

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 not 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 with an unregistered title. Separate guidelines are available in the case of land with a registered title. In these guidelines 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 be dealt 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 sure 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 not registered at the Land Registry, you will have to give us 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. Where a dissolved company was the owner of property, it will pass to the Crown as bona vacantia on the date that the company was dissolved. The title of the dissolved company to the property in question may however have been extinguished by adverse possession before the company was dissolved. In those circumstances no interest would pass to the Crown as bona vacantia.
11. Adverse possession is part of the general law, which is now contained in the Limitation Act 1980. The basic principle is that a person can become the legal owner of property simply because they have taken possession of it without the owners consent. After a certain length of time, a person in adverse possession of property may have a better title to it than anyone else, including the real or 'paper' owner, simply because the law will not permit anyone to remove the occupier.
12. If you can show that for the 12 years or more ("the limitation period") **before the company was dissolved** you were in adverse possession of the property, the company's title to the property would have been extinguished, and there would be no interest or right to pass to the Crown as bona vacantia.
13. If at the date the company was dissolved, the limitation period was still running, the property would vest in the Crown as bona vacantia, but subject to the rights of any person in adverse possession. However the limitation period then becomes that appropriate to Crown Land, which is 30 years, rather than 12 years.
14. You can find more information in the Land Registry's Practice Guide on Adverse Possession (Practice Guide 5) available free from any Land Registry Office, or 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.
15. The law relating to the above is contained in Sections 15 and 17 of the Limitation Act 1980, and Schedule 1 Part II of the Limitation Act 1980.

What To Do Next

16. If you have been in adverse possession of property for the required period and believe that you are entitled to apply to be registered as owner of the property, you should apply to the Land Registry for registration of title on the basis of adverse possession, and send to the Land Registry the necessary Statutory Declarations in support of your application. If as a result of their investigation the Land Registry discovers that the previous owner of the property was a dissolved company, a formal notice will be served on the Treasury Solicitor asking if we will object or consent to the registration. Copies of the Statutory Declarations will be sent to us by the Land Registry.
17. In order to establish that the Crown's title has been extinguished by adverse possession, we will normally require to see at least 2 Statutory Declarations. We always require a Statutory Declaration made by the current occupier of the property, and (if appropriate) their predecessors, sufficient to show either that the Crown's title has been extinguished under the 30 year rule, or to establish that the property never vested in the Crown as bona vacantia under the 12 year rule. In addition we may also require a Statutory Declaration sworn by an independent third party verifying the facts.

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.
19. 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 5) 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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