

FACT SHEET: Transfer of an Interment Right

Cemeteries and Crematoria Act 2013 (NSW) (The Act)

What is an Interment Right?

When you 'buy a grave or other memorial site', you are purchasing the right to use that site for a human interment. You will be issued with a Certificate of Interment Right which represents a contract with the cemetery operator. This contract allows you, as the person registered in the Cemetery Operator's Register as the Holder of the Interment Right (Holder), to make decisions relating to the site. You can approve who can be interred into the site; construct a memorial or add an inscription (with the approval of the cemetery operator); and whether the remains or the memorial can be disturbed.

Can an Interment Right be held by more than one person?

An interment right can be held by either one person solely or several persons who **must act jointly**. This means that all joint Holders must agree if a plot is to be opened for a burial or for a memorial to be placed or altered.

Can an Interment Right be included in a Will?

An individual who holds an interment right can bequeath an interment right to another person(s) in their Will. A bequest can be a specific gift of the interment right or form part of a general bequest of the whole of the estate of the deceased. An interment right does not form part of the deceased's "residuary estate", that is the portion of the estate not specifically disposed of by the Will.

What happens when the holder dies?

Joint Holders

If the Interment Right is held jointly by more than one person, the interment right passes to the surviving Holder(s). This is referred to as survivorship provisions under the Act (section 51). A transfer application form is not required. However, you will need to produce a

certified copy of the death certificate of the deceased Holder for the Cemetery Operator's Register to be updated.

The Holder(s) may add another person as a joint holder if they wish another person to exercise the rights previously held by the deceased person. An application form is required to be submitted for this purpose and all joint holders must consent to the addition of the new joint holder.

Sole Holder - Where there is a Will

The beneficiary(ies) should make contact with the cemetery operator to transfer the right as per instructions left in the Will. This is referred to as bequest provisions under the Act (section 49).

A person to whom an interment right is bequeathed does not become the Holder until the Cemetery Register is amended to indicate that fact. MMP must be satisfied that the Will containing the bequest was validly made. This means that the applicant will be required to produce:

1. A Grant of Probate or Grant of Letters of Administration with the Will annexed (or a certified copy)
2. A statutory declaration stating:
 - a. The applicant is the beneficiary of the bequest of the interment right.
 - b. To the best knowledge of the applicant:
 - i. the Grant is not the subject of any ongoing legal proceedings; and
 - ii. an order has not been made for the revocation of the Grant.

Once the Cemetery office has received the above documentation, the ownership of the Interment Right will be updated and the cemetery register amended to reflect the new owner/s. A new Certificate of Interment Right will be issued which allows the new owner to authorise future interments and memorialisation.

Where there is NO Will

Where a person dies without a will or if their assets are not disposed of under their Will, they will be intestate, or partially intestate, and their assets which have not been disposed of by the Will are to be distributed under intestacy laws.

MMP will need to be advised of the person(s) entitled to the interment right. Generally speaking, the interment right will pass along the following family lines:

1. Spouse
2. Child/children
3. Parents
4. Siblings
5. Grandparents
6. Aunts/uncles
7. Cousins

Each person in a family branch has equal entitlement to claim the interment right.

The entitlements to an intestate estate are typically established using event certificates (e.g. death, birth or marriage certificates). You will need to provide information such as:

- Death certificate of the deceased Holder.
- A copy of the Grant of Letters of Administration (if a Grant has been issued)
- Certificates as required to establish the persons entitled to the deceased estate.

Once the Cemetery office has received the documentation relevant to your circumstances, the ownership of the Interment Right will be updated and the cemetery operator's register amended to reflect the new Holder(s). A new Certificate of Interment Right will be issued which allows the new Holder(s) to authorise future interments and memorialisation.

We understand that everybody has different situations and, in some cases, different documentation may be required or accepted. If you require assistance in updating ownership, please contact the cemetery office to discuss your situation.

What if one of the beneficiaries doesn't want to claim the Interment Right?

Where a beneficiary wishes to forego their claim to the interment right, they must provide a letter or use MMP's Relinquishment Form advising their consent for the interment right to be held by the other beneficiary(ies).

Transfers where the interment right holder is deceased and an executor or administrator has been appointed

The Executor of an Estate applying for transfer of the Interment Right must provide proof of their status by supplying a copy of the Probate or Letters of Administration. Co-Executors must all agree to the transfer unless they are empowered to act alone. The Interment Right is not transferred into the name of the Executor/Administrator as they do not have financial

interest in the Right. The Executor or Administrator does not have an entitlement to the interment right as an asset of the estate. Rather, they can make a decision relating to the right as if they were the Holder.

Can the interment right be transferred to someone else?

In addition to a transfer under bequest and intestacy provisions, the Holder can transfer the interment right to another living person(s) or add a person(s) as a joint holder under the Act (section 58). In some circumstances, we may make arrangements with the Holder to transfer the interment right back to the cemetery operator under the Act (section 59). A person holding a Power of Attorney may act for the Holder but must produce proof of their appointment as Power of Attorney.

How many interment rights can an individual hold?

