

# Grave ownership and Deed Transferral



## Ownership of a grave - what does this mean?

When buying a grave, it is important to understand that what you are actually buying is the Exclusive Rights of Burial in a grave for a specified period of time. At Fleet this is 99 years however the Exclusive Rights may be renewed for a further term towards the end of the lease. You are not buying the grave freehold. Fleet Town Council retains ownership of the land at all times.

As the owner of the Exclusive Rights, you have the right to:

- be buried in the grave or plot if space is available (includes cremated remains);
- authorise further burials in the grave where space is available or for the interment of cremated remains;
- place an inscribed memorial on the grave or give permission for an additional inscription to be added.

An owner is responsible for:

- ensuring the memorial is in a safe condition and pay for any repairs required.

## What does the law say?

Burial Law (Local Authorities Cemeteries Order 1977) states that **no** burial may take place in a grave and **no** memorial or additional inscription may be placed on a grave without the written permission of the grave owner (during the period of the Exclusive Rights). The **only exception** to this is when the owner of the right is being buried.

Fleet Town Council's Statutory Burial Registers contain the details of the registered grave owners. It is important that grave owners keep their **Deed of Grant or Certificate of Exclusive Rights** safe as this is a legal document. The Council issues this document when the grave is first purchased and it should be produced for each burial. **Possession of the Deed does not in itself signify ownership of the grave.** It is the family's responsibility to keep the council informed of any changes of address of the owner.

## The transfer of ownership of the Exclusive Right of Burial is required when:

An application is made for a burial in the grave but the registered owner is deceased

An application to place a memorial/additional inscription on the grave is made but the registered owner is deceased.

An existing memorial needs renovating or cleaning

Establishing ownership is the families' responsibility and it is necessary to transfer the rights to a living person as soon as possible following the death of the owner. **They are not automatically transferred on the death of the owner.**

## Legal process for transfer

### If the deceased owner left a will

You will need to provide

- the Grant of the Exclusive Right of Burial
- the Grant of Probate – Probate is the document issued by the Court after the will has been proved in Court. It should be the original document bearing the Court Seal.
- 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.

### If the deceased owner left a will of insufficient value

You will need to provide

- the Grant of the Exclusive Right of Burial
- the Death Certificate
- a Statutory Declaration detailing the relationship of the person claiming the right of exclusive burial to the deceased owner. This is detailed later in the guidance.
- a Form of Renunciation from all other people who would be entitled to claim the Grant of Exclusive Right of Burial.

## **When there is no will**

If the owner of the rights dies without leaving a will, this is generally referred to as dying intestate and you should provide:

- the Grant of the Exclusive Right of Burial
- the Grant of Letters of Administration – letters of administration are granted to a person or persons who apply to the Court to receive permission to administer the estate of the deceased. The Letters of Administration should name the administrator/s and once again should bear the official seal of the Court. An Administrator of an estate has the same powers and responsibilities as an Executor
- 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.

If the estate is of insufficient value to merit application for Letters of Administration, you should provide:

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

Please note that in the case of no Will or Letters of Administration and the husband or wife of the deceased owner is also deceased then ALL children have equal rights to claim ownership.

## **Statutory Declaration**

When there is no acceptable evidence of assignment as detailed above a Statutory Declaration is required. The council is legally obliged to conduct the fullest possible inquiries in order to establish that burial rights will be correctly assigned. A questionnaire is issued to assist with this process.

A Statutory Declaration is a legal document drawn up by the Cemetery Clerk, setting out the reasons why you believe that you should be the rightful owner of the grave. It should contain the details of the original purchase of the Exclusive Rights of Burial, the death of the registered owner, intestate or otherwise and the relationship of the applicant to the registered owner.

It must comply with the Statutory Declaration Act 1835 and must be witnessed by a Commissioner for Oaths (normally a practicing solicitor) or a Magistrate (who may charge for this service). A form of Indemnity is not acceptable

You will have to provide the original copy of the statutory declaration

The original Deed of Grant and a certified copy of the owner's death certificate should accompany the Declaration. Where the Deed has been lost, suitable wording should be incorporated within the declaration to the effect.

It is essential that the written agreement of all the next of kin of the deceased owner to the transfer of ownership should also be obtained on a Form of Renunciation and attached to the Statutory Declaration.

**Renunciation - what does this mean?** Renunciation is when a registered owner or someone entitled to the Burial Rights does not wish to retain their 'rights'. A renunciation form needs to be completed.

## **Family disputes**

Where a family dispute results in a stalemate and relevant consents are withheld, the ownership cannot be transferred and no further burials will be allowed and the grave will remain untouched for the remainder of the period of the grant. The various next of kin can only resolve this by reaching an agreement between themselves.

## **Council Fees**

The current council charges for the transfer of ownership are on our website or available from our office

## **Forms of transferring deeds ownership**

### **Form of Assignment**

The grave owner can assign, or add an additional owner, the Exclusive Rights of Burial, during their lifetime, to another individual on completion of an Assignment of Right of Burial form.

### **Assigning Burial Rights from an Executor (appointed by Probate) of a Will to a Family Member**

This will arise where the burial rights have vested in the executor of the deceased owner's will and the executor wishes to assign the rights to a family member.

You will need to provide evidence that the rights have been assigned to you by the executor.

### **Grant of Probate**

Granted to the executor(s) of a Will once a document has been proven in Court. To be legally acceptable we can only accept sight of a "SEALED" Grant; i.e. it must bear the embossed seal of the court.

### **Letters of Administration**

When a deceased person dies intestate then the 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 of the deceased as an executor.

### **Form of Assent of Executor or Administrator**

The form used to transfer ownership from an executor or administrator after ownership has been transferred into their name by production of Probate or Letters of Administration.

### **Statutory Declaration**

The form used to transfer ownership from a deceased owner when no official documents have been issued. Declarations can be either 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.

### **Form of Renunciation**

Used together with a Statutory Declaration when grave is being claimed by more than one person i.e. the deceased may have three children and next-of-kin, and one or more of those children wishes to give up their Rights to the ownership.

### **Certificates**

All certificates supplied with transfer applications must be originals or certified copies