

Important Notes on the Guidelines for tenants for the sale of headleases of property that is subject to underleases

1. The attached Guidelines give you information about the sale by the Treasury Solicitor of the headlease of property from which underleases have been granted to the tenants in occupation. Please read the Guidelines carefully.
2. The attached guidelines deal mainly with property divided into flats, but the general principles also apply to leasehold houses and other leasehold property.
3. If you want to buy the headlease of the building that your flat is part of, please follow our requirements set out in the Guidelines and complete and return the attached documents to us at One Kemble Street, London WC2B 4TS.
4. You should firstly talk to the other tenants who own flats in the building to see if they wish to join in and buy the headlease with you.
5. You should then complete and return the attached ***“Details of Tenancies”*** form, with **FULL REPLIES** to the attached questionnaire.
6. If any of the other tenants **DO NOT** wish to join in and buy they must sign and return to us the attached ***“Offer Declined”*** form.
7. As well as the purchase price, the tenants will also have to pay a minimum contribution of £400, plus VAT and disbursements, towards the Treasury Solicitor’s legal costs. For a very complicated sale, the costs may be higher.
8. Until you complete and return the attached documents to us, we cannot deal with your request.
9. If you are instructing solicitors to act for you, please supply 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.
10. If the tenants were the former members of the dissolved company they may be able to restore the company to the register, which may be cheaper than buying the headlease from the Crown. Details of how to restore a company are available from Companies House, Crown Way, Maindy, Cardiff CF14 3UZ (www.companieshouse.gov.uk)
11. As explained in the attached Guidelines, the Treasury Solicitor has a statutory power to disclaim the Crown’s title to the 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 documents, failing which we may have to recommend disclaiming the title.
12. **These Guidelines contain general guidance 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 expressly reserved.**

THE TREASURY SOLICITOR BONA VACANTIA DIVISION

Guidance for tenants for the sale of the headlease of property subject to underleases

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.
3. If the company owned a headlease of a building divided into flats, in respect of which underleases were granted, on dissolution of the company the headlease passes to the Crown.

What we can do for you

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 right to the property) or sold, and the proceeds of sale transferred to the Exchequer to be dealt with in the same way as money raised by general taxation.
5. We can make an offer (subject to contract until completion) to sell the headlease. Although we are not legally bound to do so, we will usually make an offer to sell the headlease to all the tenants who wish to buy jointly. Alternatively, we can sell it to a management company of which all the tenants are members. For further information about our requirements where the headlease is subject to more than one underlease, please see the section below headed “What to do next”.

What we cannot do for you

6. We cannot act as your landlord, so we cannot take responsibility for claiming or collecting arrears of ground rents, service charges or other outgoings. However, this does not affect your right to demand payment of arrears from the other tenants if you buy the headlease.
7. We cannot manage or insure bona vacantia property, so you should take independent advice about this.
8. We will not usually take possession of bona vacantia property.
9. We cannot transfer property with either full or limited title guarantee. This means that when we sell the headlease we do not give any guarantee or assurance that we have the legal right to sell it.

How it works

10. Before we would consider making an offer to sell, we must be sure that the company owned the headlease at the time that it was dissolved.
11. If the title to the headlease 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.
12. 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 matter until we have satisfactory evidence of ownership.
13. If there is a mortgage or other charge on the property, this will have to be paid off before a sale can go ahead. It is up to you as the purchasing tenants to get the details about this from the person or organisation holding the mortgage or security, and to get the appropriate release.
14. 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 paying us any surplus after paying off the debt. Separate guidelines (BVC 10) on a sale by a mortgagee or creditor are available on our website.
15. In practice, it may be difficult or impossible to pay off the charge within our time limit for a sale. In these circumstances, we would probably disclaim the Crown's legal claim to the property. "**Disclaim**" means that we would use the power given to us by Section 656 of the Companies Act 1985 to give up the Crown's interest in the property.
16. In the case of a headlease for buildings which are fully let on underleases with at least 60 years left to run before they expire, the price is ten times the difference between the amount of rent payable by the tenants under the terms of their underleases **less** the amount of rent payable to the freeholder under the terms of the headlease, or £500, whichever is the higher.

EXAMPLES.

Example 1

There are 8 flats in the building. The annual ground rent for each flat is £20.
Head rent £20

Total annual ground rents: 8 x £20	=	£ 160
Less rent payable to the freeholder	=	<u>£ 20</u>
Difference	=	£ 140
Purchase price for the headlease is 10 x £140	=	<u>£1,400</u>

Example 2

As above but the head rent is £120

Total annual ground rent; 8 x £20	=	£160
Less rent payable to freeholder	=	£120
Difference	=	<u>£ 40</u>
Ten times the difference	=	<u>£400</u>

Purchase price for the headlease is therefore £500
(because that is the minimum price we sell for)

In all other situations the advice of the District Valuer will have to be obtained on both the price and the most appropriate method of sale.

What to do next

17. If you want to go ahead with the purchase of the headlease **and all the underleases have at least 60 years to run before they expire**, you must give us the following information:

- the number of flats in the building and which (if any) are currently vacant;
- copies of all of the underleases of the flats (if the underleases are all in the same form, we shall only need a copy of one);
- if the underleases of the flats have been registered at HM Land Registry, official copies of the entries and title plans relating to all of the titles;
- the full names and addresses of all the current tenants, and any other persons using or in occupation of any part of the building;
- an official copy of the entries on the register and the title plan relating to the headlease (if registered), or the headlease and all other title deeds if unregistered;
- an official copy of the entries on the register and the title plan relating to the freehold (if registered), or the title deeds to the freehold if unregistered;
- the amount of the current rent payable under the headlease and all the underleases (unless this is already clear from the copy documents);
- if the tenants are going to buy the headlease in the name of a new management company, evidence (before completion of the sale) that the company has been properly incorporated and that all of the tenants involved in the purchase are shareholders in it.

