessary intention to possess the property, without the owner’s consent.
4. 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 interest in 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.
5. 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.

What we cannot do for you

6. We cannot manage or insure bona vacantia property so if you occupy all or any part of the property you should take your own independent advice regarding the insurance and management of the property.
7. We will not usually take possession of bona vacantia property.

How it works

8. Before we will consider your application for adverse possession, we must be satisfied that the company was the owner of the property at the time it was dissolved, and that it was not held on trust by the company for the benefit of any other person.
9. If the title to the property is registered at the Land Registry, this can be proved by producing an official copy of the entries on the register and title plan showing the company as the registered owner. You can get this from your District Land Registry.
10. Under the law as it existed prior to the Land Registration Act 2002, a person could, in some circumstances, acquire ownership of registered property by adverse possession for a minimum period of 12 years. The Land Registration Act 2002 has, however, reformed the law and procedures, and created a new procedure, which applies only to registered property. The new procedure can be summarised broadly as follows;
 - 10.1. Adverse possession of registered property for 12 years will no longer extinguish the registered owner's title.
 - 10.2. After 10 years' adverse possession, the occupier will be entitled to apply to be registered as owner.
 - 10.3. If such an application is made the registered owner (and certain other persons) will be notified and given the opportunity to oppose the application.
 - 10.4. If the application is not opposed within three months, the occupier will become the new registered owner.
 - 10.5. If it is opposed, the application will be rejected unless one of the following three conditions applies.
 - 10.5.1 The first is that the registered owner had acted unconscionably and is prevented from denying the occupier's title. If, for example, the occupier had carried out work or repairs to the property, and the registered owner had not objected to this, although he was well aware of the position.
 - 10.5.2 The second is where the occupier is for some reason entitled to be registered as owner. If for example the occupier had contracted to buy the land and had paid the purchase price, but had failed to register the transfer, the occupier would be entitled to be registered as owner.
 - 10.5.3 The third is where the property is adjacent to land already owned by the occupier, and he is under the mistaken but reasonable belief that he is the owner of it, and the exact boundary line has not been determined, and the property has been registered for more than a year prior to the date of the application.
 - 10.6. If the application is rejected, but the occupier remains in adverse possession for a further two years, he would then be entitled to be registered as owner (subject to certain exceptions), and this time he would be registered whether or not anyone opposes the application.
11. The effect of the new provisions is, therefore, that generally no period of adverse possession for whatever length actually extinguishes the ownership of the property. Only where the three conditions referred to above apply, can the title automatically be extinguished by adverse possession. In all other cases the registered owner has a two-year period in which to either terminate the adverse possession by bringing proceedings for eviction, or to regularise the possession in some other way.

12. There are transitional positions, which cover cases where the owner's title to registered property had already been extinguished by adverse possession prior to 13th October 2003 (which is the date upon which the Land Registration Act 2002 came into force).

What to do next

13. If you have been in adverse possession of the property and believe that you are entitled to apply to be registered as owner of the property, then the appropriate procedure is to apply to the Land Registry on Form ADV1 for registration of title on the basis of adverse possession, and to submit to the Land Registry the necessary statutory declarations in support of your application.
14. We normally require to see at least two statutory declarations. We always require a statutory declaration made by the current occupier of the property, and (if appropriate) their predecessors, sufficient to show that they have been in adverse possession of the property. In addition we may also require statutory declarations from an independent third party verifying the facts.

Please Note

15. You may want to take professional advice on the important information in this document. It is not our role to give you legal advice - we provide the 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.
16. We could never say in advance whether we will object or consent to an application for adverse possession until all of the evidence has been produced. We also reserve the right to disclaim the Crown's right to the property without notice at any time under Section 656 of the Company's Act 1985. If we disclaim freehold property, the Crown Estate will subsequently deal with the matter. Following disclaimer, any enquiry should be addressed to the Crown Estate, 16 Carlton House Terrace, London SW1Y 5AH. If the title is disclaimed, we will send a copy of the formal Notice of Disclaimer to all interested parties of whom we are aware.

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. Information is also available in large print, audio tape and Braille formats. You can also obtain copies of the Land Registry's Practice Guide on Adverse Possession (Practice Guide 4) free from any Land Registry office and view or download it from their website at www.landregistry.gov.uk. You can also find details of the Land Registry offices, telephone numbers and opening times on their website.

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.

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