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TRANSFER OF EXCLUSIVE RIGHTS OF BURIAL GUIDANCE NOTES

BURIAL “RIGHTS” – WHAT ARE THEY?

The Exclusive Right of Burial 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. If the owner(s) of the Exclusive Right of Burial dies, they have the automatic right to be buried or have their ashes interred in the grave. After this the Rights become part of the deceased’s estate. Ownership of the Exclusive Right of Burial is therefore a very important matter. Ownership can be transferred either during the owner’s lifetime or after their death.

When you buy a grave, what you are actually buying is the Exclusive Right of Burial for a specific period. Ownership of Exclusive Right of Burial does not imply ownership of the land itself or the right to carry out any particular activity on the grave plot.

The ownership of the Cemetery land, including the grave surface, remains with Hungerford Town Council. Although you do not become the freehold owner of the plot you will own the “right” to make any decisions affecting the plot, including who shall be buried in the plot. You should bear in mind if there is more than one owner all owners must agree if a grave is to be opened for a burial, or a memorial placed or altered. All grave owners have a legal right to be buried in the grave, space permitting. When a burial grave space cannot accommodate any more coffin burials it may be possible for the grave to be used for the burial of Cremated Remains. In the case of joint ownership if one owner dies, the rights belong to the remaining surviving owners.

TRANSFER OF EXCLUSIVE RIGHTS OF BURIAL

A situation often arises where registered owner(s) are deceased, and 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 or 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.

WHO IS ENTITLED TO THE BURIAL RIGHTS?

Did the grave owner leave a Will?

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 people, 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.

If the rights are not specifically mentioned in the Will, they will form part of the “residue” of the Will, usually worded as “and all my other worldly goods” at the end of the Will.

DOCUMENTS REQUIRED BEFORE A TRANSFER CAN TAKE PLACE

If the registered owner(s) is deceased but left a Will we will need to see a copy of the Will. If they left a Will and their estate went to probate, we will need to see this document. Photocopies are not acceptable.

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 also require an “Assent of Executor or Administrator” form to be completed by the Executors named on the probate. The Executor is required to provide names and addresses of the person(s) who are to be the registered owners of the Burial Rights. In the case that the Executors named on the probate are also the intended registered owners of the Burial Rights no “Assent of Executor or Administrator” form is required.

The probate document will be returned once the Transfer of Burial Rights has been completed.

If the registered owner left a Will, but their Estate was insufficient to apply for Grant of Probate or Letters of Administration a Statutory Declaration will be required.

WHAT IS A STATUTORY DECLARATION?

A Statutory Declaration is a typed sworn statement explaining the registered owner of the Burial Rights is deceased and name who is entitled to the Exclusive Right 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 Declaration is to be made before a Magistrate or Commissioner for Oaths who may charge a fee for this service.

If the registered owner(s) is deceased and did not leave a Will a Statutory Declaration is required. The Statutory Declaration details will be completed by the Town Council.

TRANSFER OF OWNERSHIP FROM A “LIVING” OWNER

CAN I TRANSFER THE OWNERSHIP OF THE EXCLUSIVE RIGHT OF BURIAL TO SOMEONE ELSE?

Yes, contact us and we will send you an “Assignment of Right of Burial” form. If you are the registered owner of the Exclusive Right of Burial and would like another person to also be an owner, you can assign the rights making them joint owners. Assigning the Right of Burial jointly has many benefits:

- In the future when an owner is deceased this leaves a remaining owner;
- If it is your intention to be buried in the grave to which you own the Rights, 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.

IS THERE A CHARGE?

The Council charges a fee of £59.00 for the administration of the transfer process.

FURTHER INFORMATION

Hungerford Town Council realises the transfer of Burial Rights can seem confusing and complicated; we will endeavour to make the process as easy and straightforward as possible for you. Please contact the HTC office and we will be happy to assist.