



BODMIN TOWN COUNCIL

Transfer of Burial Rights - A legal Process

Burial 'Rights' - what are they?

The Exclusive Right of Burial in a grave gives a person(s) the 'right' to say who can be buried in the grave. Burial 'rights' also include the right to erect a memorial. The granting of burial rights to a grave does not mean you own the land itself but have the exclusive right, during the period stated on the grave deed, to say who can be buried in the grave. A memorial can be erected and remain on the grave for the period of the lease. The initial Exclusive Right of Burial lease for a grave is for 50 years and a cremation plot is 50 or 25 years (both renewable). Bodmin Town Council retains ownership of the land at all times.

Assignment of Right of Burial - what does this mean?

If you are the registered owner(s) of the Exclusive Right of Burial in a grave/ plot and would like another person(s) to also be an owner(s) you can assign the rights making them joint owners - see 'Ownership of a Grave - what does this mean?' section. Assigning the Right of Burial jointly has many benefits: -

- in the future when an owner is deceased this leaves a remaining owner(s) and no further legal transfer would be required;
- if it is your intention to be buried in the grave you own, assigning the 'rights' jointly ensures this can still take

place (provided adequate space is available) without seeking permission from another person;

- ensures there is a 'living' owner to take care of the memorial arrangements and any future renewal of the lease. An Assignment form is also completed when a registered owner wishes to renunciate their interest.

Lease of graves and cremation plots

When the Cemetery opened graves were leased in perpetuity (99 years). This meant that each time a burial occurred the lease was automatically extended and the 99 years began again. This is why families believed a grave was purchased forever. In early 1960's a fixed lease grave period of 50 years was introduced which stands today. Cremation plots are leased for 25 or 50 years. Graves/plots can be renewed for further periods by the owner.

Ownership of a grave - what does this mean?

The person(s) who is registered as the owner of the Exclusive Rights of Burial in a grave or cremation plot have certain rights and responsibilities.

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 or scattering of cremated remains;
- place an inscribed memorial on the grave or give permission for an additional inscription to be added.

You are responsible for: -

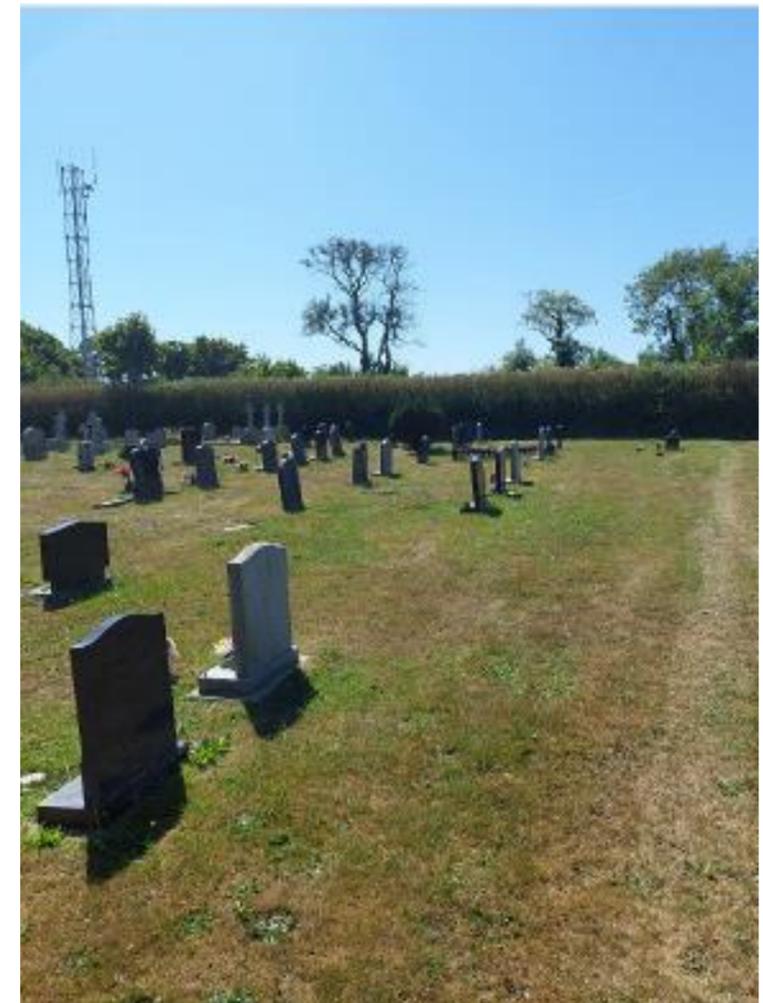
- ensuring the memorial is in a safe condition and pay for repairs required.

It is not unusual for a grave to be owned by more than one person. In this situation all living owners must give their consent before any interments take place (except

where a current owner is being buried) or a memorial is erected/altered.

How to transfer the Exclusive Right of Burial in a grave or cremation plot

A situation often arises where registered owner(s) are deceased, and other family members want to arrange for a further burial to take place or for an additional inscription to be placed on the memorial. As stated, a living owner(s) is required to give permission for a burial to take place or a memorial to be erected/ altered. 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.



Transferring the burial rights needs to be done: -

- if the registered owner(s), as stated in our burial registers, is deceased but left a Will and their estate went to probate - see 'Probate & Assent' section;
- if the registered owner left an Estate of Sufficient Value that probate was required - see 'Probate and Assent' section;
- if the registered owner(s) left a Will, but there was insufficient funds for probate - see 'What is a Statutory Declaration' section
- if the registered owner(s) is deceased and did not leave a Will a Statutory Declaration is required - see 'What is a Statutory Declaration' section.

