

ESCHEAT – A BRIEF GUIDANCE NOTE BY THE CROWN ESTATE

What is escheat?

Under our legal system, the monarch (currently Queen Elizabeth II), as head of state, owns the superior interest in all land in England, Wales and Northern Ireland – even freehold land is not owned outright, as the monarch has a superior interest. This is not usually relevant, though it can become relevant if freehold land becomes ownerless. If this happens, freehold land may, in some circumstances, become owned by the monarch as the owner of the superior interest. This process is called ‘escheat’.

We, The Crown Estate, (through our solicitors Burges Salmon) deal with all cases of escheat throughout England, Wales and Northern Ireland, except for Cornwall and an area known as the County Palatine of Lancaster (which includes parts of Lancashire, Merseyside, Greater Manchester, Cheshire and Cumbria). In these cases, escheat is dealt with by the Duchy of Cornwall and the Duchy of Lancaster.

This note is no more than a brief introduction to a complicated subject.

How does freehold land become ownerless?

There are a number of ways that this may happen, including the following:

- When the Treasury Solicitor disclaims (gives up the right to deal with) freehold property which passed to the Treasury Solicitor when a company was dissolved (ended). This will often happen because it will not be cost-effective for the Treasury Solicitor to sell the property, or because the property has risks associated with ownership.
- When a foreign company (a company not established under the laws of the United Kingdom) which owned freehold land in England, Wales or Northern Ireland, no longer exists. This is normally where the company is removed from the register of companies where it was established and registered.

In the remainder of this guidance note, ‘ownerless land’ means freehold land (and the buildings and permanent structures on it) which may become owned by the monarch under escheat.

We do not deal with freehold land previously owned by anyone who died without making a will and without any known family. This is dealt with by the Treasury Solicitor. We also don’t deal with leases without a tenant or other land rights.

What should I do if I want to find out about ownerless land?

Send your enquiry by post or email to:

Burges Salmon LLP - FAO ESCHEAT
Narrow Quay House
Narrow Quay
Bristol
BS1 4AH.

email escheat.queries@burges-salmon.com

Please do not send any enquiries to us, as we will send them to Burges Salmon and will not reply to them.

Please let Burges Salmon know the following:

- Your full name, address and contact details.
- If you are acting for someone else, their full name, address and contact details.
- The address or location of the ownerless land, and a plan if this may help identify it.
- If the ownerless land is registered at the Land Registry, the title number (if known).
- The name of the former owner (if known).
- Your interest in the ownerless land, for example, do you own a lease of it, want to build on it or add it to property which you own?
- Whether the Treasury Solicitor has dealt with the ownerless land.
- Any other information which you think is relevant.

What can you do with ownerless land?

The only way we can help return ownerless land to private ownership is to sell a new freehold to a new owner. We can only do this if we are happy that escheat applies to the ownerless land. We cannot:

- Grant rights or sell part of ownerless land.
- Decide on boundary disputes as it is not our responsibility to deal with past errors in the legal process of transferring property from one owner to another.
- Help when deeds have been lost or owners cannot be found.

What will you do if I have an enquiry?

Acting on our behalf, our solicitors Burges Salmon will do the following:

- Make a record of your enquiry.
- Consider whether the land can be sold.
- Write or email a reply, having looked into your enquiry, to you or your solicitors.

What will you do if you become aware of ownerless land?

We are not under any obligation to sell ownerless land. We are not responsible for the events that cause escheat, or the problems caused by companies or individuals in financial difficulty. Ownerless land may sometimes remain ownerless for an unlimited period.

We are also not responsible for ownerless land or what happens to it. We will not manage, insure, repair or look after it. We do not have the usual responsibilities of a landowner. We are not responsible for what former or current owners do or for the condition of ownerless land.

If you live or work on all or any part of the ownerless land you should get your own independent advice about its insurance and management.

How do you decide who to sell land to?

We will only sell to buyers we consider to be appropriate buyers, and only if we are satisfied that a sale will not create unacceptable risk to The Crown Estate. We need to get the best price for the ownerless land in all the circumstances. However, please note that any sales proceeds are not kept by The Crown Estate, but are paid to the government.

Appropriate buyers – If we think that you have a genuine interest in the future use or condition of the ownerless land, or you had an interest in the former owner (if it was a company or other similar organisation), you may be an appropriate buyer.

If there is more than one appropriate buyer, we may expect you to speak to others who may qualify. It is our policy to be open when dealing with everyone who may have an interest in the ownerless land.

Risk – The complicated nature of this part of the law means that in case of doubt or possible risk, we may decide not to sell, even if there are appropriate buyers willing to pay best price.

Best price – This means a price which is fair and reasonable in all the circumstances. It may mean that a professional valuation needs to be carried out.

Taking advice

Burges Salmon will do what they can to explain the law in this area, if relevant to your enquiry, but cannot give you legal advice. Many of the legal terms in this area are not easy to explain unless you understand land law, company law and insolvency procedures.

If a sale is possible you must take legal advice. Burges Salmon will deal with your solicitor from that point.

If you are one of a group of appropriate buyers who want to buy together, you must all be represented by one firm of solicitors. You may still take your own independent legal advice if you are worried about your own position.

More information

For more information on:

- ownerless land in the Duchy of Cornwall, see www.duchyofcornwall.org;
- ownerless land in the Duchy of Lancaster, see www.duchyoflancaster.co.uk; or
- the Treasury Solicitor and bona vacantia, see www.tsol.gov.uk and www.bonavacantia.gov.uk/.

You can find more information on the Burges Salmon website at www.burges-salmon.com.