

|  |
| --- |
| Managing a right of interment following the death of a right holder |
| OFFICIAL |

# Purpose

Accurate up-to-date right of interment records are critical to the effective management and operation of a public cemetery. It is important that the information captured on a cemetery trust’s right of interment register is correct and current as it forms the basis for the trust’s decision making in relation to its powers under the *Cemeteries and Crematoria Act 2003* (the Act) in relation to:

* the power to authorise the exercise of right holder entitlements (s. 77(4))
	+ the interment of human remains at a place of interment
	+ establishing or altering a memorial at a place of interment
	+ removal of cremated remains or body parts from a place of interment
* managing the surrender of an exercised or unexercised right of interment (ss. 82–84)
* authorising a lift and re-position procedure (ss. 88–89)
* the cancellation of a right of interment (s. 91)
* managing and recording the transfer of a right of interment (ss. 79–80).

If these records are poorly kept or improperly maintained it can cause confusion and uncertainty for cemetery trusts, their staff and their customers.

The purpose of this fact sheet is to provide trusts and their staff with advice about:

* how to manage and update records when the original holder of a right of interment (right holder) dies
* taking instruction for the interment of the deceased right holder
* the rights and role of the executor and beneficiaries of the deceased’s estate in relation to the interment of the deceased
* information requirements for updating right of interment records
* the rights and role of the executor and beneficiaries in relation to the establishment and alteration of a memorial
* the changing role of the executor and beneficiaries when an estate is finalised
* the need for trusts to develop their own policies and procedures for maintaining and updating right holder records when the original right holder dies.

# The interment of a deceased right holder

When a right holder dies a trust will generally receive a request from a funeral director, executor or family representative to inter the deceased in the plot they purchased. At the time of the funeral it is unlikely that the funeral director or family representative will be able to provide the trust with sufficient information to allow the trust to update its right of interment records.

The following people are able to give the trust instructions on the use of the place of interment, depending on the circumstances:

* A person nominated to administer the deceased’s estate (such as an executor) because the right of interment forms part of the estate. There might not be clear documentation available about the person’s nomination, for example, if the will has not been located yet or if the deceased did not leave a will. In these circumstances the trust will need to obtain evidence to its satisfaction (for example through a statutory declaration) about who the administrator of the estate is likely to be.
* A representative nominated by the deceased family to manage the funeral arrangements, including funeral director, family friend or member of the family.
* Generally, if the deceased held the right jointly with someone else, that person (or people) will still hold the right of interment and may give the trust instructions except where there is a dispute between joint holders.

Under normal circumstances a funeral should proceed as directed by the family or their representative. However, if there is a dispute about the exercise of a right relating to a proposed interment, placement of a memorial, transfer of the right or any other matter relating to the exercise of the right, the trust should recommend the family seek mediation to settle the dispute before taking directions to exercise the right.

The trust should note the executor or administrator of an estate will not necessarily become the new right holder and trusts should not update their records to reflect the executor or anyone else as the new right holder(s) without clear supporting evidence.

# Identifying the new right holder(s)

Identifying the new right holder(s) is a crucial part of the trust’s record validation process. If done properly, this step will clearly establish who is authorised to give the trust directions about the right and the place of interment in relation to future interments, memorials and exhumations.

This process is equally relevant where the right was jointly held by the deceased and other surviving right holders. The deceased right holder’s interest in the right will form part of their estate to be inherited by their beneficiaries, meaning new joint right holder(s) may be identified once the deceased’s estate has been settled.

The process of distributing a deceased estate can take several months and be finalised long after an interment has taken place. Generally, the right of interment will form part of the deceased’s estate. Once the estate has been settled the new right holder(s) is/are likely to be one or a number of beneficiaries and should be able to provide the trust with documentary evidence to demonstrate they are the new right holder(s).

The trust should contact the executor or family representative at a reasonable time after the funeral to confirm the identity of the new right of interment holder(s) and then update their records accordingly.

## Evidence for updating the trust’s records

### The deceased holder was the sole identified right holder (in the trust’s records) and leaves a will

The trust will need a certified copy of the will which identifies the beneficiaries of the deceased’s estate, or alternatively the beneficiaries nominated to manage the right of interment. Where there are multiple beneficiaries identified in the will the trust will need to record each beneficiary as a right holder.

### The deceased holder was the sole identified right holder (in the trust’s records) and did not have a will

In circumstances where the deceased right holder did not leave a will, prospective beneficiaries will generally apply to the Court for letters of administration. The trust will require a certified copy of the letter of administration granted by the Court as evidence to confirm the new right holder(s).

Where a new right holder is not identified through a Court issued letter of administration the trust will need a statutory declaration from any persons claiming to be a new right holder which addresses:

* why they believe they have a claim
* confirmation that to the best of their knowledge there are no other beneficiaries who can make claim to the right of interment
* agreement that if any legitimate claimants come forward the trust reserves the right to update its right of interment records to recognise them.

Where a trust is not satisfied that the information provided by an applicant is sufficient to have the right of interment record updated, it is not obliged to update its records. When rejecting an application, the trust should provide the reasons for its decision and where possible, be clear about what additional information is required to enable it to update its records.

# Memorialisation

The Act does not place restrictions on who can apply to establish or alter a memorial under s. 98 of the Act. However, s. 98 of the Act provides that if there is a right of interment holder, their consent is required.

The executor of the deceased’s estate can arrange for a memorial to be established for the deceased right holder providing the application is made prior to the finalisation of the estate. The executor will normally be following the wishes of the deceased when establishing a memorial, however they should also consider the wishes of the beneficiaries of the estate before their decision is finalised.

After an estate is settled an applicant will need the written consent of the holder(s) of the right of interment before the trust can allow a memorial to be established or altered. Where there are multiple joint holders, all those holders will need to give their consent for the establishment of a memorial. For practical purposes multiple right holders may nominate a single right holder to act on their behalf, but the trust will need to have a written copy of this authority before taking direction from the nominated holder.

Where there are multiple holders and the applicant has a problem contacting them to seek their consent, the trust will need to establish via a statutory declaration that the applicant has taken reasonable action to contact the other holders before it provides permission to establish or alter a memorial. Reasonable action could include but is not limited to the placement of an advertisement in a local news publication or a search of the electoral role.

# Development of trust policies

The trust should develop its own clearly documented policies and procedures, consistent with this fact sheet, to guide its staff on how to identify and manage the transfer of a right of interment when the original right holder has died.

This policy should assist the trust and its staff to determine who is authorised to make arrangements for the interment of the deceased right holder and to provide consent to establish or alter a memorial or for a lift and re-position procedure. The trust should ensure that right of interment records are not permanently changed without sufficient evidence.

# Disputes

Occasionally there may be a dispute about who should become the new right holder. It is the responsibility of the disputing parties to resolve their differences before the trust updates its records. In such a situation the trust can refer their clients to the [Dispute Settlement Centre of Victoria](https://www.disputes.vic.gov.au) <https://www.disputes.vic.gov.au>.

# Diagram: Interment and memorialisation following the death of a right holder



|  |
| --- |
| To receive this document in another format, phone 1800 034 280, using the National Relay Service 13 36 77 if required, or email the Cemetery Sector Governance Support Unit <cemeteries@health.vic.gov.au>.Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.© State of Victoria, Australia, Department of Health, August 2021.ISBN 978-1-76096-343-9 (pdf/online/MS word)Available on the [health.vic website](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/rights-of-interment/right-of-interment) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria/rights-of-interment/right-of-interment> |