

## Transfer of Exclusive Right of Burial – Ownership of a Grave

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

When buying a grave, it is important to understand what you are actually buying is the Exclusive Right of Burial in a grave for a specified period of time. You are not buying the grave freehold: it is more like purchasing a lease. Blackawton Parish Council retains ownership of the land at all times.

If there is more than one owner of the Exclusive Right of Burial, all owners must sign to authorise exercising of the Right.

The owners have the right of burial, so if they die they can be buried without a transfer.

A grave owner is responsible for ensuring the memorial is in a safe condition and paying for any repairs required.

A situation often arises where registered owner(s) are deceased and other family members want to arrange a further burial to take place in the grave, or for an additional inscription to be placed on the memorial.

The Exclusive Right of Burial needs to be transferred to the person(s) entitled to the Right before the burial or memorial request can proceed.

Rights may be assigned by deed or bequeathed by will.

### **During the owners' lifetime**

The grave owner can assign the Exclusive Rights of Burial during their lifetime on completion of an Assignment of Right of Burial form.

### **If the original owner has died**

Start with the original owner. It needs to be determined whether there was an **Executor** or an **Administrator** of their estate.

### **Deceased owner left a valid will**

If the deceased owner left a valid will and Probate was granted, the Right could be transferred to the Executor and they could then pass the Right to whoever they think appropriate.

The Executor must produce a sealed copy of the Grant of Probate and complete an Assent of Executor or Administrator form.

If Probate is not granted, ownership may be transferred by the Executor named in the will by Statutory Declaration and the production of the will. It is the Executor's responsibility to decide who to transfer ownership to.

### **Grant of Letters of Administration were obtained**

The same would apply if there was no valid will, but Letters of Administration were obtained; the Administrator would be entitled to the Right and could then transfer the Right to whoever they feel appropriate.

The applicant must produce a sealed copy of the Grant of Letters of Administration Form. It is then the Administrator's responsibility to identify the correct person for transfer of ownership and assent the transfer by completing an Assent of Executor or Administrator form.

### **Nearest surviving relatives**

If there is no Executor or Administrator, the nearest surviving relatives of the original owner would be entitled to the Right; if there was a surviving spouse they would be entitled, if not, any surviving children would be equally entitled.

If any of those children are still surviving, they can claim the Right via a Statutory Declaration.

If they are all deceased, you need to find out who the last surviving child was and follow the same process to determine who is entitled to the Right. The last surviving child's Executor or Administrator can have the Right transferred to them, and they can pass the Right on to whoever they think appropriate. If there is no Executor or Administrator, the nearest surviving relative of the last child alive can claim the Right via a Statutory Declaration explaining the circumstances.

This is different to the normal rules of intestacy where something physical, like money, can be divided. With grave Rights, the potential number of entitled grandchildren would make it unworkable, hence the above approach, i.e. that the Rights pass to the children of the last surviving child. This replicates what would happen if the Rights had been transferred to the children of the original owner; as each one died, their entitlement would die with them and their relatives would not inherit the Rights, and the remaining owners would become the only owners, until there is just one left, with the Rights then passing down their line.

### **Search Facility**

Did the owner leave a Will or were Letters of Administration issued? Use a search facility [link](https://probatesearch.service.gov.uk/#wills). (<https://probatesearch.service.gov.uk/#wills>)

Relatives are most entitled in the following order [link](https://www.gov.uk/applying-for-probate/who-can-apply) (<https://www.gov.uk/applying-for-probate/who-can-apply>)

### **Refusal of Requests to Transfer of Ownership of Exclusive Right of Burial**

Blackawton Parish Council is not obliged to transfer the Exclusive Right of Burial. If there is uncertainty that the person(s) claiming the Right is entitled, the transfer of ownership will not be made.

### Note

Blackawton Parish Council follows the Local Authorities' Cemeteries Order 1977 and Institute of Cemetery and Crematorium Management Guidance for transfers of entitlement to exclusive Right of burial.