

THE TREASURY SOLICITOR BONA VACANTIA DIVISION

GUIDELINES FOR REFERRING ESTATES TO THE TREASURY SOLICITOR

Background

We act on behalf of the Crown in dealing with the solvent estates of people who die without a Will (intestate) and without known kin. These estates are known in law by the Latin term bona vacantia, which means 'ownerless goods'.

Before you consider referring an estate to us, you should ask yourself the following questions: -

- Did the deceased leave a valid Will and, if so, can I contact the executor and beneficiaries?
- Can I get in touch easily with any blood relatives entitled to the estate?
- Is the estate insolvent?

If the answer to any of these questions is yes, you should not refer the estate to us as there will be someone else entitled to deal with it - a relative, a person named in the will as executor or beneficiary or, if the estate is insolvent, a creditor

The following is designed to help you to decide whether to refer any particular case to us. It also gives details about small estates with a net value of £2,000 or under, which are dealt with in a simpler way.

Wills

Is There A Valid Will?

A will is usually accepted as valid by the Probate Registry if it:

- is signed by the deceased and two witnesses;
- is dated; and
- clearly indicates the deceased's wishes.

It does not have to be:

- drawn up by a solicitor or name an executor
- written on a printed Will form

Can I contact the executor or beneficiaries?

If you have what appears to be a valid Will, you should write to the executor informing them of the person's death and asking them to take over the administration of the estate.

If you get no reply and someone different is named as beneficiary, you should write to them explaining what has happened, suggesting that they approach the Probate Registry. Where no executor is named, you should write directly to the beneficiary.

Where there is a valid Will and an entitled relative the Will takes precedence.

It may be that you don't have the Will but you believe that there is one (perhaps because of a note amongst the deceased's papers suggesting that the Will is held by a firm of solicitors or a bank). In this case you should write to whoever may hold the Will, asking them to pass details of the person's death on to the executor.

If you hold any assets or have a claim against the estate yourself, it's a good idea to ask for the executor's name and address so that you can pursue the matter.

What if I can't contact the executor or beneficiaries?

It won't always be possible for you to get in touch with the people named in the Will. If it's old, for instance, they might have moved away from the addresses given or might have died. People often make a Will naming one person as executor and sole beneficiary and then forget to make a new one if that person dies.

In these cases, even though the Will may be legally valid, the deceased's wishes can't be carried out, so you should proceed as if there is no Will at all. But if the case is referred to us, you should send us the Will if you have it.

Kin

Can I get in touch with entitled relatives – and how hard should I try?

You may intend to report a death to us either because you hold assets or personal property or because you wish to make a claim against the estate. If this is so, you should first of all make 'reasonable enquiries' to find out if the deceased has left a Will or entitled relatives.

Before you involve us, we would expect you to have written to the address of any possible relative that you've found, either in your own papers or from a brief search of the deceased's papers to which you have access. A good source of information is a diary or address book, which might contain entries in the deceased's maiden name if she was a married woman.

If you're responsible for arranging the funeral and you're writing to relatives by marriage (who are not themselves entitled) or to friends of the deceased, you could ask them for help in tracing a Will or any entitled relatives.

Your enquiries don't need to be extensive. If you write to a possible relative and get no reply, we would then be responsible for making any further enquiries that might be necessary.

Who Is An Entitled Relative?

If there were no valid Will to the contrary, the deceased's husband or wife, civil partner and then any children would have first claim on the estate. If a marriage or civil partnership has ended in divorce, the ex-spouse or civil partner is not legally entitled but the divorce wouldn't affect the rights of any children.

If there's no living spouse, civil partner or child, a general rule is that anyone descended from a grandparent of the deceased would be entitled to share in the estate.

To help you we've drawn up a family tree in which the entitled relatives are shown in block letters and non-entitled relatives in standard letters. A copy is attached to these guidelines.

The family tree attempts to make clear, for example, the distinction between a first cousin once removed (entitled) and a second cousin (not entitled): people sometimes confuse the two.

