

Exclusive Right of Burial is an official document confirming that the purchaser (owner) has the right to say who can be buried in a defined grave space (plot). Rights of burial only are purchased, not the land itself which remains the property of the burial authority (the Parish Council).

No burial (full burial or interment of cremated remains) may take place in the grave and no memorial can be erected on the grave without the written permission of the grave owner during the period that the Exclusive Right exists. Where an existing burial has taken place or memorial erected in error, no further burials or amendments to existing memorials will be allowed without the permission of the grave owner. The only exception to this is where the owner of the right is being interred.

Ownership of the Exclusive Right is therefore very important and grave owners must keep their Deed of Grant safe. This is a legal document and should be produced for each burial. Possession of the Deed does not signify ownership of the Exclusive Rights.

Ownership can be transferred during the current owner's lifetime or after their death. Please note that ownership ideally should be kept to one or two persons maximum. This is because the consent of all owners is required before any burials can take place.

There are various fees payable for the purchase and transfer of Exclusive rights etc. Please contact the Clerk for a list of current fees.

All references to wills in this document relate to wills recognised as valid by the laws in England and Wales.

## 1. Transfer of Ownership

### 1.1. Grave owner living

1.1.1. The grave owner can assign the Exclusive Right of burial to another individual during their lifetime on completion of a Form of Assignment.

1.1.2. The owner can also surrender the Exclusive Right on completion of a Surrender Form. The surrender value will be the original purchase price specified on the Deed of Grant less the administration fee at the time of transfer.

### 1.2. Grave owner deceased

1.2.1. If the grave owner dies it is assumed that they have given permission for themselves to be buried in the purchased grave. The Exclusive Right then becomes part of their estate and may be left in a will to someone else. If the Exclusive Right is not specifically mentioned in the will it will form part of the residual estate of the deceased.

1.2.2. Therefore the procedure to transfer ownership depends on whether there was a valid will or not and whether the Exclusive Rights were mentioned in the will.

#### 1.2.2.1. If the deceased owner left a will

1.2.2.2. If the deceased owner left a will stating who the Grant of Exclusive Right of Burial should be passed to then the person identified in the will should provide the Council with:

- a. the Grant of the Exclusive Right of Burial;

- b. the Grant of Probate (the document issued by the Court after the will has been proved in Court) which should be the original document bearing the Court Seal for a copy of the relevant parts to be taken and retained for the files;
- c. if the person is not also the Executor of the will, an Assent from the Executor(s) of the Will giving the Grant of Exclusive Right of Burial to that person.

1.2.2.3. If the deceased owner left a will of insufficient value to merit application to be made for Grant of Probate and someone wishes to claim the exclusive right of burial, then the Council ask for:

- a. the Grant of the Exclusive Right of Burial;
- b. the Death Certificate;
- c. a Statutory Declaration detailing the relationship of the person claiming the right of exclusive burial to the deceased owner;
- d. a Form of Renunciation from all other people who would be entitled to claim the Grant of Exclusive Right of Burial.

1.2.2.4. **When there is no will**

1.2.2.5. If the owner of the rights dies without leaving a will, this is generally referred to as dying intestate and the Council ask for:

- a. the Grant of the Exclusive Right of Burial;
- b. the Grant of Letters of Administration (granted to a person or persons who apply to the Court to receive permission to administer the estate of the deceased) which should name the administrator(s) and bear the official seal of the Court for a copy of the relevant parts to be taken and retained on file (an Administrator of an estate has the same powers and responsibilities as an Executor);
- c. if the person is not also the Administrator then an Assent Form is required from the Administrator(s) giving the Grant of Exclusive Right of Burial to you.

1.2.2.6. If the estate is of insufficient value to merit application for Letters of Administration the Council ask for:

- a. the Grant of the Exclusive Right of Burial;
- b. the Death Certificate;
- c. a Statutory Declaration detailing the relationship of the person claiming the rights to the registered grave owner;
- d. a Form of Renunciation from all other people that would be entitled to claim the Grant of Exclusive Right of Burial.

1.3. **Original Grant of Right has been lost**

1.4. The Statutory Declaration should be amended to include suitable wording to cover this or other suitable legal declaration should be completed and returned with the rest of the documents.

1.5. **Consents Required**

1.6. The following are examples of circumstances where the ownership is required to be transferred and what consents would normally be required:

Deceased owner survived by:	Applications made by:	Consents needed:
Spouse	Spouse	None – transferred to spouse
Spouse	Son or daughter	Transfer to spouse then can be assigned to either the son or daughter

No spouse but children	One of the children	All other children – irrespective of legitimacy must consent to the transfer
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1.7. **You should always seek independent legal advice regarding your individual circumstances.**

2. **Glossary**

2.1. **Form of Assignment**

2.2. Used by a living owner to transfer/change ownership of an Exclusive Right to a new owner.

2.3. **Grant of Probate**

2.4. Granted to the Executor(s) of a Will once a document has been proved in court. To be legally acceptable the parish council can only accept sealed copies (i.e. must bear the embossed seal of the court).

2.5. **Letters of Administration**

2.6. When a person dies intestate their next of kin can apply to the courts to be made Administrator of the estate. An Administrator receives the same powers to administer the estate as an Executor.

2.7. **Form of Assent**

2.8. Used to transfer ownership of an Exclusive Right from an Executor or Administrator after ownership has been transferred to their name by production of Probate or Letters of Administration.

2.9. **Statutory Declaration**

2.10. Used to transfer ownership of an Exclusive Right when no official documents have been issued. Declarations can be based on a will that did not go to Probate, claiming ownership by the Executor or by the next of kin if the deceased left no will. Must be witnessed by a Magistrate or Commissioner of Oaths (usually a solicitor).

2.11. **Form of Renunciation**

2.12. Used with the Statutory Declaration when the grave can be claimed by more than one person (i.e. the deceased has 3 children and ownership is to be transferred to only 1 of them). The form must be completed by the 2 other children who wish to give up their rights to the grave.