



TRANSFER OF BURIAL RIGHTS

A LEGAL PROCESS



Exclusive Rights of Burial and Transfers – The Legal Process when an Owner is deceased.

The Exclusive Right of Burial Deed is issued when you 'purchase' / reserve a Grave or Cremated Remains Plot. It gives the person(s) named on the deed the 'right' to say who can be interred and the 'right' to request the placement of, or changes to, a memorial. The person(s) named on the Exclusive Right of Burial Deed is often referred to as the Deed Holder or Grave Owner, but they do not own the land they have only purchased the right to say who can be interred and to request a memorial (or changes to a memorial) for the period of time shown on the deed. The Owner(s) of the Exclusive Rights of Burial will be referred to as the Owner(s) throughout this document.

The Owner(s) is the only person with the rights

- to be interred in the plot if space is still available
- to request any further interment in the plot if space is still available
- to request a memorial be erected
- to request any further works to an existing memorial

The Owner(s) is also responsible for ensuring that any memorial is in a safe condition and paying for any repairs required.

All living Owners named on the Exclusive Rights of Burial Deed must provide consent for an Interment (unless it is an Owner who is to be interred) a memorial application can be accepted from any single Owner named on the Exclusive Rights of Burial Deed.

When the Owner(s) is deceased.

Often when the Owner(s) is deceased other family members will wish to arrange for a memorial to be placed, or an additional inscription to be added to an existing memorial and in some cases for a further interment to take place. As only a living Owner may legally hold the right to make these requests it becomes necessary to transfer the Exclusive Right of Burial Deed to a living person(s).

Who is entitled to the Exclusive Right of Burial Deed?

If the Owner(s) has died, their will may mention who the Exclusive Rights of Burial should transfer to. There may be letters of administration, or probate. Where there is no will, letters of administration or probate, we will need a Statutory Declaration.

1) If the Owner is deceased and left a valid will and an estate of sufficient value to require the Grant of Probate to Executors, then the ownership of the grave can be transferred to the Executor.

The Executor must produce an original copy of the Grant of Probate, with the seal included, to the Parish Council.

If the Executor wishes to transfer the deed to someone else, then an Assent of Executor or Administrator form must be completed. The form is available from us.

We will take a copy of the original Grant of Probate and keep the original Assent of Executor or Administrator form.



2) If the Owner is deceased and letters of administration have been obtained or the will is not valid, and the estate was of sufficient value as to require Grant Letters of Administration, the ownership of the grave can be transferred to the Administrator.

The Administrator must produce an original copy of the Letters of Administration Form, with the seal included, to us. If the Administrator wishes to transfer the deed to someone else then an Assent of Executor or Administrator form, available from us, must also be completed. We will take a copy of the original Letters of Administration Form and keep the original Assent of Executor or Administrator form.

3) If the Owner is deceased and there is no grant of probate or letters of administration. If there are no Executors or Letters of Administration have not been granted, we can accept a **copy of a valid will** showing to whom the estate was left or the applicant for transfer of ownership should complete a **Statutory Declaration.**

The Statutory Declaration sets out the reasons why you are saying that you are the rightful owner of burial rights for a grave/cremated remains plot. It is a legal document declaring something to be true. If a Statutory Declaration is required, you will need a solicitor or commissioner of oaths to witness the document. We can assist with example wording of Statutory Declarations, however, to do this we will require further family information and a copy of any will that has been left, applicants may prefer to ask their solicitor prepare the wording.

The requirement for a Statutory Declaration exists to ensure that the burial rights are assigned only to the rightful owner(s). It serves to protect both the owners of those rights and the council. It is a procedure used by the majority of burial authorities in England. It is supported by the Institute of Cemetery and Crematorium Management. There will likely be a charge for this service.

Your Statutory Declaration should clearly set out the facts including:

- the original purchase of the Exclusive Rights of Burial
- the death of the registered owner
- intestate or otherwise
- the relationship of the applicant to the registered owner
- The names and addresses of all persons entitled to the burial rights in accordance with succession.

Family disputes

We cannot become involved where there is a family dispute over any ownership or where there is a stalemate, and relevant consents are withheld. The ownership cannot be transferred, and no further burials will be allowed, or memorial applications processed. The various next of kin need to reach an agreement. Stepchildren do not come into the order of succession.

Exclusive Rights of Burial and Transfers – The Legal Process when an Owner is alive

If the grave owner is alive and wishes to transfer the ownership of the grave to another person, they need to complete a Form of Assignment. Forms are available from us and need the signature of the owner and one other as witnesses.

Fees – Any transfer of the Exclusive Right of Burial Deed will incur the Council's admin fee in place at that time, in addition to any fees which may be due to a solicitor, should their services be required.

Please contact us
if you need further guidance



01522 750011.



parishcouncil@nettleham-pc.gov.uk