

Exclusive right of burial (ERB)

When you buy a grave at Whitwell Road Cemetery, Reepham what you are actually buying is the Exclusive Right of Burial for a specific period: 50 years for a coffin or casket grave and cremated remains grave. You are not buying the grave freehold or the grave space: it is more like purchasing a lease. The ownership of the grave and the cemetery land remains with Reepham Town Council. The Exclusive Right of Burial Deed will be issued to the person named on the ERB application form.

Only the Registered Owner has the right to allow a burial to take place in the grave. No memorial may be placed on the grave without the written permission of the grave owner during the period of the Exclusive Right of Burial. If you are the Registered Owner of the Exclusive Right of Burial, you have the automatic right to be buried in the grave. You may also allow others to be buried in the grave (space permitting).

Ownership of the Exclusive Right of Burial is very important. Ownership can be transferred either during the owner's lifetime or after their death. The procedure for transferring the ownership is detailed below.

A fee is payable for the digging and preparation of a grave at the time of burial and a fee is also payable for the installation of a memorial. The Exclusive Right of burial may be renewed for a further term at the end of the lease; please contact the Town Council Office for the fee.

The Council's records contain the details of the registered grave owners. However, it is important that the grave owners keep safe their Deed of Grant. The Council issues this document when the grave is first purchased and should be produced for each burial. Possession of the Deed does not in itself signify ownership of the Exclusive Right.

The Grant of Exclusive Right of Burial can only be purchased when arranging a burial. Grave space can be reserved in advance for a 10 year term for which a fee is payable.

When do you need to transfer ownership of the Exclusive Right of Burial?

In the following circumstances transfer of the ownership will be required:

- The registered owner has decided to assign the grave to someone else
- An application is made for a burial in the grave (who is not the registered owner) but the registered owner is previously deceased
- An application to place a memorial/additional inscription on the grave is made but the registered owner is previously deceased

- If the registered owner has recently died. This makes future arrangements easier if there is a living registered owner

Guidance on Transfer of Grave Ownership

The Council must obey the law relating to ownership of graves and burials.

When considering transferring ownership of a grave, it is important to be aware that it is against the law to open a grave for burial including a burial of cremated remains or to place cremated remains upon the surface of a grave without the written permission of the registered owner, unless the burial is for that of the grave owner. Where the owner has previously been buried, then without exception a new owner must first be registered to re-open a grave for burial or place a memorial or additional inscription upon a memorial.

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

The owner can surrender the Exclusive Right of Burial if the grave has not been used for burial, on completion of an Assignment of Exclusive Right of Burial Form. The surrender value being the original purchase price as specified on the Deed of Grant (less an administration fee).

The procedure for establishing grave ownership when the original owner has died depends upon whether there is a will.

Deceased 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 to executors, ownership of the grave can be transferred to the executor. The applicant must produce a sealed copy of the Grant of Probate and complete the Assent of Executor or Administration form.

If the estate is not of sufficient value, ownership may be transferred to the executor named in the will by Statutory Declaration and the production of the will. It is then the executor's responsibility to identify the correct person for the transfer of ownership and assent the transfer by completing an Assent of Executor or Administration form.

Grant 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 and complete the Assent of Executor or Administration form. It is then the applicant's responsibility to identify the correct person for transfer of ownership and assent the transfer by completing an Assent of Executor or Administration form.

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 them, possibly through the agency of solicitors, can only resolve this. Until ownership has been resolved, the Council is not in a position to allow a burial or a memorial to be erected.

Deceased 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 Right 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 Statutory Declaration.

Where the Deed has been lost, suitable wording should be incorporated within the declaration to that effect. It is essential that the written agreement of all the next of kin of the deceased owner must also be obtained for the "transfer of ownership" and attached to the Statutory Declaration. The following are examples of many of the possible circumstances:

Deceased owner survived by	Application made by	Consents needed
Spouse	Spouse	None - Transferred to spouse
Spouse	Son or daughter	Transferred to spouse - then can be assigned to Son/Daughter

Deceased owner survived by	Application made by	Consents needed
No spouse but several children	One child	All children - irrespective of legitimacy
No spouse or children - but several siblings	One sibling	All siblings

Forms of transferring deeds ownership

Assignment of Exclusive Right of Burial - Used by a living owner to transfer or change the ownership of the Exclusive Right of Burial i.e. to transfer to new owner or add an additional owner.

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. An Assent of Executor of Administration form will need completing.

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.

Assent of Executor or Administrator

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

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. Please contact the Town Council office to discuss the Statutory Declaration.

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. NB The Council wish to advise that due to Administration Restrictions we only accept a maximum of TWO owners.

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

Kew

Richmond

Surrey

TVV9 4DU.

Telephone 020 8876 3444

www.nationalarchives.gov.uk

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 (G.R.O). Copy death certificates can also be ordered online www.gro.gov.uk/gro/content/certificates

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 www.nationalarchives.gov.uk

Fees and charges

The transfer of Grave Ownership is handled by the Town Council, and there is a fee payable. You can contact the Clerk, Kirsty Cotgrove on 01603 873355 or email clerk@reephamtowncouncil.gov.uk to enquire about the current fee applicable. Payments are made payable to Reepham Town Council.