

# 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 Hamble le Rice this is 20 years. You are not buying the grave freehold: it is more like purchasing a lease. Hamble le Rice Parish 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 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.

Hamble le Rice Parish Council's Statutory Burial Registers contain the details of the registered grave owners. It is important that grave owners keep safe their **Deed of Grant or Certificate of Exclusive Rights** as this is a legal document containing the grave details. 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.*

## Establishing ownership

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 to them on the death of the owner.**

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. In order for the burial or memorial request to proceed, the exclusive right of burial needs to be transferred to the person(s) entitled to the rights. A transfer of ownership is also needed if an existing memorial needs replacing, renovating or cleaning.

The procedure for establishing grave ownership when the original owner has died depends upon whether there is a will. If the deceased grave owner has made a valid Will and left an estate of sufficient value to require the Grant of Probate to Executors, ownership of the grave can be transferred to the Executor on production of a sealed copy of the Grant of Probate.

If the estate is not of sufficient value, ownership may be transferred to the Executor named in the Will on production of a sealed copy of that Will. It is then the Executor's responsibility to identify the correct person who should take ownership of the grave, if it is not required by the Executor

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.

### **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.

### **Transfer of grave ownership**

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

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

If the deceased grave owner has made a valid will and left an estate of sufficient value to require the Grant of Probate, ownership of the grave can be transferred by the executor. The executor must produce a sealed copy of the Grant of Probate and complete an Assignment of Right of Burial form if it is to be transferred on to another person(s).

If the estate is not of sufficient value to obtain a Grant of Probate, 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 identify the correct person for the transfer of ownership. The executor will then complete an Assignment of Right of Burial Form.

### **Grant of letters of administration have been obtained**

If there is no will, or the will is not valid, and the estate is of sufficient value as to require a Grant of Letters of Administration, ownership of the grave can be transferred to the personal representative of the deceased.

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 make the transfer by completing an Assignment of Right of Burial Form.

### **Deceased owner dies intestate**

If there are no Executors or Letters of Administration have not been granted, the rules of intestacy apply as laid down in the Administration of Estate Act 1925. The applicant for transfer of ownership should complete a Statutory Declaration.

Statutory Declarations are legal documents and must be signed in the presence of a Magistrate or Commissioner for Oaths.

The Statutory Declaration should clearly set out the facts regarding 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.

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.

### **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.

### **Statutory Declaration**

There will be situations where there is no acceptable evidence of assignment or where no grant of probate or grant of letters of administration is available. The council is legally obliged to conduct the fullest possible inquiries in order to establish that burial rights have been correctly assigned.

A Statutory Declaration is a legal document drawn up by a solicitor of your choice, setting out the reasons why you are saying you are the rightful 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.

### **Forms of transferring deeds ownership**

#### **Form of Assignment**

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.

#### **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.

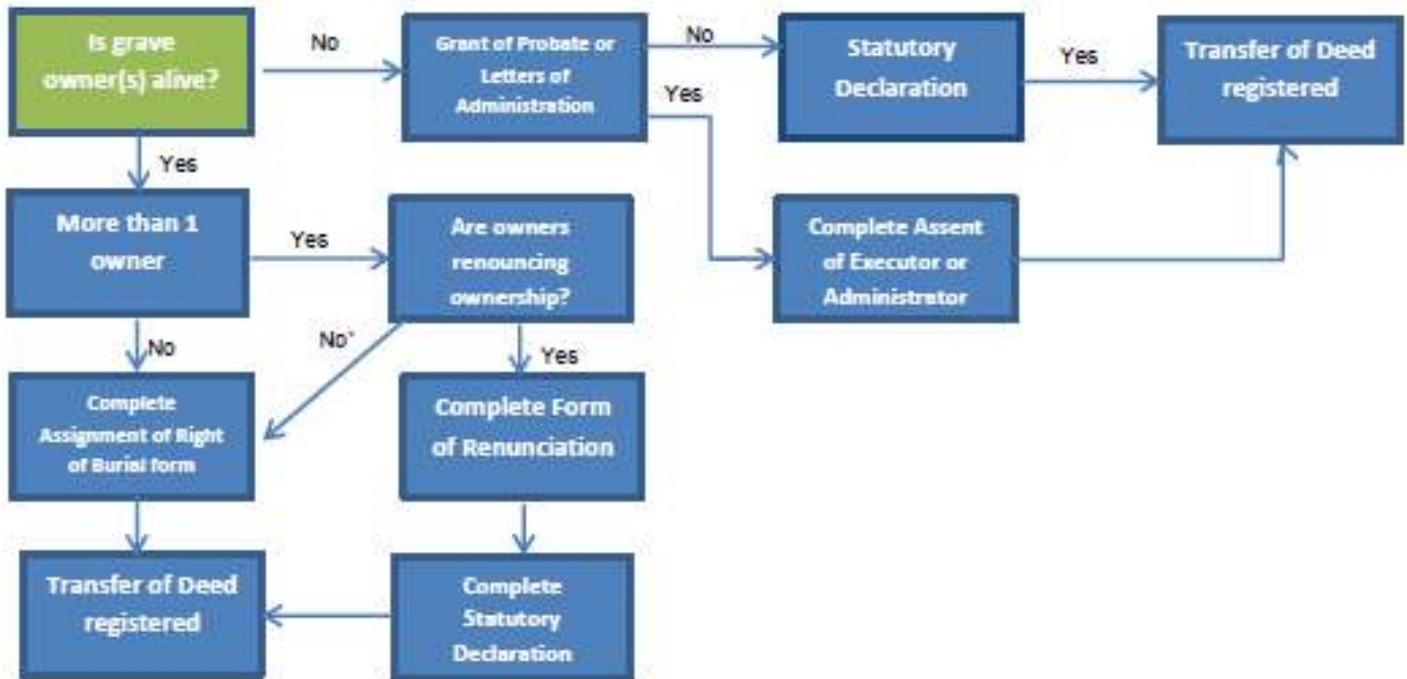
#### **Form of Renunciation**

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

## Transferring grave deed ownership



\* All owners to complete