



Grave Ownership & Transfer of Exclusive Rights of Burial (Grave Deeds)

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. South Derbyshire District Council retains ownership of the land at all times.

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 for payment of 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. The Exclusive Rights may be renewed for a further term towards the end of the lease by contacting the District Council.

The Council's Statutory Registers contain the details of the registered grave owners. It is important that grave owners keep safe their **Deed of Grant** as this is a legal document containing the grave details. 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.

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 ownership of the Exclusive Right of Burial

If the grave owner is alive and wishes to transfer the ownership of the grave to another person, they need to complete a *Form of Assignment*. Forms are available from the District Council and need the signature of the owner and one other as witness.

If the grave owner is deceased and left a valid will and an estate of sufficient value to require the Grant of Probate to Executors, then the ownership of the grave can be transferred to the Executor.

The Executor must produce an original copy of the Grant of Probate with the seal included or a certified copy of the Grant of Probate. If the Executor wishes to transfer the deed to someone else, then an *Assent of Executor or Administrator form* must be completed. The form is available from the District Council.

If the estate is not of sufficient value, ownership may be transferred to the executor named in the will as long as they have a Statutory Declaration and can produce the will. Should the Executor then wish to transfer the deed to someone else, an *Assent of Executor or Administrator form* should be completed.

If the grave owner is deceased and Letters of Administration have been obtained or the will is not valid, and the estate was of sufficient value as to require Grant of Letters of Administration, the ownership of the grave can be transferred to the administrator.

The Administrator must produce an original copy of the Letters of Administration with seal included or a certified copy. If the Administrator then wishes to transfer the deed to someone else, an *Assent of Executor or Administrator form* must be completed. The form is available from the District Council.

If the grave owner is deceased and there is no Grant of Probate or Letters of Administration or will (deceased owner dies intestate). If there are no Executors or Letters of Administration have not been granted, 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, Commissioner of Oaths or Solicitor. A Statutory Declaration form is available from the District Council.

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 be obtained and attached to the declaration.

Deceased owner survived by e.g.	Application made by	Consents needed
Spouse	Spouse	None
Spouse	Son or daughter	Transferred to spouse – then can be assigned to son/daughter
No spouse but four children	Son	All children – irrespective of legitimacy (unless chosen to renounce rights)
No spouse or children – but three brothers or sisters	Brother	Both other brothers/sisters (unless chosen to renounce rights)

Family Disputes

We cannot become involved where there is a family dispute over any ownership or where there is a stalemate and relevant consents are withheld. The ownership cannot be transferred and no further

burials will be allowed, or memorial applications processed. The various next of kin need to reach an agreement. Stepchildren do not come in to the order of succession.

Guide as to who is next of kin in succession order:

1. The surviving lawful husband or wife (spouse)
2. The children of the deceased
3. The grandchildren of the deceased
4. The father and mother of the deceased
5. Whole blood brothers and sisters of the deceased
6. Whole blood nephews and nieces of the deceased
7. Half blood brothers and sisters of the deceased
8. Half blood nephews and nieces of the deceased
9. Grandparents
10. Whole blood uncles and aunts of the deceased
11. Children of whole blood uncle and aunts of the deceased (full cousins)
12. Half blood uncles and aunts of the deceased
13. Children of half blood uncle and aunts of the deceased (half blood cousins)
14. Other persons with an interest in the estate may apply

