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| Reuse of an unused place of interment in a side-by-side double grave |
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# Background

Cemetery trusts may issue a single right of interment for a double grave that has two separate places of interment side-by-side. A right of interment is exercised when human remains are interred and/or a memorial is established at the place of interment. This means that if one side of a side-by-side double grave has no remains interred and no memorial established, the right of interment for the unused side of the grave is still considered to be exercised.

Section 91 of the *Cemeteries and Crematoria Act 2003* (the Act) provides a mechanism for cemetery trusts to cancel certain rights of interment in certain circumstances if the right of interment has been in existence for more than 25 years, has never been exercised, and the person who holds the unexercised right of interment cannot, after diligent enquiry by the cemetery trust, be found.

Upon cancelling a right of interment in accordance with s. 91 of the Act, a cemetery trust may then re-sell that particular right at the current market value applicable to that right or an equivalent right. The intent of this provision is to provide trusts with a process that facilitates the resale of old unexercised rights to prevent cemetery land from remaining unused.

In the case of a side-by-side double grave with one side unused, the single right of interment for the double grave cannot be cancelled under s. 91 of the Act as it has been exercised. However, the trust may take steps to alter the existing right of interment so that it no longer relates to the double grave, only the used grave on one side. The trust can then issue a new right of interment for the unused grave.

This fact sheet explains the steps cemetery trusts must take in order to facilitate the reuse of an unused place of interment in a side-by-side double grave.

# Scope

This process applies to double graves that are side-by-side only. Trusts cannot seek to reuse an unused place of interment in a grave that is intended for multiple interments at different depths e.g. a grave that is dug to double depth to accommodate a second interment above the first interment.

If a trust has in the past allowed the construction of a double monument on a double grave it will be unable to use this process to reclaim the unused place of interment.

# Updating right of interment records

Before a trust can reclaim an unused place of interment in a side-by-side double grave, it will need to update its records and issue a new right of interment for the unused place of interment.

Before a trust can update its records, it will need to place an advertisement in a local news publication requesting members of the public notify the trust if they believe they have a claim to the unused place of interment within the cemetery. The trust should ensure the advertisement provides as much information about the original right of interment as practicable and specifies:

* that the trust is seeking to update its records in relation to unused places of interment in double graves
* the family name of the holder of the right of interment for the double grave
* the date the right of interment was purchased and the date it was exercised
* the time period for responding to the advertisement (it is recommended that trusts allow at least 6 weeks from the publication date to give members of the community sufficient time to respond)
* the trust’s contact details.

The trust may need to place multiple advertisements during this time to ensure it can obtain as much information as possible to update its records.

# Where a claim is received in relation to an unused place of interment

The trust should evaluate any claims made and, where a person can demonstrate to the trust’s satisfaction that they have a valid claim to an unused place of interment, the trust should issue a new right of interment for that unused place of interment to the claimant.[[1]](#footnote-1)

Where practicable, a new right of interment should be reissued on the same terms and conditions and issue date of the original.

Once a new right of interment has been issued the trust should ensure its records are updated. The holder of this ‘new’ right of interment has the same rights and obligations as any other right of interment holder over that place of interment.

There is a common misconception that the purchaser of a right of interment actually buys the land associated with a cemetery plot, grave, crypt or cremation niche when a right of interment is purchased. This assumption is not correct as all public cemeteries in Victoria are situated on Crown land. What is actually purchased is the right to determine who can be interred in that grave (or other type of place of interment) and the type of memorialisation (if any) to be established at the place of interment (subject to any cemetery trust memorialisation policies or specifications).

A right of interment rests only with the holder/s of the right of interment. Possession of a right of interment permit does not of itself give any person/s the right to make decisions in relation to the right of interment.

# Where no claim is made in relation to the unused right of interment

The trust can:

* amend its records and issue a separate right of interment for the unused place of interment to the original owner of the right
* determine if it is going to cancel the right in accordance with s. 91 of the Act.

# Cancelling a right of interment under s. 91

Once the trust’s records have been updated and if the trust determines that it will cancel the reissued right of interment, it can follow the normal process for cancelling a right set out under s. 91 of the Act.

Section 91 of the Act requires the trust to advertise its intention to cancel the right of interment prior to the actual right being cancelled. The process for cancelling a right of interment is set out in the Manual for Victorian Class A Cemetery Trusts and Manual for Victorian Class B Cemetery Trusts available on the [health.vic website](https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria) <https://www2.health.vic.gov.au/public-health/cemeteries-and-crematoria>.

Once a right of interment has been cancelled in accordance with the Act, the trust is able to make the unused place of interment available for purchase.

If at any time the former holder of the right of interment approaches the trust to use the grave and exercise the right of interment after it has been cancelled, the trust must either provide them with a full refund of the current market value of the right of interment or offer them an alternative comparable right of interment at no cost.

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1. If a person can demonstrate they have a legitimate claim on the unused place of interment, the trust should also ensure it updates its records to reflect this person’s rights in relation to the exercised place of interment. [↑](#footnote-ref-1)