

Saltash Town Council

Guide to Grave Ownership and Deed Transfer

Grave Ownership – Exclusive Right of Burial

When a grave is purchased a Deed will be issued giving the Exclusive Right of Burial to the grave owners named on it. This Deed is a legal document however possession of it does not signify ownership, please keep it in a safe place.

The Exclusive Right of Burial is a lease on the next available grave, which will be allocated by Saltash Town Council. It lasts for 10 years and gives the grave owners' burial rights providing there is sufficient space, please keep in a safe place.

The Town Council will usually put one name on a Deed, but a maximum of two is recommended. It is useful to note that before a grave can be opened, or a memorial stone put up or altered, permission needs to be given in writing by the named person on the Deed. Please remember to keep us informed of any changes, for example, a Deed owner moves home or there is a name change.

The grave owner has a legal right to be buried in the grave space providing there is sufficient space. When the grave owner passes away, they still retain the right to be buried in the grave but ownership must be transferred before the headstone can be put up and altered.

Transferring Grave Ownership

There are several types of grave ownership transfer; if the person transferring is living, they can choose who is put on the Deed. If the person on the Deed has died the Deed must be transferred to persons entitled to it:

1. Living Transfer

- a) A grave owner can transfer ownership during their lifetime to another person or add more names to the ownership using Form of Assignment.

A grave owner has passed away, the procedure followed depends on whether the owner left a Will.

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2. 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 to the Executor. Saltash Town Council will take copies of both documents which will be stored on file electronically. To be legally acceptable, the Town Council must have sight of the “sealed” Grant bearing the embossed seal of Court. Once it has been seen it will be returned.

3. Grave Owner leaves a Will that does not require 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 to the Executor. To be legally acceptable, the Town Council must have sight of the Will showing the name of the Executor. A copy will be taken by Saltash Town Council and kept electronically on file. If posted, once it has been seen it will be returned. A Statutory Declaration will then be prepared, based on the Will, the person making the declaration will be asked to sign it under Oath.

4. Grave Owner does not leave a Will but Grant of Letters of Administration was obtained

When a deceased person dies intestate (without leaving a valid 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.

To be legally acceptable, the Town Council must have sight of the Letters of Administration bearing the embossed seal of Court. Once it has been seen it will be returned. Saltash Town Council will take a copy of this document which will be stored on file electronically.

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5. Grave Owner does not leave a Will but Grant of Letters of Administration was not obtained

If the grave owner did not leave a valid Will and Grant of Letters was not obtained, the rules of intestacy apply, for example;

- a) If the grave owner is survived by a married or civil partner, the partner is the entitled person
- b) If the grave owner has no living partner and is survived by children, all the children are the entitled persons
- c) If the grave owner has no living partner or children, all siblings are entitled persons.

The entitled person will be asked to sign a Statutory Declaration under oath.

In all cases, the original Deed should be returned to Saltash Town Council. The details of transfer will be handwritten on the back of the Deed, signed by the appropriate Officer, dated and the Town Council's stamp will be put in place.

Should the Deed have been mislaid a form will be issued by the Council with details of the Transfer of the Deed. No new Deeds will be issued.

If you do not know if the grave owners left a Will or obtained Grant of Letters of Administration, it is suggested that you contact the Office of Probate.

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6. Transfer of Title

- a) A Form of Assignment is used by a living owner to transfer the ownership or to add additional names to the EROB deed. An administration fee is required for this and an amended deed will be issued to the new/additional grantee/s.
- b) A legal document **MUST** be submitted to the Burial and Memorials Department before the transfer of EROB can be completed. One of the following would be acceptable
 - Grant of Probate – showing the legal executor and bearing the embossed seal of the Courts.
 - Letters of Administration – showing the legal right to administer the estate and bearing the embossed seal of the Courts. (Please seek advice and guidance from a solicitor).
- c) A Form of Assent can be used to transfer EROB from an executor/administrator once ownership has been transferred into their name (similar to a Form of Assignment).
- d) In the event of the death of the owner of the exclusive right of burial in a grave, the person claiming to be entitled to the said exclusive right of burial must produce the relevant documents to the Burials and Memorials Department and furnish proof of his or her title to the grave.
- e) A transfer of the exclusive right of burial in a purchased grave, will not be deemed valid unless such transfer has been completed

Because the transfer of Deeds is a legal process, the Town Council reserves the right to deny a transfer until satisfied that any persons wishing to take on the ownership are entitled to do so.

If you have any questions about grave ownership please contact
Saltash Town Council, The Guildhall, 12 Lower Fore Street, Saltash. PL12 6JX
Tel : 01752 844846 Email: burialsandcremations@saltash.gov.uk

For further support or advice on bereavement please visit:

<http://www.cornwall.gov.uk/advice-and-benefits/deaths-funerals-and-cremations/>