

Burges Salmon LLP represents The Crown Estate in relation to property which may be subject to escheat to the Crown under common law. This note is a brief explanation of this complex and arcane aspect of our legal system intended for the guidance of persons who may be affected by or interested in such property. It is not a complete exposition of the law nor a substitute for legal advice.

All general enquiries regarding escheat should be addressed in the first instance by email to escheat.queries@burges-salmon.com or by post to Escheats, Burges Salmon LLP, One Glass Wharf, Bristol, BS2 0ZX.

Basic Principles

English land law has, since feudal times, been based on a system of tenure. A freeholder is not an absolute owner but a "tenant in fee simple" holding, in most cases, directly from the Sovereign, as lord paramount of all the land in the realm. Whenever a "tenancy in fee simple" comes to an end, for whatever reason, the land in question may become subject to escheat and the lord holding the superior interest, in most cases the Sovereign, becomes entitled to take possession of it. This principle applies whether the freehold title is registered or unregistered. This entitlement (not an obligation) is called 'escheat'.

Only freehold properties may be subject to escheat. In particular, the following do not fall within our remit:

- (a) Leasehold properties.
- (b) Rent charges.
- (c) Time share properties.
- (d) Freehold property abroad held by a British registered company.
- (e) Mineral rights (where they exist as profits à prendre as opposed to an exception and reservation of land itself).
- (f) Freehold property owned by joint tenants (in this sense meaning the joint owners of freehold property) only one of whom has been made bankrupt or has been dissolved. So, in the event of disclaimer of the interest of one joint owner in the property, the legal estate in the freehold does not escheat since it is not vested solely in that person or company but is vested in the joint tenants upon a trust of land.
- (g) Freehold property held subject to a trust.

Properties which may be subject to escheat within England or Wales fall to be dealt with by Burges Salmon LLP on behalf of The Crown Estate, except for properties within the County of Cornwall or the County Palatine of Lancaster (as to which see 1.6 below).

Routes by which escheat arises

There are a number of ways that freehold properties may become subject to escheat to the Crown, including but not limited to:-

(a) Disclaimer by Treasury Solicitor under the Companies Act

The Treasury Solicitor (bona vacantia division - www.bonavacantia.gov.uk) deals with all cases of 'bona vacantia' – the term used to describe 'lost' property. The property of a company which has been dissolved may pass to the Treasury Solicitor in this way.

The Treasury Solicitor, however, may disclaim any property which vests in the Crown as bona vacantia. Freehold property disclaimed by the Treasury Solicitor may then become subject to escheat.

(b) Disclaimer by trustee in bankruptcy or Official Receiver

It is open to a trustee in bankruptcy or an Official Receiver to disclaim property vested in a bankrupt. The effect of such a disclaimer of a freehold property is to determine the bankrupt's interest and the trustee's obligations and liabilities with effect from the date of disclaimer. The property may then become subject to escheat.

(c) Disclaimer by liquidator

In the case of a company which is being wound up in England and Wales, the liquidator may, by giving the prescribed notice and with leave of the Court, disclaim any onerous property. He may do this notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it. As the disclaimer takes place before the company is dissolved, the property does not vest in the Treasury Solicitor as bona vacantia. The property may then become subject to escheat to the Crown.

(d) On dissolution of a foreign company

The freehold property in England and Wales of a dissolved foreign company may be subject to escheat to the Crown. Such assets are not dealt with by the Treasury Solicitor as bona vacantia because the company is not formed and registered under the Companies Acts.

A "foreign" company includes, in this context, one registered in any of the Channel Islands or in the Isle of Man.

continued overleaf

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX
Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400

Chancery Exchange, 10 Furnival Street, London EC4A 1AB
Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7685 1266

www.burges-salmon.com

Burges Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is regulated by the Solicitors Regulation Authority. A list of members, all of whom are solicitors, may be inspected at our registered office: One Glass Wharf, Bristol BS2 0ZX.



