

Weedon Parish Council

CHAPEL GRAVEYARD

The Exclusive Right Of Burial (EROB)

When we describe a grave or grave plot in a private cemetery as “purchased” or “owned”, this refers to the purchasing of the Exclusive Right Of Burial in a grave space and not the purchase of the land itself.

This means that you do not own the land nor have any automatic right to place anything on that land, but only have the exclusive right, during the period stated in the Grant of Exclusive Right of Burial, to say who can be buried in the grave. Also, provided that you do not, during your lifetime, transfer the right to another person, and provided that the period stated on the Grant of Exclusive Right of Burial has not expired, you can choose to be buried in the grave yourself.

A grant of exclusive right of burial is always issued to the grave owner(s). This should be kept in a safe place, as it will be required should there be a further burial in the grave at some point in the future. Where the grant cannot be produced, this could delay the funeral. No burials or changes to memorials can be authorised without the permission of the holder(s) of the exclusive right of burial.

Many people believe that if they possess the Grave Deed (the Deed of Grant of Exclusive Right of Burial) document itself, this means they are the Grave Owner, but for the burial authority (Weedon Parish Council) to recognise the owner, that person must be specifically named on the Deed, and registered with the Parish Clerk as Owner.

Joint ownership of the EROB

Legally, a number of people can jointly own the right of burial. This may be sensible in some circumstances, but you should bear in mind that before a grave can be opened for a burial, or a memorial placed or altered, all owners must agree in writing. This could cause problems if one or more of the joint owners are unavailable – perhaps on holiday, or there is a family dispute – and this permission cannot be obtained.

All grave owners have a legal right to be buried in the grave, and in such situations permission from any other owner is not required.

When there are a number of grave owners and one dies, the rights are shared by the remaining owners. The last surviving owner only can pass on the rights at death.

Number of persons buried in a grave

The number of persons buried in any grave is dependent upon the depth of the first burial and whether or not cremated remains will be interred. Generally, a full-sized double-depth grave will give sufficient space for 2 full burials and 6 cremated remains interments.

Expiry of grave rights

In accordance with the Local Authorities Cemeteries Order, grave rights in the Weedon Chapel Graveyard are sold for a fixed period.

Transferring the EROB

The Exclusive Rights of Burial may be transferred at any time. However, this transfer must be carried out by the council and no other form of transfer can be recognised. There are two forms of transfer, depending on whether the owner is alive or deceased.

Transferring an exclusive right of burial whilst the owner is alive

If you wish to transfer the ownership during your lifetime you must complete a Form of Assignment and submit it to the Parish Clerk together with the original Deed of Grant.

Transferring an exclusive right of burial when the owner has died

Transferring the ownership once the owner has died can be a little more complicated, but it is vital that it is done correctly. Please refer to our further information.

Please note that any document produced for a transfer of grave ownership should be the original, or a certified copy of the original. Further useful information can be found at www.direct.gov.uk.

Renunciation of the EROB

Sometimes families may purchase the Exclusive Rights and then decide that they no longer require the grave. In such circumstances and provided that the grave has not been used, the grave may be surrendered to the Council by completing a Form of Renunciation. The surrender value will be based upon the price paid less a deduction relating to administration and the number of years remaining on the grant.

Notification of change of address/name

Please advise us if you change your address or legal name. This is most important to enable us to keep our records up to date and contact you should the need arise.

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EROB Transfers where the owner is deceased

Please see overleaf for more detail on the documents described below.

A) If the Deceased Owner Left a Will and Probate is granted

If the deceased owner left a will stating who the Grant of Exclusive Right of Burial should be passed to and you are that person we will require:

- (a) The original Grant of Exclusive Right of Burial
- (b) The Grant of Probate
- (c) An Assent from the Executor(s) of the Will giving the Grant of Exclusive Right of Burial to you.

If no Assent is provided, we will automatically transfer the Rights to the Executor(s). Unfortunately, we must take instruction from the Executor(s) and not any beneficiaries that maybe named in the Will.

B) If the Deceased Owner Left a Will of insufficient value to require Probate

If the deceased owner left a will stating who the Grant of Exclusive Right of Burial should be passed to and you are that person we will require:

- (a) The original Grant of Exclusive Right of Burial
- (b) The Death Certificate
- (c) A Statutory declaration detailing the relationship of the person claiming the Right of Exclusive Burial to the deceased owner
- (d) A Form of Renouncement from all other people who would be entitled to claim the Grant of Exclusive Right of Burial. Where there is no Renouncement we will automatically transfer the Rights to all possible owners.

C) If there is No Will, but there is a Grant of Letters of Administration

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

- (a) The original Grant of Exclusive Right of Burial
- (b) The Grant of Letters of Administration
- (c) A Form of Assent from the Administrator(s) giving the Grant of Exclusive Right of Burial to you.

D) If there is No Will, and no Grant of Letters of Administration

If the estate is of insufficient value to merit application for Letters of Administration we will require:

- (a) The original Grant of Exclusive Right of Burial
- (b) The Death Certificate
- (c) A Statutory declaration detailing the relationship of the person claiming the rights to the registered grave owner
- (d) A Form of Renouncement from all other people who would be entitled to claim the Grant of Exclusive Right of Burial.

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 themselves, possibly through the agency of solicitors, can only resolve this.

Please note, however, you may wish to consider having your own independent legal advice regarding your circumstances and completing of the forms. You are responsible for ensuring that the proper form has been completed and all details contained in it are correct. Unfortunately, although we may give guidance, we are unable to complete forms.

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The forms to be used for transferring deeds ownership (available from the Parish Clerk)

References to Wills in this leaflet are references to Wills recognised as valid by the laws in England and Wales and all Statutory declaration must be witnessed by a Commissioner for Oaths or a Magistrate.

Form of Assent (available from the Parish Clerk)

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.

Form of Assignment (available from the Parish Clerk)

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.

Form of Renunciation (available from the Parish Clerk)

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

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.

Letters of Administration

When a deceased person dies intestate (without leaving a will), 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.

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.

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 name, date and place of death. If this is not known, you can search the index of deaths from 1837 until the present day, <http://www.nationalarchives.gov.uk> for useful information. From 1984 you search by a year and then alphabetically by surname. Prior to 1984 the search is by quarters of each year.

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 (GRO).

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 <http://www.nationalarchives.gov.uk>. Their index is from 1858 to 1943 on microfiche. You could visit their website for help and information.

The Probate Service

To get a copy of a Will, Grant of Probate or Letters of Administration, you can write to The York Probate Sub Registry, First Floor, Castle Chambers, Clifford Street, York YO1 9RG. There is a small fee and any cheque should be made payable to HMCS. A copy is usually provided within 21 days of your request. The full name of the deceased, date of death and last known address must be provided. You cannot request a copy of any Will, Grant of Probate or Letters of Administration by telephone.

You can also get a copy of any document in person by visiting First Avenue House, 42-49 High Holborn, London WC1V 6NP. The offices are open from Monday to Friday, from 10am until 4.30pm.

Telephone 020 7947 6000/6939 or visit the Probate Service website at: <http://www.justice.gov.uk>