

Deanshanger Parish Council

Exclusive Right of Burials



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EXCLUSIVE RIGHT OF BURIALS

Grave Ownership and Transferring Grant of Exclusive Rights



EXCLUSIVE RIGHT OF BURIALS

Many people believe that if they possess the Grave Deed (the Grant or EROB) document itself, this means they are the Grave Owner, but for the burial authority (Deanshanger Parish Council) to recognise the owner, that person must be specifically named on the Deed, and registered with the Cemeteries Office as Owner.

Legally, a number of people can jointly own the right of burial. This may be sensible in some circumstances, but you should bear in mind that before a grave can be opened for a burial, or a memorial placed or altered, all owners must agree in writing. This could cause problems if one or more of the joint owners are unavailable – perhaps on holiday, or there is a family dispute – and this permission cannot then be obtained.

All grave owners have a legal right to be buried in the grave, and in such situations permission from any other owner is not required.

When there are a number of grave owners and one dies, the rights are shared by the remaining owners. The last surviving owner only can pass on the rights at death.

The number of persons buried in any grave is dependent upon the depth of the first burial and whether or not cremated remains will be interred – generally, a full sized double depth grave, will give sufficient space for 2 full burials and 8 cremated remains interments.

When a grave is ‘purchased’ this refers to the purchasing of the exclusive right of burial in a grave space and not the purchase of the land itself. This means that you do not own the land nor have any automatic right to place anything on that land, but only have the exclusive right, during the period stated in the Grant of Exclusive Right of Burial, to say who can be buried in the grave. Also, provided that you do not, during your lifetime, transfer the right to another person, and provided that the period stated on the Grant of Exclusive Right of Burial has not expired, you can choose to be buried in the grave yourself.

A grant of exclusive right of burial is always issued to the grave owner(s). This should be kept in a safe place, as it will be required should there be a further burial in the grave at some point in the future. Where the grant cannot be produced, this could delay the funeral. No burials or changes to memorials can be authorised without the permission of the holder(s) of the exclusive right of burial.

In accordance with the Local Authorities Cemeteries Order all grave rights are sold for a fixed period (usually 50 or 99 years: grave spaces cannot legally be sold for more than 100 years, although these periods can be extended when nearing expiration). The number of years the rights have been granted for is shown on your Grave Grant. At, or nearing, the end of this period you may apply to the Parish Council to extend those rights.

The Exclusive Rights of Burial may be transferred at any time. However, this transfer must be carried out by the Parish Council and no other form of transfer can be recognised. There are two forms of transfer.

The Parish Council may also grant the Erection of a Memorial on the grave, subject to it meeting the cemetery regulations in force at the time.

Transferring an exclusive right of burial whilst the owner is alive

If you wish to, you can transfer those rights to another person and the documents that we will require from you are detailed in this leaflet.

If you wish to transfer the ownership during your lifetime you must complete a Form of Assignment and submit it to the correct council department (which is currently Deanshanger Parish Council) together with the Grant of Exclusive right of Burial.

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Transfer an exclusive right of burial when the owner has died

Transferring the ownership once the owner has died can be a little more complicated, but it is vital that it is done correctly. The following sections describe the information required to enable us to properly process transfers of grave ownership.

If the Deceased Owner Left a Will

If the deceased owner left a will stating who the Grant of Exclusive Right of Burial should be passed to and you are that person we will require:

1. The original Grant of Exclusive Right of Burial
2. The Grant of Probate
3. An Assent from the Executor(s) of the Will giving the Grant of Exclusive right of Burial to you. If no Assent is provided, we will automatically transfer the Rights to the Executor. Unfortunately, we must take instruction from the Executor and not any beneficiaries that may be named in the Will.

If the deceased owner left a will of insufficient value¹ to merit application to be made for Grant of Probate and you claim the exclusive right of Burial, we will require:

4. The original Grant of Exclusive Right of Burial
5. The Death Certificate
6. A Statutory declaration detailing the relationship of the person claiming the Right of Exclusive Burial to the deceased owner.
7. A Form of Renunciation from all other people who would be entitled to claim the Grant of Exclusive Right of Burial. Where there is no Renunciation we will automatically transfer the Rights to all possible owners.