An individual cannot, without the approval of the Regulator (Cemeteries and Crematoria NSW), grant or transfer an interment right to a person if the proposed transfer will result in the person holding (including jointly holding) interment rights for more than 2 unused sites, or 10 total sites in a cemetery. Any request to hold more than 2 unused sites or 10 total sites can be made to MMP, who will seek approval from the Regulator on your behalf at no additional cost.

Verifying Identity

Applicants are required to verify their identity by producing two documents for sighting, one of which must contain a photo of the applicant. For example, a Medicare card and an Australian driver's licence.

What is the role of the Executor/Administrator

Upon the issuing of grant of probate by the Court, all of the personal property of a deceased person vests in the executor of the deceased's estate. This means that the executor may exercise rights pertaining to the burial including the right to erect and maintain a monument at the grave.

The Executor must also give the cemetery operator written notice of the death of the Holder within 12 months after becoming aware of the death.

Should the Executor or Administrator be recorded as the interment right holder?

The Executor or Administrator does not have an entitlement to the interment right as an asset of the estate. Rather, they have a non-financial interest in the estate of the deceased person but can make a decision relating to the right as if they were the Holder. The interment right will not be transferred into the executor's name but their non-financial interest should be noted in the Cemetery Records Management System.

What if there is a dispute around who should be the Holder?

If there is a dispute or doubt about the rightful Holder of an interment right for a particular site, the Act gives a cemetery operator power to determine who the rightful Holder is.

A person who believes they are the holder of an interment right for a site may apply for a decision that they are the rightful holder. This requires public notice activities such as displaying a notice at a prominent place in the cemetery, publishing the notice in a newspaper and any other steps considered reasonable in the circumstances. A period of 28 days must lapse before a determination can be made.

You should contact the cemetery operator if there are situations where an urgent decision is needed due to an imminent interment of a person related by blood or marriage or in a domestic partnership with the applicant or a person interred in the interment site.

Definitions

Grant of Probate

A Grant of Probate is a legal document issued by the Court to the executor(s) named in the deceased's Will to administer the deceased estate in accordance with the wishes in the deceased's Will.

Letters of Administration

Letters of Administration is a legal document issued by the Court to an administrator to administer the estate in accordance with the intestacy rules. An application for letters of administration will be made when the deceased died intestate, that is, without a Will.

Letters of Administration with Will annexed is a legal document issued by the Court to an administrator to administer the estate in accordance with the wishes in the deceased's Will. An application for letters of administration with will annexed would be made when the person named as executor in the Will is unwilling or unable to take on that role.

Note: In each of these cases, the executor or administrator (as applicable) has had to apply to and satisfy the Court of various matters, including the assets and liabilities of the deceased and the rightful beneficiaries entitled to the estate of the deceased.

Case Study – Sole holder to become joint holder

Person A is the interment right holder for a plot at the Memorial Park. Person A wants to add his daughter, Person B, as a joint holder so there is someone else to authorise future interments when he passes. Person B does not hold any other interment rights at the Memorial Park and is happy to be added as a joint Holder.

Both Persons A and B must complete an application to Update Ownership form, verify their identity through the production of 2 identifications documents and pay an administrative fee.

MMP will issue both persons with a new Certificate of Perpetual Interment Right and update the Cemetery Operator's Register to show Persons A and B as joint Holders for the plot.

Case Study - Bequest

Person A is the sole holder of an interment right for a plot at the Memorial Park. Person A passes away leaving a Will bequeathing all assets in the estate to be divided equally to 5 children. This means that all 5 children have a claim to the interment right and can be added to the Cemetery Register as joint Holders.

All children will be required to complete the application to Update Ownership form, produce necessary legal documentation to evidence their entitlement and pay the administrative fee.

Any one of the beneficiaries who do not wish to claim the Right can complete a Relinquishment Form or provide a letter equivalent which must be submitted at the time of the application.

Case Study – Joint holder

Persons A, B and C are joint holders for the Interment Right to a Vault containing 12 shelves. The families wish to have 4 shelves each to use into the future.

Person A dies which means that survivorship provisions apply and the Interment Right passes to the remaining Holders Persons B and C.

Persons B and C may continue to exercise the right jointly or they can add a relative of Person A as a joint holder to continue the original arrangement between the families.

The Cemetery Operator does not intervene in the internal management of a vault.

Case Study - Intestacy

Person A passed away without a Will leaving a spouse known as Person B and 2 adult children.

Under intestacy laws, the interment right would pass to the spouse, Person B.

An application needs to be made by Person B to update ownership of the interment right in the Cemetery Operator's Register in order to authorise activities associated with the right such as erecting a memorial or authorising future interments.

Person B must provide the death certificate and/or other legal documentation to establish they are the person entitled to claim the interment right.

If Person B does not come forward to update the Cemetery Register as the new Holder and they pass away with a Will in place, the intestacy provisions continue to apply in respect of Person A as the interment right did not form part of Person B's estate.

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Phone 02 9661 5655

Field of Mars Cemetery
info.mpc@mmplm.com.au
Phone 1300 389 888
(MPCC Office)

Frenchs Forest Bushland Cemetery
info.ffbc@mmplm.com.au
Phone 02 9451 6204

Gore Hill Memorial Cemetery
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(MPCC Office)

Macquarie Park Cemetery & Crematorium
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Rookwood General Cemetery & Crematorium
info.rgc@mmplm.com.au
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