

Grant of Right of Burial - A legal document

Tenure on private graves is specified in a legal document called the "Grant of Right of Burial". It is important to give careful consideration when nominating a person or agreeing to hold the Grant of Right of Burial as the Grantee has the right to all activities within the grave plot area. This includes approval to place cremated remains, for further burials in the nominated grave plot, and/or to erect monumental work upon the grave. In some situations conflict can arise and responsibility for the outcome lies with the holder of the Grant.

Grants are issued for 25 years with the right of renewal. When the grant expires and a renewal has not been granted the control of the site reverts to the Shire of Serpentine Jarrahdale. The nominated person on the "Grant of Right of Burial" should make provisions in their will to ensure that a nominated person retains the legal ownership of the grave plot.

The Shire will write to the registered owner at the address detailed on the Burial Register of the "Grant of Right of Burial" at the time of renewal inviting the holder to renew. If a renewal request is not received or the holder of the "Grant of Right of Burial" is unable to be contacted within 60 days the "Grant of Right of Burial" will lapse. If the Grantee no longer wants the legal responsibility the Grant of Right of Burial can be transferred to another person upon application and payment of a fee.

If the Grantee is unknown then a Statutory Declaration can be obtained from the Shire and filled out by the person wishing to become a Grantee. When a Grant expires, control of the grave plot reverts to the Shire of Serpentine Jarrahdale and the following conditions apply:

- If a grave is to be used for further interments or placement of ashes or a monument, then a new Grant would be required, which would mean that the family member or nominated person would need to repurchase the land for graves. This would then give the nominated person a current Grant Right of Burial for the required 25year period.

Grant Right of Burial in relation to burials

The original Grant of Right of Burial is required to be produced before a second burial can take place and for any placement of ashes within a grave and any monumental works can occur. The Grantee can approve or deny any activity within the burial plot which has a life span of 25 years.

For this reason it is important that the Grantee (if not the deceased's partner) makes provisions in a legal document (e.g. their Will) to allow transfer of the grant to another person to ensure their wishes will be carried out. After the 25 year period has lapsed, an application for the re-issue of a Grant can be made for a further 25 years if the family should desire this. Further information can be obtained from Council.

First Burial - A Grant of Right of Burial is automatically issued for the first burial. This is for a period of 25 years.

Second Burial - When the second burial takes place, the Grant of Right over the plot must be produced with the Grantee's permission as proof of right to use the plot.

Expiry - Upon expiry of 25 year period the Shire will attempt to notify the Grantee and advice of expiry and ability to have Grant of Right of Burial re-issued, the cost being re-purchase of the land at current rate.

Transfer – If a Grantee no longer wants the responsibility an application can be lodged for the transfer of the Grant of Right of Burial. There is a nominal fee for this service.

Contact Us

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If the Grantee is the person being buried then the Grant Right of Burial can be transferred to a nominated person.

If the Grant Right of Burial holder cannot be found, then a person can sign a Statutory Declaration to become the Grantee.

So why are Grant Right of Burials only valid for 25 years?

Prior to the commencement of the Cemeteries Act on 1st July 1987 there was no legislation regarding the term of a Grant of Right of Burial and cemeteries throughout the State issued grants for varying times. Some were issued in perpetuity, others 100 years, 50 years etc.

In Schedule 2 of the Cemeteries Act 1986 there is provision for any Grant, issued prior to the commencement of the Act, (1 July 1987) to expire twenty five years after the commencement day, i.e. 1 July 2012. This is irrespective of the term that it may have been issued for. Or putting it another way, all Grants issued prior to 1 July 1987 will expire no later than 1 July 2012.

The new Act provides for cemeteries throughout WA to issue Grants for a term of 25 years with the right to extend or renew the tenure for a further 25 years.

Need a link to the Cemeteries act 1986

Expired Grant Right of Burials for Graves in Serpentine Jarrahdale

The Shire of Serpentine Jarrahdale provided 6 months of leniency for people who may use a grave that is older than 1987. As of the 1st January 2013, families that wish to use graves that have not been used since before 1 July 1987 will be required to repurchase the cost of the land for graves.