When there is No Will

If the owner dies without leaving a will we will require:

8. The original Grant of Exclusive Right of Burial
9. The Grant of Letters of Administration
10. A Form of Assent from the Administrator(s) giving the Grant of Exclusive Right of Burial to you.

If the estate is of insufficient value¹ to merit application for Letters of Administration we will require:

11. The original Grant of Exclusive Right of Burial
12. The Death Certificate
13. A Statutory declaration detailing the relationship of the person claiming the rights to the registered grave owner.
14. A Form of Renouncement from all other people who would be entitled to claim the Grant of Exclusive Right of Burial.

Insufficient Value Note 1: This currently means that if the estate is below £5,000, and doesn't contain any land, property or shares, it may be possible to deal with it without a grant. A grant might not be needed if the whole of the estate is held in joint names and passes automatically to the surviving joint owner.

Family Disputes

Where a family dispute results in a stalemate and relevant consents are withheld, the ownership cannot be transferred. The various next of kin reaching an agreement between themselves, possibly through the agency of solicitors, can only resolve this

Please note, however, you may wish to consider having your own independent legal advice regarding your circumstances and completing of the forms. You are responsible for ensuring that the proper form has been completed and all details contained in it are correct. Unfortunately although we may give guidance, we are unable to complete forms.

Sometimes families may purchase the Exclusive Rights and then decide that they no longer require the grave, in such circumstances and provided that the grave has not been used, the grave may be surrendered to the Council by completing a Form of Renunciation. The surrender value will be based upon the price as originally paid minus 10% administration costs.

Please advise us if you change your address. This is most important to enable us to keep our records up to date and contact you should the need arise.

The forms to be used for transferring deeds ownership

References to Wills in this leaflet are references to Wills recognised as valid by the laws in England and Wales and all Statutory declaration must be witnessed by a Commissioner for Oaths or a Magistrate.

Form of Assent (available from Deanshanger Parish Council)

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.

Form of Assignment (available from Deanshanger Parish Council)

Used by a living owner to transfer or change the ownership of the exclusive Rights of Burial i.e. to transfer to new owner or add an additional owner.

Form of Renunciation (available from Deanshanger Parish Council)

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.

Grant of Probate

Granted to the executor/s of a Last Will and Testament 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.

Statutory Declaration

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.

Certificates

All certificates supplied with transfer applications must be originals or certified copies (NB Birth certificates supplied for identification in a Deed Transfer must be a full birth certificate and not a short birth certificate)

Useful information to help you transfer the ownership of a grave

How to get a copy of a Death Certificate

The National Archives

You will need to know the full names, date and place of death. If this is not known, you can search the index of deaths from 1837 until the present day, at the National Archives at Kew, Richmond, Surrey TW9 4DU. Telephone 020 8876 3444 or you could visit their website <http://www.nationalarchives.gov.uk> for useful information. From 1984 you search by a year and then alphabetically by surname. Prior to 1984 the search is by quarters of each year.

The Register Office

If the death was within the last 18 months, you can ask for a copy death certificate from the Register Office for the area in which the death occurred. You can get a copy certificate from 1836 to the present day from The General Register Office (GRO). Copy death certificates can also be obtained from the local Register Office

How to get a copy of a Will, Probate or Letters of Administration

The National Archives

If you need to find out if a Will was made, you can search the index to all Wills at the National Archives at Kew **<http://www.nationalarchives.gov.uk>** . Their index is from 1858 to 1943 on microfiche. You could visit their website for help and information.

The Probate Service

To get a copy of a Will, Grant of Probate or Letters of Administration, you can write to The York Probate Sub Registry, First Floor, Castle Chambers, Clifford Street, York YO1 9RG. There is a small fee and any cheque should be made payable to HMCS. A copy is usually provided within 21 days of your request. The full name of the deceased, date of death and last known address must be provided. You cannot request a copy of any Will, Grant of Probate or Letters of Administration by telephone.

You can also get a copy of any document in person by visiting First Avenue House, 42-49 High Holborn, London WC1V 6NP. The offices are open from Monday to Friday, from 10am until 4.30pm.

Telephone 020 7947 6000/6939 or visit the Probate Service website at;

<http://www.justice.gov.uk>

Please note that any document produced for a transfer of grave ownership should show the embossed area of the seal, or be a certified copy of the original.

Further useful information can be found at www.direct.gov.uk.