

Narborough Cemetery - Rules and Regulations

APPENDIX ONE

Exclusive Right of Burial

Ownership and Transferal

Grave Ownership – Exclusive Right of Burial

When buying a grave, it is important to understand what you are actually buying is the Exclusive Right of Burial in a grave for a specified period of time. You are not purchasing any land and no ownership of land is transferred to you. At Narborough Cemetery, an Exclusive Right of Burial is granted for an initial term of 50 years which can then be extended for a further term should this be required. Narborough Parish Council retains ownership of land at all times and therefore may determine how the land is used in its Rules and Regulations.

A grave owner has 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 (after consent sought from Narborough Parish Council) 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 pay for 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 Right, excluding the burial of the grave owner.

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 the registered owner(s) is deceased and other family members want to arrange a further burial to take place in the grave, erect a memorial on the grave or add an inscription onto an existing 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.

Transferring the Exclusive Right of Burial

The grave owner can assign the Exclusive right of Burial, during their lifetime, to another individual on completion of a Form of Assignment. This form is available from Narborough Parish Council and must be signed by the owner and witnessed by the Parish Clerk/Deputy Clerk.

The procedure for establishing grave ownership when the original owner has died is as detailed below:

Deceased owner left a valid Will

If the deceased grave owner has made a valid Will and left an estate of sufficient value to require the Grant of Probate, ownership of the grave can be transferred to the executor. The executor must produce a sealed 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. This form is available from Narborough Parish Council and must be signed by the Executor and witnessed by the Parish Clerk/Deputy Clerk.

If the estate is not of sufficient value to obtain a Grant of Probate, ownership may be transferred to the Executor named in the Will by Statutory Declaration (see below) and the production of the Will. If the Executor then wishes to transfer the deed to someone else then they can do so by completing a Form of Assignment.

Deceased owner did not leave a Will or the Will was not valid

If there is no Will, or the Will is not valid, and the estate is of sufficient value as to require a Grant of Letters of Administration, ownership of the grave can be transferred to the personal representative of the deceased. The applicant must produce a sealed copy of the Grant of Letters of Administration Form. It is then the administrator's responsibility to identify the correct person for transfer of ownership and assent the transfer by completing an Assent of Executor or Administrator form. This form is available from Narborough Parish Council.

If the estate is of insufficient value to require a Grant of Letters of Administration, the rules of intestacy apply as laid down in the Administration of Estate Act 1925. The applicant for transfer of ownership should complete a Statutory Declaration.

Statutory Declarations

Statutory Declarations are legal documents and must be signed in the presence of a Magistrate or Commissioner for Oaths.

The Statutory Declaration should clearly set out the facts regarding the original purchase of the Exclusive Right 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 that effect. It is essential that the written agreement to the transfer of ownership by all the next of kin of the deceased owner also be obtained (see Renunciation below) and attached to the Declaration.

If a Statutory Declaration needs to be completed, Narborough Parish Council will provide the appropriate wording for the Declaration but it is the responsibility of the person making the Declaration to have it witnessed by a Magistrate or Commissioner for Oaths.

Renunciation – what does this mean?

Renunciation is when a registered owner or someone entitled to the Burial Right does not wish to retain their 'rights'. A renunciation form needs to be completed and is available from Narborough Parish Council.

Family Disputes

Where a family dispute results in 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.

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

1. The surviving lawful husband or wife
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 uncles and aunts of the deceased (full cousins)
12. Half-blood uncles and aunts of the deceased
13. Children of half-blood uncles and aunts of the deceased (half-blood cousins)
14. Other persons with an interest in the estate may apply

Fees

Please refer to the fees schedule.

Forms of Transferring Deed Ownership - Glossary

Form of Assignment

Used by a living owner to transfer or change the ownership of the Exclusive Right of Burial i.e. to transfer to a new owner or add an additional owner

Grant of Probate

Granted to the Executor(s) of a Will 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 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.

Form of Assent of Executor or Administrator

The form 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.

Statutory Declaration

The form 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.

Where a Statutory Declaration is required this will need to be signed by a Magistrate or Commissioner of Oaths which will incur separate charges not determined by the Parish Council.

Forms of Renunciation

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 Right to the ownership.

Certificates

All certificates supplied with transfer applications must be originals or certified copies.

Julie Whitehouse – Clerk to the Council

2 January 2019