

**Important notes on the Guidelines about
the Sale by a Mortgagee of land and buildings
vested in the Crown as bona vacantia**

1. The attached Guidelines give you information about a sale by a mortgagee of land and buildings that has vested in the Crown as bona vacantia. 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 a solicitor to act on your behalf please let us know their name, address and reference as soon as possible, and how them 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 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 property.
5. The Treasury Solicitor has the 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 four weeks to complete and return to us the attached questionnaire, before making any decisions about the property.
6. **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 about a Sale by a Mortgagee of land and buildings 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 you should take your own immediate independent advice on the insurance and management of the property.
6. We will not usually take possession of bona vacantia property.

How it Works

7. Before we deal with the property, we must be sure that the company was the owner at the time it was dissolved, and that it was not held on 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 the 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 the property until we have satisfactory evidence of ownership.

10. If there is a mortgage or other debt secured on the property, the person or organisation holding the benefit of the mortgage or security usually has the statutory right to sell the property to pay off the debt owing to them, and must then give to us any surplus. We must therefore be satisfied that the sale of the property is for the full open market value. The person or organisation holding the benefit of the mortgage or security must therefore ensure that;
- they have the right to sell the property, and
 - the sale is for the full open market value of the property.
11. We will usually take independent advice on the open market value of the property, and the best means of selling it. If you have already appointed agents to sell the property, please let us see a copy of any advice they have given about the best way of selling the property, the terms and conditions of their appointment, a copy of any valuations they have provided, and a copy of any Particulars of Sale they have prepared.
12. To ensure that the full market value obtained, we usually require that the property is advertised at least once locally, and (unless there is some exceptional offer made for the property) that it is marketed for a period of at least four weeks before any offer is accepted, and that copies of all offers made for the property are forwarded to us.
13. Before we can take this matter forward, we firstly need your solicitor's undertaking to pay the Treasury Solicitor's proper legal costs, plus VAT and disbursements, including the cost of instructing the District Valuer, and the fees of any other agent or contractor employed by the Treasury Solicitor in connection with this matter.
14. In order to ensure that the sale price does represent the full open market value, we will also require;
- 14.1. your undertaking not to sell the land to your agents, employees, or anyone associated with you, or their agents, and
 - 14.2. an undertaking from your solicitors to account to the Treasury Solicitor for the balance (if any) of the proceeds of sale immediately after completion, and to provide us with a copy of the completion statement, and a certified copy of the Transfer to the purchaser.

Money Laundering

15. 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.
16. 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.

What to do next

17. As you will appreciate from the above there are a number of steps to be taken before we can decide how we will deal with this property. We will not object to you selling the property under your statutory power of sale, provided that we are satisfied that you have the right to sell the property, and provided it is for full open market value. If the matter does not proceed quickly, we may decide to disclaim the Crown's title if there is little or no equity, or alternatively to sell the property ourselves and to pay off the mortgage in the usual way.

Please Note

18. 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. If you wish to pursue the matter you may wish to refer it to your own solicitors, and to show them a copy of these Guidelines. They will then be able to give you further assistance.
19. This guidance does not represent any binding offer or other professional undertaking to deal with the property in any particular way. We reserve the right to disclaim the Crown's claim to the property without notice at any time under Section 656 of the Companies Act 1985. If we disclaim the title to the freehold property, the Crown Estate will subsequently deal with the matter. Following disclaimer, any enquiries 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.
20. If you proceed with the sale of the property under your statutory power, we will require completion of the sale to take place within the time period that we prescribe. The power to disclaim property only applies for a period of 12 months from the date when it came to our notice that the property was bona vacantia. In certain circumstances this period may be reduced to three months. It is our practice to require that completion of the sale should take place well before the expiry of the disclaimer period, and to disclaim the property or sell it ourselves if it appears that you will not complete the sale before the end of the disclaimer period. Separate guidelines relating to disclaiming property (Form BVC 7) are available on the Bona Vacantia Division's website.
21. If anyone is in occupation of the property, it is possible that they may have acquired ownership of the property by adverse possession. Separate Guidelines (BVC 8/1 and 8/2) relating to ownership by adverse possession are available on our website.

Further Information

22. 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. Is the title to the property in question freehold or leasehold?	
2. If the title to the property in question is registered HM Land Registry please supply up to date official copy entries of the title and the title plan, and say whether or not you are holding the original charge certificate.	
3. If the title to the land is unregistered, please confirm that you are holding all of the original title deeds.	
4. Please supply a copy of the original mortgage deed and confirm that you are holding the original.	
5. Please supply a statement of the amount currently outstanding under the mortgage, including accrued interest.	
6. If the property has already been marketed, please provide me with a copy of the terms and conditions of appointment of the estate agents concerned, a copy of their valuation, and a copy of their Particulars of Sale, and details of any offers that have already been received.	
7. Please let us know whether or not you are holding any other title deeds, securities or documents that relate to the dissolved company.	
8. Please supply any other information you have relating to the property, or to the dissolved company, which may be relevant.	
9. Please let me know the name, address and reference of the solicitors who will be dealing with the legal formalities of selling the property upon your behalf.	
10. If the land is vacant, has it been incorporated into any adjoining property that you (or anyone else) own?	
11. Please supply details of any past or current disputes or other matters relating to the property or its use of which you are aware.	
12. Please let me know the full name and address of any person now known to be in occupation of the property, or who has assumed responsibility for its maintenance, and state when it is believed that this occupation commenced.	

<u>Questions</u>	<u>Answers</u>
<p>13. If the land is used in common, please provide the names and addresses of the persons who currently use the land.</p> <p>14. Please let me have your solicitor's undertaking to pay the Treasury Solicitor's legal cost, plus VAT and disbursements (including the cost of instructing the District Valuer), whether or not the matter proceeds to completion</p> <p>15. Please let me have;</p> <ol style="list-style-type: none"> 1) a copy of any Order for Possession which you have obtained in order that you can exercise your statutory power of sale, 2) or otherwise confirmation that the property is currently vacant, 3) copies of any particulars of sale that have been prepared by the marketing agents, 4) your undertaking not to sell the property to your agents, employees, or anybody associated with them (or their agents), 5) your solicitor's undertaking to account to the Treasury Solicitor for the balance (if any) of the proceeds of sale following repayment of the amount outstanding immediately after completion, and to provide us with a copy of the completion statement, and a certified copy of the Transfer to the purchaser. 	

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

Signed: Date:

Name: [in BLOCK CAPITALS]

Address: