

Important Notes on the Guideline about Disclaiming Property Vested in the Crown as Bona Vacantia

1. The attached Guidelines give you information about the Treasury Solicitor's power to disclaim properties that have passed to the Crown as bona vacantia. Please read the Guidelines carefully.
2. The attached guidelines deal mainly with land and buildings, particularly property that is let to tenants on leases, but the general principles also apply to any property or rights that pass to the Crown as bona vacantia.
3. Please complete and return the attached questionnaire, with **FULL REPLIES**.
4. If you are instructing a solicitor 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.
5. Depending upon the date when the company was dissolved, it is possible that it can be restored to the Companies Register, and then the ownership of the property would automatically return to the company. If restoration is possible, the Treasury Solicitor is likely to ask the former members or liquidators of the company if they intend to restore it, before dealing with the property.
6. As explained in the attached guidelines, the Treasury Solicitor has a statutory power to disclaim the Crown's title to property (i.e., to give up the Crown's right to deal with the property). We will give you 4 weeks to complete and return to us the attached questionnaire, before deciding how to deal with the property.
7. **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

Guidelines about Disclaiming Property Vested in the Crown as Bona Vacantia

Background

1. When a company that was registered under the Companies Acts is dissolved, all 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.

What we can do for you

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

What we cannot do for you

5. The Treasury Solicitor does not manage or insure property that is owned by the Crown as bona vacantia. If you occupy all or any part of the property in question you should accordingly take your own immediate independent advice regarding the insurance and management of the property.
6. We will not usually take possession of bona vacantia property.

How it works

7. Before we will deal with the property in any way, we must be sure that the company was the owner at the time that it was dissolved, and that it was not held upon trust by the company for the benefit of any other person.
8. 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 proprietor – you can get this from your District Land Registry.
9. If the property is not registered at the Land Registry, you will have to give us other evidence that the company owned it. This usually means tracing the original title deeds

and forwarding them to us. We cannot deal with property until we have satisfactory evidence of ownership.

10. It is only the assets of a company that vest in the Crown as bona vacantia when the company is dissolved. The liabilities are extinguished, and the Crown accepts no liability for the property under the company's title or otherwise.
11. Depending upon when the company was dissolved, it is possible that it can be restored to the Companies Register, and then the ownership of the property would automatically return to the Company. If restoration is possible, the Treasury Solicitor is likely to ask the former members or liquidators of the company if they intent to restore it, before dealing with the property.
12. If there is a mortgage or other debt secured on the property, the person or organisation holding the mortgage or security usually has a statutory right to sell the property to pay off the debt owing to them. We will usually agree to them selling the property, and accounting to us for any surplus after paying off the debt. If there is no surplus ("negative equity"), we may disclaim the title. Separate guidelines (BVC 10) relating to a sale by a mortgagee or a creditor are available on our website.
13. It is possible that the title of the company to the land or buildings in question may have been extinguished by adverse possession if anyone is in occupation, or has undertaken responsibility for its maintenance. Enquiries will therefore have to be made of anyone who may have a claim to possession of the land. Separate guidelines (BVC 8/1 and 8/2) relating to ownership by adverse possession are available on our website.

Disclaimer by the Treasury Solicitor

14. Under Section 656 of the Companies Act 1985 (as amended by Sections 178-182 of the Insolvency Act 1986) the Treasury Solicitor has the power to disclaim assets that are vested in the Crown as bona vacantia. We will usually disclaim onerous property, such as;
 - commercial leases at a market rent
 - land used in common, such as private roads, service yards, amenity land, or the common parts of an estate or a block of flats
 - property subject to onerous covenants or other potential liabilities
 - property which is contaminated or has buildings, trees, or other items which are in a dangerous state and condition
 - property subject to negative equity
 - property where there are a number of competing claims, and
 - property which is of limited value (under £500), or unmarketable, or where it would not be cost effective to attempt a sale.

This is not an exhaustive list, but represents the most common situations where disclaimer is appropriate.

15. If the Treasury Solicitor disclaims assets that are vested in the Crown, those assets are deemed never to have been owned by the Crown. The effect of a disclaimer, in the case of freeholds, is that the freehold interest in the land is then extinguished, and the ownership of the land itself then reverts to the Crown. The Crown Estate then deals with the land. Any enquiries then need to be addressed to their Solicitor's, who are Messrs Burges Salmon, Narrow Quay House, Narrow Quay, Bristol BS1 4AH. In the case of leaseholds, the lease is effectively extinguished, but becomes subject to the provisions contained in Section 657 of the Companies Act 1985, and (in particular) to Sections 179 of the Insolvency Act 1986 (which is incorporated by reference) which sets out the statutory provisions relating to a disclaimer of leasehold property.

