



Exclusive right of burial

When a grave is purchased it refers to the purchase of the “exclusive right of burial” (EROB) for that grave space and not to the purchase of the actual land. Generally, the effect of purchasing the exclusive right of burial is that the grave may not be opened and no one may be buried there without the owner’s permission and only the legitimate grave owner or owners are permitted to install or alter any memorial.

The Burial Authority encourages families to consider joint rights of ownership with close family members, if possible of different generations, i.e adult children; this will eliminate the need to transfer the rights to the grave after the original owners have died.

A grave with exclusive rights of burial may not be opened for the interment of someone who is not a named owner without the permission of the registered owner or owners.

When an owner dies, they have the legal right to be buried in the grave. When a grave owner dies, the burial rights become part of their estate and must be legally transferred to a legitimate successor.

Transferring exclusive right of burial

When the only legitimate grave owner dies, the person arranging the funeral will be required to complete a section of the Cemetery Interment Request Form claiming their rights to the grave. Ideally this person would be the next of kin of the deceased and the person, or one of the persons who are entitled to inherit the estate of the deceased. All legitimate beneficiaries are entitled to an equal share of the burial rights. However the person arranging the funeral may not be legitimately entitled to take over the burial rights. A Will left by the deceased may leave their estate to somebody else, or a third party may be named as the Executor of the estate, a solicitor for example. All the facts must be established before a transfer of ownership can be processed. The new Deed of Grant can only be issued to persons with a legitimate claim, which must be verified by the cemetery staff upon presentation of the appropriate legal documentation.

To start the process of transfer, cemetery administration staff will contact the person claiming the exclusive rights of burial within two weeks of the funeral. In most cases they can prepare all the documentation required to complete the transfer of burial rights; the burial authority does not charge for this service. Alternatively you may prefer to engage the services of a Solicitor. If sight of a Will is necessary, details concerning property or finances are not required to be seen by cemetery staff. They will only require evidence concerning the date of the Will and the name or names of the beneficiaries or executors.

There are several ways in which burial rights can be amended or transferred.

Form of Assignment:

Used if the grave owner wants to change the named owners.

Grant of Probate:

Used when a Will has been proven by “Grant of Probate”.

Letters of Administration:

Used in the absence of a Will. The next of kin may apply to the Courts to be made an Administrator of the estate.

Form of Assent:

Used when Probate or Letters of Administration have been granted and the burial rights are transferred to a successor by instruction of the Executor or Administrator.

Statutory Declaration:

Used to transfer ownership from a deceased owner when official documents have not been issued. A declaration can be based upon a Will that didn't go to Probate, claiming ownership by the named executor or beneficiary, or by the next of kin if no Will was left.

To be validated the Statutory Declaration must be sworn under Oath in the presence of a Commissioner for Oaths (solicitor or magistrate). The statutory Declaration can only be prepared by the cemetery staff for the transfer of burial rights, if there is other property that requires a declaration, i.e a house or funds deposited with a bank further legal advice must be sought.

Letter of Renunciation:

This is used when a person has a legitimate right of ownership but does not wish to be named as an owner of the burial rights.