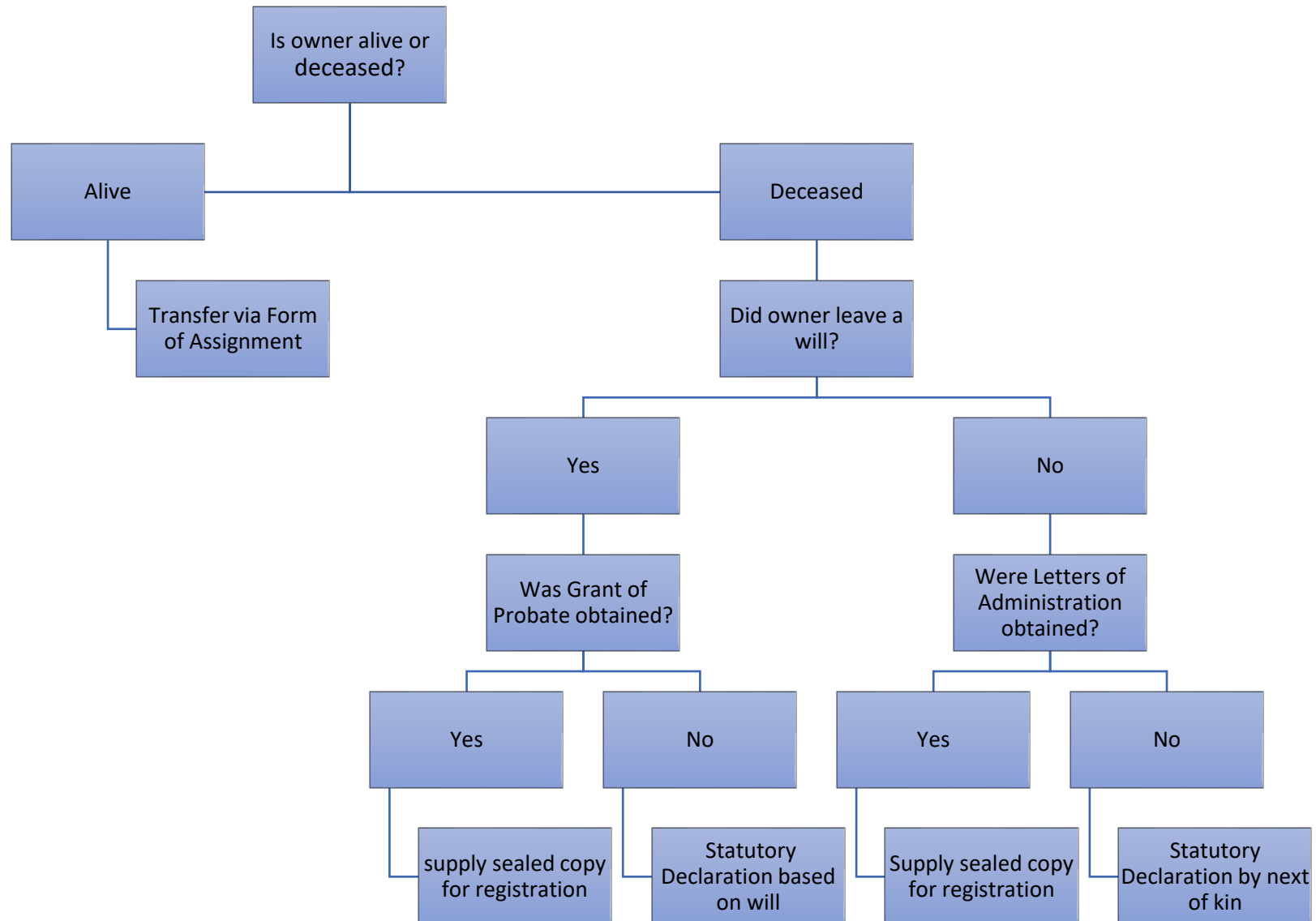
Renunciation (Renouncement of Rights) – what does this mean?

Renunciation is when a registered owner or someone entitled to the Burial Rights does not wish to retain their 'rights'. A *Form of Renunciation* needs to be completed and is available from the District Council.

A Form of Renunciation can be used together with a Statutory Declaration when a 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.

Transfer Map

Below is a brief process map detailing which method of transfer applies in which circumstance. Please read relevant paragraph within the text for full details of the transfer process.



Certificates

All certificates supplied with transfer applications must be originals or certified copies. We will take copies of these documents and return them by recorded delivery.

Glossary of Forms

Form of Assignment: this only needs to be used if the owner is alive and wishes to transfer the grave or add more names to ownership. Grave deeds will also be required. If not available, then proof of identity will be required e.g. passport or utility bill.

Grant of Probate: granted to the executor/s of a will once the document has been proven in court. To be legally acceptable it must be sealed (embossed).

Letters of Administration: when a person dies intestate (without a will) the next of kin can apply to the courts to be made Administrator of the estate.

Form of Assent of Executor or Administrator: used to transfer ownership from an executor or administrator.

Statutory Declaration Form:

- i) Used to transfer ownership from deceased owner when no official documents have been issued.
- ii) Declarations can be either based on a will that did not go to Probate, claiming ownership by the executor, or
- iii) By the next of kin if no will was left by the deceased (died intestate).

Form of Renunciation: this is to be used if only one member of the family (next of kin) wishes to take on the ownership of the grave. The remaining members of the family must renounce their interest in the grave.

Points of Contact

Any queries regarding the process of transferring grave rights or grave ownership in general should be referred to the Cemeteries & Services Officer through one of the methods below:

E-Mail: cultural.services@southderbyshire.gov.uk

Phone: 01283 595782

Fax: 01283 595720

Write: Cemeteries & Services Officer
Cultural Services
South Derbyshire District Council
Civic Offices
Civic Way
Swadlincote
Derbyshire
DE11 0AH