Leases

16. In the case of leaseholds, if the landlord forfeited the lease (whether by physical re- entry or by legal proceedings) **before the dissolution of a company**, then the lease would not have vested in the Crown as bona vacantia. If the lease was forfeited **after dissolution**, then that part of the term of the lease that remained and continued after the dissolution of the company (but before the forfeiture) would have vested in the Crown as bona vacantia, together with the right to relief from forfeiture.
17. If the landlord re-entered the premises before the company was dissolved, this may amount to a surrender of the lease by operation of law. If the company voluntarily gave up possession of the premises to the landlord, with the intention on the part of both the landlord and the tenant that the lease should be surrendered, that would be sufficient to operate as a surrender by implication. In that situation, there would be no interest to vest in the Crown as bona vacantia.
18. The Crown will not accept liability under any of the covenants on the part of the tenant contained in a lease that has vested in the Crown as bona vacantia. If we are requested to assign **any type** of lease, we will not do so unless the Crown is fully protected from any liabilities by a release from the landlord in the form prescribed by us.
19. We will not usually agree to an assignment of a **commercial lease at a rack rent**, unless it is to a third party who is in occupation of the premises under the mistaken belief that the lease was assigned to them prior to the dissolution of the company, or to a person who was a guarantor under the lease, **and then only if we are satisfied that this does not prejudice the Crown. If there is any delay, we will immediately disclaim the lease without notice so as to protect the Crown.**

What to do next

20. As you will appreciate from the above, there are a number of steps which will have to be taken before consideration can be given to the possibility of disclaiming the property in question,
21. In the meanwhile would you please complete and return the attached questionnaire with full replies.

Please note

22. 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 only provide the information as guidance. We accept no liability for its accuracy and we reserve the right to change or depart from the guidance at any stage. If you wish to pursue the matter you may wish to refer it to your own solicitors, and show them a copy of these guidelines. They will then be able to give you further assistance.

Money Laundering

23. 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.
24. 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.

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.

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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QUESTIONNAIRE

<u>Questions</u>	<u>Answers</u>
1. Please provide a plan on A4 size showing by red edging the extent of the property, and by blue edging any neighbouring property that you own.	
2. Are there any buildings on the land? If so, are they commercial, residential, or industrial?	
3. If it is only vacant land, has it been incorporated into any adjoining property that you (or any one else) own?	
4. If the property is leasehold, please supply a copy of the lease.	
5. If the title is unregistered, please forward the deeds to this office, or provide me with information as to where they are.	
6. If the title is registered, please supply up to date official copy entries and title plan of the title.	
7. If appropriate, please state the amount of the current rent payable under the lease and (if appropriate) the date of the last rent review.	
8. Are there any arrears to date in respect of rent or service charge or other outgoings? If so, please provide full details.	
9. If the rent is paid up to date, who is currently paying the rent?	
10. Apart from rent and outgoings, are there any other breaches of covenant alleged by the landlord? If so please provide full details.	
11. Has the property been kept in good repair? If not, a copy of any outstanding schedule of dilapidations which has been served by the landlord, or which the landlord is considering serving, should please be provided.	

<p>12. Please supply a copy of any sub-leases, licences, mortgages, or any other matters of title affecting the property of which you are aware.</p> <p>13. Please supply copies of any outstanding notices served by the landlord under Section 146 of the Law of Property Act 1925 or any other formal notices which have been served.</p> <p>14. Please supply the full name (if known) of any persons who are known to be in actual occupation of the property at the present time, and details of any rent that they are paying. To whom are these rents being paid at present?</p> <p>15. If the property is subject to a mortgage or charge, have you made any enquiries of the lender as to their intentions regarding the property?</p> <p>16. If it is alleged that the lease has been forfeited (either by way of legal proceedings or by peaceable re-entry), or has been surrendered, please provide full details of the forfeiture proceedings or the surrender, which are relied upon.</p> <p>17. Please give the name, address and reference of the solicitors who will be dealing with the legal formalities upon your behalf.</p>	
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The above answers are true to the best of our knowledge and belief.

Signature.....Date.....

Name [in BLOCK CAPITALS]

Address