**GRAVE OWNERSHIP AND DEED TRANSFER**

**Guidance and Information**

When a grave is purchased a grave deed will be issued giving the exclusive rights of burial and to erect a memorial to the grave owners named on it. This deed is a legal document and should be kept in a safe place. Please note, the ownership is as shown on the deed, unless a transfer has been actioned at a later date. Transfers and interments can be endorsed on the original deed although this is not essential. If you are in possession of the original deed, please contact the office for clarification of the current owner and available space within the grave.

The exclusive rights of burial and to erect a memorial is a lease on a grave and will be included on the deed but does not mean you own the land itself but have the exclusive rights for the duration of the lease to say who can be buried in the grave providing there is sufficient space. A memorial can be erected and remain on the grave for the period of the lease. The maximum number of owners the burial authority of Cheltenham Borough Council accepts is four at any time.

Please remember, should there be more than one owner written permission is required from every owner prior to a grave being opened (with the exception of the interment of one of the grave owners who have an automatic right to be buried within the grave, if space allows), erecting or altering a memorial stone or amending ownership including surrendering, transferring or adding (maximum numbers permitting). This can prove difficult if a family dispute arises or a named person moves away.

All grave owners have a legal right to be buried in the grave providing there is sufficient space. If there is more than one grave owner and one owner passes away, the rights automatically go to the surviving owners, until the last surviving owner. It is only at this point, that the Will comes into effect; therefore, no transfer of ownership can be made following the death of any of the previous owners, regardless of what is stated within their Will. If the last grave owner passes away, they will retain the right to be buried in the grave, but ownership must be transferred before the headstone can be put up or altered based on their Will or Letter of Administration.

**Transferring Grave Ownership**

There are several ways to transfer ownership of a grave and it is important that the correct process is followed. If the person transferring is living they can choose who is put on the deed but if the person on the deed has died the deed must be transferred to persons entitled to it:

**Living transfer**

During your lifetime a grave owner can ~ *a Statutory Declaration is not required, however in the case of multiple owners, permission must be obtained from all remaining living owners, except when you surrender your rights and are vesting them in the remaining owners*

1. add additional names to the ownership using a form of assignment, remembering the total maximum number of owners the burial authority of Cheltenham Borough Council accepts is four at any time
2. surrender ownership to the remaining lawful and current owners, therefore giving up all your own rights using a form of assignment
3. surrender ownership to another person, giving up all your rights using the relevant form of assignment
4. surrender ownership if the grave has not been used back to the burial authority by using the relinquish of rights form

Transfer of Exclusive Rights if the sole grave owner has passed away, the procedure followed depends on whether the owner left a will and as detailed.

1. **Grave owner leaves a will requiring grant of probate**

If the grave owner made a valid will and left an estate of sufficient value to require grant of probate, ownership of the grave is to be transferred by the executor as per instructions of the will. We recommend you add a codicil stating your wishes regarding the future ownership of the exclusive rights of burial and to erect a memorial. To be legally acceptable, we must have sight of the ‘sealed’ grant bearing the embossed seal of court. If you are unable to personally bring this document to our offices we will ask you to post it to us and we will return once we have seen it.

1. **Grave owner leaves a will which did not receive grant of probate**

If the grave owner made a valid will but did not leave an estate of sufficient value requiring grant of probate, ownership of the grave is to be transferred by the executor as per instructions of the will. We recommend you add a codicil stating your wishes regarding the future ownership of the exclusive rights of burial and to erect a memorial. To be legally acceptable, we must have sight of the will showing the name of the executor. If you are unable to personally bring this document to our offices we will ask you to post it to us and we will return once we have seen it. We will then prepare a statutory declaration based on the will, the person making the declaration will be asked to sign it under oath.

1. **Grave owner does not leave a will but grant of letter of administration was obtained**

If the grave owner did not leave a valid will but grant of letter was obtained, ownership of the grave is to be transferred by the administrator. To be legally acceptable, we must have sight of the ‘sealed’ letter bearing the embossed seal of court. If you are unable to personally bring this document to our offices we will ask you to post it to us and we will return once we have seen it.

1. **Grave owner does not leave a will and grant of letter of administration was not obtained**

If the grave owner did not leave a valid will and grant of letter of administration was not obtained, the rules of intestacy apply, for example:

1. If the grave owner is survived by a married or civil partner, the partner is the entitled person
2. If the grave owner has no living partner and is survived by children, all the children are entitled persons
3. If the grave owner has no living partner or children, surviving parents are the entitled persons
4. If the grave owner has no living partner, children or parents, all surviving siblings are entitled persons

The entitled person(s) wishing to take ownership will be asked to sign a statutory declaration under oath. Should any entitled person(s) not wish to take on the ownership, it is essential that written agreement is obtained using a form of assignment (one for every person not taking up their entitlement) and attached to the declaration prior to the signing under oath.

If you do not know if the grave owner left a will or obtained grant of letter of administration, we suggest you contact the office of probate or you can search online for probate records for people who died after 1857 at <https://www.gov.uk/search-will-probate> (as of November 2018 there is a fee of £10 for a copy of the probate).

Because the transfer of deeds is a legal process, we reserve the right to deny a transfer until we are satisfied that any persons wishing to take on the ownership are entitled to do so.