

41 However, if our information is correct and it helps or enables you (whether independently or through us or using an Attorney paid for by us) to claim the Property or unpaid past Earnings, then the Commission Fee stipulated in the Fee Agreement is payable.

42 The date when the Commission is payable depends on how you or we decide to pursue the Claim.

43 If we disclose the information to you direct and you choose to make the claim yourself, you must pay us the Full Commission 30 days after we identify the Property to you and tell you how it may be claimed, whether or not you have completed your claim by then.

44 However, if we disclose the information to you direct but within 30 days afterwards you ask us to handle the claim for you, the commission is not payable until the claim is successfully concluded, when it will be payable out of the proceeds of the claim.

45 If we are funding an Attorney to act for you, no commission is payable until he has realised the Property. He will then pay our commission out of the proceeds in accordance with the Fee Agreement and pay your share to you. If you want the Attorney to delay the sale of any Property or you want to pay our fee out of other funds, our commission (calculated as at the Date of Disclosure) is payable 21 days after you tell us you want a delay.

INCIDENTAL COSTS, DISBURSEMENTS and TAXES

46 If you decide to make your claim independently you are liable for all Disbursements you incur.

47 If TPR or an Attorney is obliged to pay any Disbursements, they will be deducted from the proceeds of the Property in addition to the Success Fee. However, with the exception of receipted court fees, insurance premiums and indemnity fees, the Disbursements will not exceed 2% of the overall Property value and you may request an itemised statement of them.

48 Please see what is said under the heading **TAXATION**.

TERMINATION

49 We can choose to cease work on the claim at any stage without any further obligation or liability to you. If we do that:

- a. we will notify any Attorney and settle his account up to the date of termination; and
- b. if you wish to pursue the claim independently, we will hand over all relevant papers and correspondence to you; and
- c. you will not owe us any Commission even if you recover the Property and Income yourself.

INDEPENDENT CLAIMS MADE AFTER DATE OF AGREEMENT

50 If, after signing a Fee Agreement with TPR, and even before any Date of Disclosure, you take independent steps (whether directly or through anybody else) to contact the Custodian or to claim or accept the Property without first getting our agreement, then you must pay the Full Commission to us immediately.

OBSTRUCTION

51 If we cannot calculate the commission due on Past Recoverable Earnings because you will not give us any necessary information or authorise us to obtain it, then:

- a. the past Earnings will be calculated as a twelve-fold multiple of the latest known annual earnings;
- b. if we have no information about any Past Recoverable Earnings, we will be entitled to substitute a figure equal to 7% of the Property's capital value at the Date of Disclosure (so that the Past Recoverable Earnings will be deemed to equal 84% of the Property's Capital value); and
- c. we will be entitled to calculate the Success Fee accordingly.

CONFIDENTIALITY and DISCLOSURE

52 Where an Attorney is appointed to act for you (whether by TPR or independently by you) you and he must disclose to TPR any past or present information or correspondence concerning the case, whether with the Custodian or any other party.

53 To make progress with the case, we may have to disclose information about the Property or your Entitlement to your Attorney in confidence (for example, names of other people who are entitled to share in the Property but who have not been traced yet; or specific details about the Property itself.) You agree that you will not require your Attorney to disclose to you (or to anybody else) any information that we have given to him in confidence

TAXATION

54 **SALES TAX.** In some countries, TPR and/or its agents are obliged by law to add some form of Sales Tax to the agreed fees (e.g. Value Added Tax in the UK or Government Sales Tax in Australia). We have no control over taxes and Governments can vary them from time to time. They must be paid from the Client's share in addition to the Success Fee. The only exception to this is when the client shows evidence of existing proof of title for a capital asset such that TPR's fee is equal to past unclaimed earnings. In such cases, any VAT, GST or similar sales tax is paid by TPR out of the Success Fee.

55 **OTHER TAXES.** Responsibility for calculating, declaring and paying any other taxes (e.g. Income, Estate, Inheritance or Capital Gains taxes) lies with the Client. You must make your own enquiries about any tax liability that may arise, and settle any tax bills from your own resources.

56 **CANCELLATION.** Some countries give you the right to cancel your Fee Agreement with TPR within a specific period. These consumer protection laws vary from place to place, and change over time. If you have any second thoughts about what you have signed, please contact an independent legal advisor to check whether this provision applies in your particular case. Apart from unavoidable rights given by any applicable laws, there is no right of cancellation.