**BURGES
SALMON**

(e) **On an Industrial and Provident Society (or Friendly Society) ceasing to exist**

Any freehold property held by an Industrial and Provident Society may be subject to escheat to the Crown if the Society is dissolved or otherwise ceases to exist. Mere cancellation of the registration of a Society does not, of itself, mean that the Society has necessarily ceased to exist.

Freehold property held by a Friendly Society may also be subject to escheat in similar circumstances.

(f) **On dissolution of a statutory company**

Property may be subject to escheat where such entities are dissolved by statutory instrument, but freehold property has been overlooked.

Subordinate interests and encumbrances – Liability of the Crown

Escheat does not determine any subordinate interests in the property in question, such as a lease or mortgage, or any other encumbrances to which the property is subject. The Crown will not, by virtue of the property becoming subject to escheat, assume any liabilities in relation to such interests or encumbrances or of any other nature. The Crown is not a successor in title to the freeholder and does not derive title under him. Only if, exceptionally, the Crown took possession of the property, or committed an act of management in relation to the property, might it assume any liabilities. Where a property may be subject to escheat, the Crown is not the 'owner' in any conventional sense and does not have the ordinary responsibilities of an owner.

Duchy of Cornwall and Duchy of Lancaster

Properties subject to escheat within the County of Cornwall or the County Palatine of Lancaster fall to be dealt with by The Duchies, not The Crown Estate. The County Palatine of Lancaster includes the County of Lancashire and parts of Merseyside, Greater Manchester, Cheshire and Cumbria. The solicitors to The Duchies are Farrer & Co (enquiries@farrer.co.uk).

Practice

The Crown Estate is not bound to dispose of property subject to escheat, or to dispose of such property to any particular purchaser. Normal policy is to dispose of such property to an appropriate purchaser where it is possible to do so. In the case of a block of flats, the appropriate purchaser will usually be such of the long lessees as want to participate. In the case of a private road, the appropriate purchaser will usually be such of the adjoining owners served by the road as want to participate. Other cases will depend upon their merits.

If an obvious candidate to have the property has grounds for applying to the Court for a Vesting Order, The Crown Estate may decide not to oppose that application.

The Crown Estate does not manage or insure properties subject to escheat.

Procedure

Enquiries received about properties concerning which The Crown Estate has no information will be passed to the Treasury Solicitor (Bona Vacantia Division).

Other enquiries will be investigated and we will, as soon as we are able, give an indication of whether a disposal may be possible and on what terms.

We may initiate or require evidence of consultation with other appropriate persons.

If a disposal is a possibility we will require the interested party or parties to appoint a solicitor to act for them, which should be a single firm if they are more than one.

If a mortgage or other charge exists over the property, the lender may be prepared to release his interest without requiring any payment. A mortgagee holding a power of sale may sell under that power and The Crown Estate will not be involved.

If the lender is not prepared to release his charge, or if there are other claims and the claimants indicate in writing that they do not propose to exercise any rights that they may have under the Companies Acts or the Insolvency Act, a sale may still be arranged but the prospective buyer will be made aware of the existence of the other claims and will be given a copy of any relevant correspondence with the other claimants.

Price

Disposals are usually at market value. The Crown Estate has a statutory duty to secure best consideration in all the circumstances of a disposal. A minimum nominal consideration is payable in cases where there is no readily ascertainable market value but a disposal is nevertheless possible.

Where the freehold of a block of flats is subject to escheat and more than 80 years remain unexpired on the leases of the flats then, unless there are other relevant factors, the price will usually be 15 times the total of the annual ground rents, subject to a minimum payment to cover administrative expenses. Where less than 80 years remain unexpired, or other relevant factors apply, any disposal will be at market value.

Legal and valuation costs

We normally recover a contribution to the legal costs incurred on a disposal and reimbursement of the cost of obtaining any appraisal of value.

Burges Salmon LLP
Issue October 2009