

Ludgvan Parish Council

Guidance on the legal transfer of Exclusive Rights of Burial

St Paul's Cemetery, Ludgvan and at Crowlas Cemetery

Exclusive Right of Burial

Buying an Exclusive Right of Burial gives the right of burial in a specific grave for a specific period, eg 50 or 100 years, either for a grave (burial of coffin or casket) or a cremated remains grave. It does not give ownership of the grave space, it is more like a lease. The ownership of the cemeteries and the graves within the cemeteries rests with the parish council.

Only the Registered Owner of the Exclusive Right of Burial has the automatic right to be buried in a grave, and only they can allow others to be interred in the grave (space permitting).

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

The Exclusive Right of Burial may be renewed, but not beyond 100 years from the date of renewal. Contact the clerk to the parish council for information on renewals.

The council keeps records of those granted Exclusive Rights of Burial, however it is important that when the Deed of Grant is issued, these should be kept safe and 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 normally only be purchased when arranging a burial – the council does not reserve grave spaces in advance.

When to transfer ownership of the Exclusive Right of Burial?

The following examples would require the transfer of ownership:

- the registered owner decides to assign the grave to someone else
- where the registered ownership was assigned to the deceased person buried in the grave space, and an application is made for a second interment in the grave space
- an application to place a memorial / additional inscription on the grave is made but the registered owner is previously deceased

Guidance on Transfer of Grave Ownership

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

It is important to be aware that it is against the law to open a grave for a burial, including for 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 to 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 **Surrender of Exclusive Right of Burial Form**. The surrender value being the original purchase price as specified on the Deed of Grant (less administration fee).

The procedure for establishing a 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 complete 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

If necessary consents are withheld, then the ownership cannot be transferred. Only the various next of kin reaching an agreement can resolve this. Until ownership has been resolved, the council is not able to allow a burial or for a memorial to be erected.

Unknown whether there is a Will or Letters of Administration

When the Transfer of Exclusive Rights of Burial has skipped a generation and it is unknown whether the deceased Grave Owner left a will, or if Letters of Administration were issued, then you can use the [Government Find a Will website](#) to answer this question. The person concerned can then purchase a copy to aid the transfer.

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. In this case, applicants must submit a **Statutory Declaration – No Will No Probate** to claim the Exclusive Right of Burial, and complete a **Deed of Assignment** to clarify and/or elect the proposed new Registered Owners for the remaining years on the Deed. If the lawful next of kin of the deceased Grave Owner needs to be clarified or identified, the [Government Who Inherits website](#) will help identify those who are entitled and so can help enable a lawful transfer.

Statutory Declarations are legal documents and must be signed in the presence of a Magistrate of a Commissioner for Oaths (contact your local solicitor who may be able to provide this service for you).

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, if available. 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 to the deceased owner must also be obtained for the Transfer of Ownership and attached to the Statutory Declaration.

Some examples:

Deceased owner survived by spouse, spouse can apply and no other consents needed.

Deceased owner survived by spouse. Son/daughter can apply, transfer first to spouse who can then assign it to son/daughter

Deceased owner survived by four children. Son can apply, consents are needed by all living children (irrespective of whether or not parents were married when children were born)

Deceased owner survived by no spouse/children, but by three siblings. Brother can apply, consents needed from all other living siblings.

If applicants do not wish to attain the Exclusive Right, in order to renounce all Right, an **Assent of Executor or Administrator** will need to be completed and returned with the Transfer paperwork.

Please refer to the Transfer flowchart to guide you through the Transfer process.

Living owners – transferring ownership

A living owner can transfer to a new owner, or add an additional owner using an **Assignment of Exclusive Right of Burial form**.

Grant of Probate

Granted to the executors 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, ie it must bear the embossed seal of the court. Then an **Assent of Executor of Administration form** will need to be completed.

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

The Assent of Executor or Administrator Form can be 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 next of kin if the deceased left no will.

Form of Renunciation

Used together with a Statutory Declaration when a grave is being claimed by more than one person (eg multiple siblings as next of kin) and more of more of these people wish to give up their Rights to the ownership.

Some useful information:

How to get a copy of a Death Certificate

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 Tel. 020 8876 3444

www.nationalarchives.gov.uk

If the death was within the last 18 months, a copy of a death certificate can be requested from the Registrar Office for the area in which the death occurred.

For deaths from 1836 to the present day you can get a copy certificate from The General Register Office and online from www.gro.gov.uk/gor/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.nationarchives.gov.uk

Fees and charges

The transfer of ownership of Exclusive Rights of Burial is handled by the Clerk to the Parish Council and there is a fee payable. For details, see the parish council website or contact: clerk@ludgvan.org.uk

Payments are made payable to Ludgvan Parish Council

Guidance written by the parish clerk and approved by Council – February 2022