57 **MAKING CLAIMS AT YOUR REQUEST FOR ENTITLEMENTS THAT YOU ARE ALREADY AWARE OF.** Some clients are already fully aware that they have an entitlement with a particular custodian, but anticipate or have experienced difficulties in making their claim. For this reason, they may ask TPR to assist with the claim. In such cases, the entitlement is shown in the "exceptions" panel on the Fee Agreement, with a note which shows that:

"Although the entitlement is already known to the Client, for the purposes of allowing TPR to assist in its recovery it is to be treated as "unclaimed" as defined in the TPR Terms and Conditions."

As a result, the provisions of Paragraph 40 in these Terms and Conditions concerning pre-existing proof of title; or relevant correspondence with the Custodian, do not apply to these particular entitlements that you have asked us to help you recover.

In these cases, you agree to provide us at the earliest opportunity (and certainly within 30 days) with copies of all documentation or information which you already have knowledge of concerning the entitlement, or which comes into your possession.

FINANCIAL DETAILS

58 **LIEN.** If you have any account owing to us for more than 30 days, you agree that we may recover our fees (as far as possible) from any funds that we are already holding on your behalf.

59 **INTEREST PAYABLE TO YOU.** Any money that we hold on your behalf will normally be held in trust in a client bank account, to keep it safe and separate. If the amount being held for you is more than US \$2,000 (or the equivalent in local currency) and is likely to be in the account for two months or more, then the money will be placed in an interest-bearing account and all the interest earned will be payable to you. For smaller amounts, or shorter periods, there is no interest.

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TPR

TRUST PROPERTY RESEARCHES
Terms & Conditions (Issue 12)

Published: September 2006



wellington cape town dublin kuala lumpur london singapore sydney

WHAT THIS DOCUMENT CONTAINS

1 The contents of this Document explain TPR's procedures and are our contractual Terms and Conditions. They are part of every TPR Fee Agreement which says in any way that it incorporates Issue No. 12 of the TPR Terms and Conditions. Anybody who signs a Fee Agreement agrees to be bound by them.

MEANINGS of words and phrases used in this document and in Fee Agreements

2 "We,"Us,"Our","Trust Property Research","TPR" and "TPR Network" mean generally the international network of independent researchers and genealogists known collectively as **Trust Property Researches**, and specifically the TPR associate or company identified as "TPR" in the Fee Agreement.

3 "You","Your" and "the Client" mean the person named as "the Client" in the Fee Agreement. If your right to the Property is as a trustee, nominee, agent or representative, then they also mean the beneficiaries or principals whom you represent.

4 "Custodian" means a third party who has custody or control of the Property or of a register defining its ownership.

5 "Attorney" means the person whom you appoint to be your agent under a Power of Attorney or other similar document of authority. It does not mean "lawyer" as it does in the USA and some other countries.

6 "The Agreement Date" means the date on which the Fee Agreement is signed or, if it is signed by the parties on different dates, on the later or last date of signing.

7 "Full Commission" means the maximum commission payable by you to us under the Fee Agreement based on (i) an open market valuation of the Property as at the Date of Disclosure plus (ii) the actual Recoverable Past Earnings available to be claimed as evidenced by documentation or calculated as stipulated under the heading **OBSTRUCTION** overleaf.

8 "Disclosure Date" means the date on which we release any information to you in order for you to identify the Property or the Custodian.

9 "Property" and "Entitlement" mean any real (immoveable) or personal (moveable) property including money, assets, entitlements, inheritances or rights of any sort, including the possible right of the Client to require a Custodian to release or restore all or part of the Property or its monetary equivalent to the Client. They are further explained below.

10 "Income" and "Earnings" mean any money, entitlement or value (other than the capital value of the Property) that comes from the Property (regularly or irregularly) such as rent, interest, dividends and so on.

11 "Past Recoverable Earnings" means all Income due or available from the Property before the Date of Disclosure or the date when the Property is sold (whichever is the earlier).

12 "Future Income" means all income due from the Property after any Date of Disclosure.

13 "Reward","Fee","Commission","Commission Fee" and "Success Fee" mean the commission payable to TPR under the Fee Agreement.

14 "Disbursements" means everything that has to be spent to recover the Property, including (but not limited to) professional fees, court and other official fees, insurance premiums, indemnity fees and finance charges.