Probate and Assent

When an estate goes to probate the Executor swears on oath the Will is the deceased's last valid Will. Once issued the Executor will receive the Seal of Probate, a document with an embossed seal in the right-hand corner. We need to see this original document and we will take a photocopy. The probate document will be returned once the Transfer of Burial Rights has been completed.

We also require an 'Assent of Executor or Administrator' form to be completed (available from our office) by all of the Executors named on the probate. The Executor(s) are required to provide names and addresses of the person(s) who are to be the registered owners of the grave/plot.

What Is a Statutory Declaration?

A Statutory Declaration is a typed sworn statement explaining the registered owner of a grave/plot is deceased and names who is entitled to the Exclusive Rights of Burial and why. This statement must give names of all

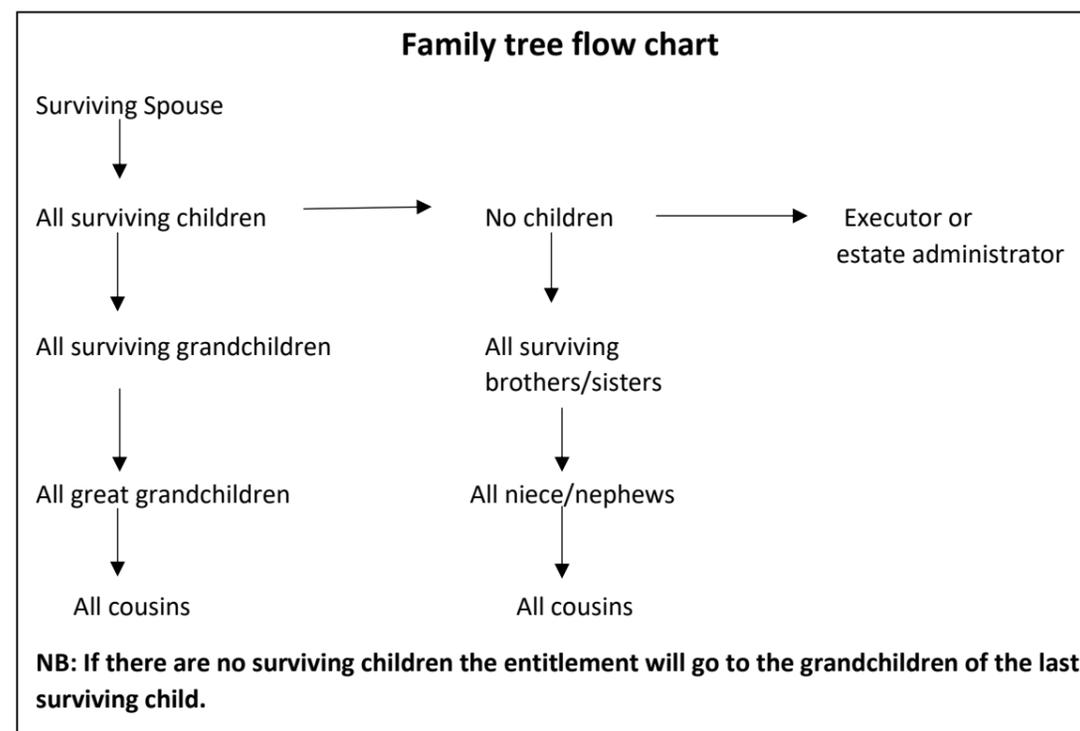
those persons entitled to the Rights, whether they wish to be owners or not.

The statutory declaration exists to ensure that burial and memorial rights are exercised by the rightful person when there is no owner available or if the deeds have been lost. This helps to protect both the owner of those rights and the council (please note this is not a transfer of grave ownership, only permission to arrange a burial and memorial). It is used by most burial and cremation authorities in England and is supported by the Institute of Cemetery and Crematorium Management.

Who is entitled to the burial rights?

Did the grave owner leave a Will but of insufficient value to go to Probate?

If the answer is Yes, the main beneficiary of the deceased's estate is entitled to the burial rights. If the estate is divided equally between a number of persons, they are all entitled to the burial rights.



If the answer is No, the persons entitled to the rights are the direct next of kin following their blood line – see 'Family tree flow chart'. When a Will has been left, we will need to see a copy to advise you on your 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 and is available from the office. This form can only be used in conjunction with a statutory declaration otherwise Assignment of Burial Rights is required.

Change of address

Please let us know if you change your address. If our records are kept up-to-date we can let you know when:

- the exclusive right of burial in your grave/cremation plot is due for renewal;
- provide important information following a memorial safety inspection;
- advise you when a memorial lease is due for renewal.

Fees

When a Transfer/Assignment or Assent is requested, by law we are required, to amend our statutory registers and electronic records. We will write to each new grave/plot owner informing them the transfer has been completed. For the current fee payable to complete the transfer please contact: Cemeteries Administration, Bodmin Town Council, Shire Hall, Mount Folly Square, Bodmin, PL31 2DQ.

t: 01208 76616

e: cemeteries@bodmin.gov.uk

Fees payable to other organisations:-

- swearing on oath at Commissioner of Oaths/magistrates
- statutory declaration provided by a solicitor.