18. If you want to go ahead with the purchase of a headlease with one or more underleases of **less than 60 years to run before they expire**, you must provide us with all of the information above and:

- details of any short term lettings that have been granted by the tenants
- details of any arrears of rent and other outgoings;
- details of any breaches of covenant that you are aware of;
- copies of any Schedules of Dilapidations that you are aware of; and
- copies of any notices served by either the former landlord (the dissolved company) or the managing agents (if any).

19. Where the headlease is subject to more than one underlease, we shall need to know whether all the tenants wish to buy it. You should firstly ask the other tenants if they want to take part in the purchase. It is very helpful if you can let us have letters from all the tenants confirming what they want to do, or the attached **“Offer Declined”** form duly signed. If you cannot to do this, we shall write to the tenants. to:-

- notify them that the headlease has passed to the Crown as bona vacantia and that we are considering selling it to the tenants jointly;
- ask them whether they want to take part in the purchase; and
- warn them that if we do not hear from them within 21 days of the date of the letter, we may go ahead with the sale without further notice.

20. Although we will consider objections to a proposed sale, no tenant has the right or power to veto it.
21. It may be necessary to obtain the freeholder's consent before the headlease can be transferred. The tenants will need to apply for that consent and be responsible for the freeholder's costs. Even if consent is not needed, the Treasury Solicitor must receive a release and indemnity from the freeholder for the breach of any covenants under the headlease. A copy of the form of release and indemnity will be supplied. The freeholder's costs are payable by the tenants.

Money Laundering

22. 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.
23. 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.

Please note

24. 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.
25. This guidance is not a binding offer or a professional undertaking to sell the headlease. We reserve the right to disclaim the Crown's claim to the headlease without notice at any time under Section 656 of the Companies Act 1985. If the headlease is disclaimed, we will send a copy of the formal notice of disclaimer to all interested parties of whom we are aware.
26. If we do make an offer to sell the headlease, completion of the sale must 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 headlease was bona vacantia. In certain circumstances this period may be reduced to 3 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 property if completion will not be possible before the end of the disclaimer period.

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 and interpreted like one. It is intended to provide general guidance only, and 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 the applicant about our decisions as soon as possible. When dealing with any property and rights that pass to the Crown, we aim to act fairly and impartially but in such a way as not to prejudice the Crown. We aim to be fair in all our dealings and not to take unfair advantage or to favour one party over another.

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QUESTIONNAIRE

Questions	Answers
<p>1. Please complete and return the attached Details of Tenancy Form giving full details of the underleases, and the full name and address of the current occupational tenants.</p>	
<p>2. Please specify the amount of the current rent payable under each of the underleases.</p>	
<p>3. Are any of the flats sub-let? If so please provide full details.</p>	
<p>4. Please provide copies of any notices or any Schedule of Dilapidations that have been served upon the occupational tenants.</p>	
<p>5. Please provide copies of the underleases, and if the underleases have been registered at HM Land Registry, please supply recent official copy entries and title plans of the registered titles. A copy of only one of the underleases is needed if they are all in the same form.</p>	
<p>6. If the freehold and headlease titles are registered at HM Land Registry, please supply recent official copy entries and title plans of the registered title.</p>	
<p>7. If the title to the freehold is unregistered, please supply a copy of the conveyance to the freeholder, their current name and address, and (if known) the name and address and reference of their solicitors.</p>	
<p>8. If the title to the headlease is unregistered, please supply a copy of the original headlease, and copies of all assignments and subsequent deeds, culminating in an assignment to the dissolved company, unless the dissolved company was the original lessee.</p>	

Questions	Answers
<p>9. Please state the amount of current rent payable under the headlease. Are there any arrears owing in respect of rent, or service charge? If so, please provide full details. If the rent (and service charge) is paid up to date, who is making the payments? To whom is the rent (and service charge) being paid at present?</p> <p>10. Has the freeholder complained of or alleged any breaches of the covenants in the headlease? If so, please provide full details.</p> <p>11. Please supply copies of any notices that have been served by the freeholder.</p> <p>12. Do you intend to set up a new management company to purchase the headlease?</p> <p>13. Please give the name, address and reference of the solicitors who will be dealing with the legal formalities on behalf of the tenants.</p>	

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

Signature Dated:.....

Name [in BLOCK CAPITALS]

Address

DETAILS OF TENANCIES					
Flat No:	Title No:	Term of Lease			Full Name of Tenant/Vacant
		Years	From	Rent	

OFFER DECLINED

Company Name	
Property	

1. The headlease of the above property is now vested in the Crown pursuant to Section 654 of the Companies Act following the dissolution of the above-mentioned company.
2. The Treasury Solicitor as nominee for the Crown has offered to sell the headlease to all of the tenants jointly.
3. We, the undersigned, being tenants of flats in the property hereby confirm that we **DO NOT** wish to participate in the purchase of the headlease from the Crown.

DATED the day of200

Signed by

[Full name in block Capitals]

[Signature]

Signed by

[Full name in block Capitals]

[Signature]

Signed by

[Full name in block Capitals]

[Signature]

Signed by

[Full name in block Capitals]

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