BACKGROUND and BASICS

15 **Trust Property Researches** is an international network of independent researchers and genealogists, working across the world but mainly in Europe, Africa, Asia and Australasia.

16 **TPR Document Researchers** are engaged to find Property which seems to have been forgotten or abandoned by the legal owners. The Property usually has a capital value and may also include Income.

17 **The Word PROPERTY** does not just refer to land or buildings. TPR searches records of inheritances, dormant bank accounts, insurance policies, forgotten investments, patent and other intellectual property revenues, corporate assets and any other entitlement that appears to have value but to have been lost or forgotten. For simplicity, all of these things are referred to as "Property" or "Entitlements".

18 The Custodians

The Property and/or Income will normally have been under the control or custody of Custodians who have lost touch with the current legal owner. In some cases, they will have actively searched for him. On other occasions, they will simply have advertised. Sometimes they will have had no legal duty to make any searches at all. Therefore, the Property remains unused, and the person who should really be enjoying the benefit of it is missing out.

19 **TPR Tracing Agents** are engaged to locate the current legal owners. In some cases, the original owners are still alive. In other cases, they have died and their heirs or beneficiaries are entitled to the Property. If the owner is corporate (e.g. a company or other organisation), it may still exist or it may have merged or been taken over.

20 The Fee Agreement

When the apparent Owner is traced, the researchers or TPR invite him or her to sign a Fee Agreement which stipulates that he or she will pay TPR a Success Fee if its work and information helps or makes it possible for the Owner to claim the Property.

21 Transfer of Duties

All the different TPR affiliates work together as a team. So, if one of them gives you an undertaking to do something, it may be a different affiliate who actually does the work. As long as the work is done, and done properly, you agree to accept that the undertaking has been fulfilled.

22 Jurisdiction and Local Laws

It is quite common for Property to be in one country while the Clients are in another. The laws concerning inheritance, contracts, Powers of Attorney and various other important matters can vary from country to country. Each TPR Fee Agreement should state which country's laws govern it and whether any country's courts have exclusive jurisdiction over it. If that information is omitted for any reason then, unless you and TPR subsequently agree otherwise, the law and exclusive jurisdiction will be those of England and Wales.

THE CLAIM PROCEDURE

23 After the Fee Agreement has been signed, the claim can proceed in ONE of TWO ways.

- EITHER - We will disclose all the relevant information directly to you, so that you can make the claim yourself.
- OR - We will require you to appoint an officer of one of the TPR network companies or one of our approved lawyers to be your **Attorney**. We will nominate people or lawyers experienced in this type of business and with whom we are willing to work. Any such lawyer will be qualified and permitted to practise in the relevant jurisdiction or country, and will be governed by the relevant laws, professional standards and codes of conduct.

24 We will decide which procedure is suitable for any particular case having regard to (a) the location and overall value of the Property, (b) the number of people who may have an interest in it, and (c) our own interests in being able to monitor the progress of the claim. If, for example, the Property is held in a country where there is an Unclaimed Monies Act in force (such as in Malaysia, Australia, New Zealand and America) we may disclose certain details to you, but still require you to appoint and authorise an attorney or agent: because this may be the only way for us to confirm whether or not the Claim is successful.

25 We may recommend you to appoint an individual director or officer of a TPR affiliated company to be your Attorney. However, you can still insist on appointing one of our companies' approved lawyers instead, if you are more comfortable with that arrangement.

26 If you appoint a lawyer nominated by us as your attorney, he will remain our lawyer and not yours. His primary professional duties will be towards us, although the appointment document or procedure will protect you by requiring that he must always consider and protect your interests as much as ours. We will pay all his costs and fees.

27 Usually, if we disclose all the information directly to you, you may either make the claim on your own or ask us to handle the claim procedure for you. We will provide you with all the information necessary to make your claim but if it is complex (and particularly if it involves overseas property, procedures or foreign languages) you can choose to pass the work back to us. The TPR Success Fee is the same in either case, which is why most clients ask us to do this work.

