

# Charmouth Parish Council

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## Grave Ownership and Deed Transferral

### 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 Rights 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. Charmouth Parish Council retains ownership of the land at all times. Charmouth Parish Council issues new Deed of Grant of Exclusive Right of Burial for 100 years, allowing the purchase of extensions at the end of that period, at 25 year increments up to a maximum of 100 years. Renewing or extending the Deed of Grant of Exclusive Right is strongly recommended.

These Exclusive Rights of Burial would be for up to two normal interments within the grave plot. However, when the grave plot is full with respect to normal burials, it may still be utilised for the interment of cremated remains.

It is important to retain the Deed in a secure place, as it is the only legal document held by the owner confirming their entitlement to the burial and memorial rights. 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.

After the rights have lapsed, grave ownership reverts to the Council and the Council is at liberty to reuse or resell any space remaining.

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.

A grave owner is responsible for:

- ensuring the memorial is in a safe condition and pay for any repairs required.

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, excluding the burial of the grave 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.

### Transfer of grave ownership

The grave owner can assign the Exclusive Rights of Burial, during their lifetime, to another individual on completion of a Request for Transfer of Deed Ownership form. The procedure for establishing grave ownership when the original owner has died depends upon whether there is a will.

### **Death of Deed Owner**

If the owner of the Exclusive Rights dies, it is reasonably assumed that they gave permission to have themselves interred in the grave. After this, the Rights become part of their estate and may be left in a Will or assigned by their executors to someone else. If the Rights are not specifically mentioned in the Will, they will form part of the 'residue' of the Will, usually willed as 'and all my other worldly goods' at the end of the Will.

Whoever inherits the Rights will need to contact the Council and arrange for a transfer of ownership before the grave can be opened again. It is not possible to place a new monument or alter an existing one without the express permission of the owner (Exclusive Right holder).

In cases where the owner of the Rights died years ago and the family wish to reuse the grave, there is a need to legally transfer ownership. This may involve seeing copies of Will(s) and / or Grants of Probate. Otherwise there may be a need to make a Statutory Declaration in front of a Commissioner for Oaths, Solicitor or Magistrate. Although the Council can advise of the process and provide specimen paperwork, ownership is the family's responsibility and the Council is unable to accept a booking for an interment unless ownership has been clearly established.

### **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 a Request for Transfer of Deed Ownership form.

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.

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### **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 assent the transfer by completing an Assent of Executor or Administrator 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 and attached to the Declaration.

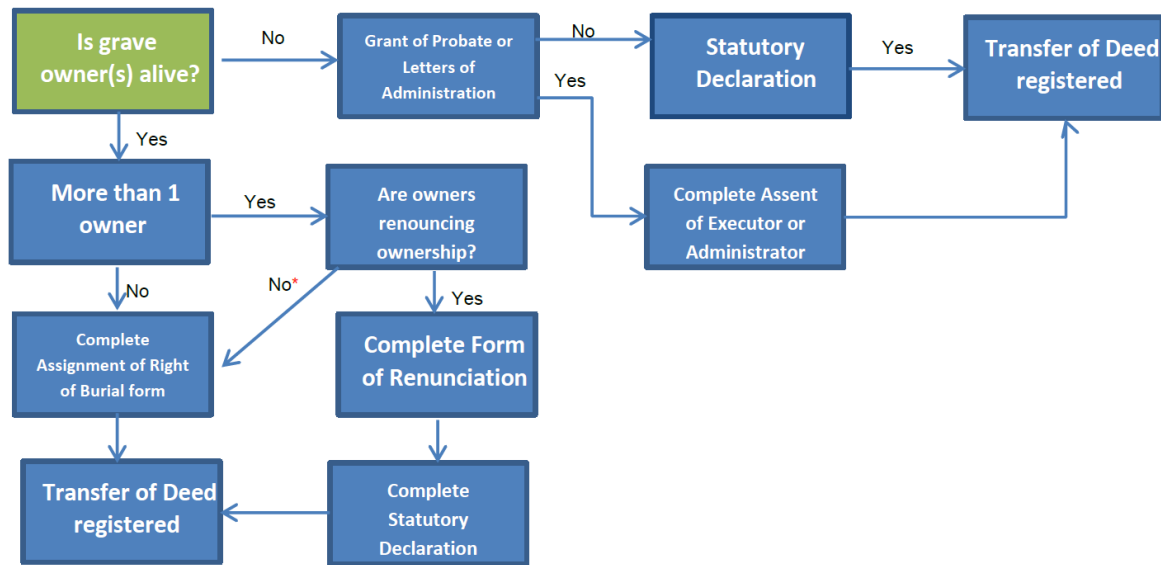
## Family disputes

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. The various next of kin reaching an agreement between themselves can only resolve this.

## 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 and is available from Charmouth Parish Council office.

### Transferring grave deed ownership



\* All owners to complete

## Forms of transferring deeds ownership:

**Request for Transfer of Deed Ownership** - 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.

**Fees** - Unless organised at the time of a funeral the transfer of grave ownership will incur a fee.

Contact us: Charmouth Parish Council, The Council Offices, The Elms, St Andrews Drive, Charmouth Dorset, DT6 6LN. Tel: 01297 560826. Email: [charmouth@dorset-aptc.gov.uk](mailto:charmouth@dorset-aptc.gov.uk)

## **Summary Checklist -**

### **Transfer grave rights of a deceased person**

If there is a will -

If the deceased owner left a will saying who the grant of exclusive right of burial should be passed to we require:

- the grant of exclusive right of burial
- the grant of probate
- an assent from the executor(s) of the will giving the grant of exclusive right of burial to you

If the deceased owner left a will - with insufficient value to merit a grant of probate application - and you claim the exclusive right of burial, we will require:

- the grant of exclusive right of burial
- a statutory declaration detailing the relationship of the person claiming the right of exclusive burial to the deceased owner
- a form of renouncement from all other people who would be entitled to claim the grant of exclusive right of burial.

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

- the Grant of Exclusive Right of Burial
- the grant of letters of administration
- an assent from the administrator(s) giving the Grant of Exclusive Right of Burial to you.

If the estate is of insufficient value to merit application for letters of administration, we require:

- the Grant of Exclusive Right of Burial
- a statutory declaration detailing the relationship of the person claiming the rights to the registered grave owner
- a form of renouncement from all other people who would be entitled to claim the grant of exclusive right of burial

Statutory declarations must be witnessed by a Commissioner for Oaths or Magistrate.

You should seek legal advice regarding your own circumstances and for completing forms.