A similar confusion arises with a half-brother and a step-brother (or sister). A half-brother shares a common parent with the deceased (ie that parent has married twice and has produced a child of each marriage) and is entitled. A step-brother does not share a common parent with the deceased (ie one of the deceased's parent has married someone who already has a child) and is not entitled.

Anyone legally adopted under the Adoption of Children Act 1925 has the same rights as if he or she had been born into their adoptive family. But they don't have any rights of the family into which they were originally born.

Please note we can only administer the estate of someone who has not been survived by any blood relatives. We cannot act if:

- you trace an entitled relative who is unwilling or unable to deal with the administration of the estate, or
- you trace an entitled relative but subsequently lose contact with that person, or find out that they've since died.

If there is confirmation that the deceased has been survived by an entitled blood relative, we can't get involved, even if the relative dies, disappears or refuses to act. We can only suggest that you get advice from your own legal advisers .

Solvency

Is the estate insolvent?

The estate is insolvent if the deceased has left more debts than funds to settle them. If this happens, any money must be used to pay the debts.

Funeral expenses are the first legal charge against any estate. So the funeral director (or, if their bill has been paid by someone else, the person responsible for paying it) has first claim. Only when this bill has been paid can anyone else including other creditors make a claim on what's left.

You should not refer insolvent estates to us. We will not accept the case as there'll be nothing for us to collect once the creditors have been paid.

What is the value of the estate?

If the estate is only marginally solvent, it may still be uneconomical for us to get involved - see *Small Estates* below.

Small Estates

When an estate consists only of cash of £500 or less, you can keep the money and don't have to refer the case to us.

When an estate consists of a cash residue of over £500 but under £2,000, you should refer the case and send the money to us at the same time.

In all these small cases, we would assume that you're not aware of any entitled relatives and that the deceased died without a Will. In all cases we will need to have at least the following information:

- the deceased's full name and marital status;
- the actual date and place of their death (and, if this a residential home or hostel, the date of the deceased's admission and their last private address if admission was recent); and
- if the deceased died at or had recently occupied a private address, confirmation that the tenancy has been terminated, that no rent is due and that furniture and belongings have been disposed of.

If there are personal belongings that you don't think have any saleable value, you can dispose of them as you wish. If you believe that some of them (usually jewellery) may have value, you can arrange to sell them through a local firm of reputable auctioneers.

If an estate has a net cash value of £500 and belongings that appear to be saleable, these should be sold and if the net estate then exceeds £500, you should refer the case to us.

Money Laundering

In accordance with good practice, and with the aim of preventing money laundering, the Treasury Solicitor (as the Crown's Nominee for dealing with assets that vest in her as bona vacantia) operates in accordance with the principles laid down in Part VII of the Proceeds of Crime Act 2002 ("the Act") and the Money Laundering Regulations 2003 ("the Regulations").

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.

Get in touch

If you're in any doubt about whether an estate should be referred to us or if you need any further information regarding bona vacantia or our requirements, please get in touch.

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Or visit our website at www.bonavacantia.gov.uk

How to refer a case to us

You can refer a case to us using the Notification Form (Form BV1A) which you'll find on our website at http://www.bonavacantia.gov.uk/forms/estate_deceased_form1.asp http://www.bonavacantia.gov.uk/forms/estate_deceasedform1.asp or you can telephone us for a copy on 020 7210 3116/7.

When you're sending papers and valuables to us, please follow the procedures below.

Thank you.

1. All documents of value such as Title Deeds and Share Certificates should be scheduled and sent by Recorded Delivery.
2. Credit/debit and store cards should be cut before you send them, to avoid fraud.
3. All bank or building society passbooks should be scheduled and sent by Recorded Delivery.
4. Please don't send cash through the post.
5. Please make cheques payable to The Treasury Solicitor, and write the case reference and name of the deceased on the back.
6. Please keep jewellery somewhere safe until we send you instructions on how to dispose of it.

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