28 If you decide to handle the claim yourself (so that we have no control over its speed or progress) then:

- Provided that our information and research are correct and you are entitled to claim the Property, you must pay our fee even if you do not pursue your entitlement.
- If you intend to argue that we are not entitled to any fee or only to a reduced fee (because, for example, our information was wrong or you had already claimed your entitlement before you signed the Fee Agreement), you must do so within 30 days of the Disclosure Date.
- You will also be responsible for any expenses of pursuing the claim yourself, whatever they are but including for example: certified proof of identity, indemnities, translations, and any associated legal costs.
- You must pay our fee in the time specified in the section across headed **TIME SCALES**.
- We will be relying on you for information and progress reports. You must therefore keep us informed of progress at all times whether we specifically ask you for updates or not.
- You must perform your duties to us in the **utmost good faith**.

29 If you pass the claim procedure back to us:

- You will have to give us written authorities to make whatever enquiries, requests and applications are necessary to claim the Property on your behalf, to sell it or otherwise realise its value, to recover its unpaid past Income and to distribute the proceeds in accordance with the terms of the Fee Agreement;
- The written authorities, which may include a suitably limited Power of Attorney, will include permission to obtain information and records relating to the Property or to your Entitlement and will give whatever consents are necessary for that purpose under any data protection or privacy laws in any jurisdiction;
- We will cover all incidental administrative expenses;
- Then, you will not be liable to pay our fee until we have actually realised a sum of money for you, so that the fee can be deducted from the proceeds.
- If we fail to recover the money for you, you have no liability to us whatsoever.

30 If we ask you to appoint a nominated Attorney, we will pay him, whether the claim is successful or not. You will not have to pay him anything at all, although once you appoint him to be your Attorney you must not revoke the appointment without a valid reason.

31 We will not pay any lawyers or other advisors whom you appoint independently. Any costs or charges from people whom you appoint independently will be your own responsibility.

32 The appointment of an **Attorney** will probably be in a document called a Power of Attorney, but local laws may require or permit another procedure (e.g. a simple letter of authority). Whatever form it takes, to protect you the Power will be limited to the Property and its Income. It will not allow us to conduct any other business on your behalf.

33 When we ask for a Power of Attorney or letter of authority from you, we will draft the paperwork: but we must always keep it reasonable, relevant, and proportionate. In return, you must sign the documentation and send it back to us with any other paperwork that we ask for (for example, proof of identity) within the period stipulated under the heading **TIME SCALES** below.

TIME SCALES

34 Each of the following time scales applies unless it is expressly varied in the Fee Agreement. This enables the claim to proceed without undue delay.

35 IF YOU ARE THE SOLE CLAIMANT IN THIS CASE, we will either disclose all details about the Property and the basis of the claim or agree to cover the cost of an attorney by whichever is the later of the following:

- 30 days after receiving the completed Fee Agreement back from you; or
- 14 days after receiving confirmation from the Custodian that the Property remains unclaimed.

36 IF THERE ARE TWO OR MORE CLAIMANTS, we may, at our discretion, delay any disclosure or decision concerning attorneys until all potential clients have signed Fee Agreements. The maximum delay, unless you agree otherwise, will be not more than one year.

37 If we ask you for relevant permission or authority, information or paperwork in your possession or control, you must supply it within thirty (30) days.

38 If you do not keep to any time limit, we will consider ourselves unable to proceed with your claim, in which case:

- our obligations to you and your Attorney will cease; but
- if we have undertaken to pay an Attorney's fees, we will still pay those fees up to the date of cessation; and
- you will have to pay us the full Commission Fee immediately; and
- the provisions under the heading **OBSTRUCTION** overleaf will apply.

COMMISSION FEE

NO COMMISSION WITHOUT SUCCESS

39 If we have discovered and brought you information about an entitlement, but for any **reason our information fails to establish a valid claim for you** (for example, if there has been a mistake in identity, or any important part of TPR's research information turns out to be wrong) **then no Success Fee is payable at all**. Provided that you have kept all the time limits and done everything required of you under the Fee Agreement, you have no obligation to us and we have no obligation to you.

NO COMMISSION IF YOU'RE ALREADY CLAIMING INDEPENDENTLY

40 If we have discovered and brought you information about an entitlement, but you can prove that you were already fully aware of the Entitlement (including Earnings) before the date you signed the Fee Agreement, by showing:

- pre-existing proof of title; or
- relevant correspondence with the Custodian from any time during the three years immediately before the Agreement Date; then no Success Fee whatsoever is payable.

But see also the section headed MAKING CLAIMS FOR YOU, FOR ENTITLEMENTS THAT YOU ARE ALREADY AWARE OF.

wellington cape town dublin kuala lumpur london singapore sydney