

# ***How to Establish a Family Cemetery***

***In Accordance with Texas  
Health & Safety Code***

*Revised Aug. 1, 2012*



*The following information was compiled from several sources.*

*The Clay County Clerk's office takes no responsibility for  
verifying the correctness, completeness, or legality of the contents.*

Texas Health & Safety Code Ch. 711

Sec. 711.034. DEDICATION. (a) A cemetery organization that acquires property for interment purposes shall:

(1) in the case of land, survey and subdivide the property into gardens or sections, with descriptive names or numbers, and make a map or plat of the property showing the plots contained within the perimeter boundary and showing a specific unique number for each plot; or

(2) in the case of a mausoleum or a crematory and columbarium, make a map or plat of the property delineating sections or other divisions with descriptive names and numbers and showing a specific unique number for each crypt, lawn crypt, or niche.

(b) The cemetery organization shall file the map or plat with the county clerk of each county in which the property or any part of the property is located.

(c) The cemetery organization shall file with the map or plat a written certificate or declaration of dedication of the property delineated by the map or plat, dedicating the property exclusively to cemetery purposes. The certificate or declaration must be:

(1) in a form prescribed by the directors or officers of the cemetery organization;

(2) signed by the president or vice-president and the secretary of the cemetery organization, or by another person authorized by the directors; and

(3) acknowledged.

(d) Filing a map or plat and a certificate or declaration under this section dedicates the property for cemetery purposes and is constructive notice of that dedication.

(e) The certificate or declaration may contain a provision permitting the directors by order to resurvey and change the shape and size of the property for which the associated map or plat is filed if that change does not disturb any interred remains. If a change is made, the cemetery organization shall file an amended map or plat and shall indicate any change in a specific unique number assigned to a plot, crypt, lawn crypt, or niche.

(f) The county clerk shall number and file the map or plat and record the certificate or declaration in the county deed records.

(g) A cemetery association is civilly liable to the state in an amount not to exceed \$1,000 for each map or plat that fails to comply with Subsection (a), (b), (c), or (e).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 15, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 502, Sec. 1, eff. Oct. 1, 1995.

Sec. 711.035. EFFECT OF DEDICATION. (a) Property may be dedicated for cemetery purposes, and the dedication is permitted in respect for the dead, for the disposition of remains, and in fulfillment of a duty to and for the benefit of the public.

(b) Dedication of cemetery property and title to the exclusive right of sepulture of a plot owner are not affected by the dissolution of the cemetery organization, nonuse by the cemetery organization, alienation, encumbrance, or forced sale of the property.

(c) Dedication of cemetery property may not be invalidated because of a violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

(d) A railroad, street, road, alley, pipeline, telephone, telegraph, electric line, wind turbine, cellular telephone tower, or other public utility or thoroughfare may not be placed through, over, or across a part of a dedicated cemetery without the consent of:

- (1) the directors of the cemetery organization that owns or operates the cemetery; or
- (2) at least two-thirds of the owners of plots in the cemetery.

(e) All property of a dedicated cemetery, including a road, alley, or walk in the cemetery:

- (1) is exempt from public improvements assessments, fees, and public taxation; and
- (2) may not be sold on execution or applied in payment of debts due from individual owners and plots.

(f) Dedicated cemetery property shall be used exclusively for cemetery purposes until the dedication is removed by court order or until the maintenance of the cemetery is enjoined or abated as a nuisance under Section 711.007.

(g) Property is considered to be dedicated cemetery property if:

{1} *one or more human burials* are present on the property; or

{2} a dedication of the property for cemetery use is recorded in the deed records of the county where the land is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 16, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [914](#), Sec. 9, eff. September 1, 2009.

Sec. 711.036. REMOVAL OF DEDICATION. (a) A cemetery organization may petition a district court of the county in which its dedicated cemetery is located to remove the dedication with respect to all or any portion of the cemetery if:

(1) all the remains have been removed from that portion of the cemetery where the dedication is to be removed; or

(2) no interments were made in that portion of the cemetery where the dedication is to be removed and that portion of the cemetery is not used or necessary for interment purposes.

(b) An owner of land adjacent to a cemetery for which a cemetery organization or other governing body does not exist may petition a district court of the county in which the cemetery is located to remove any human remains and the dedication for all or any portion of the cemetery. In addition to the notice required by Section 711.004, notice of a petition filed under this subsection must be given to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The Texas Historical Commission and the county historical commission may intervene and become parties to the suit. Unknown next of kin of deceased persons buried in the cemetery shall be served by publication of a notice in a newspaper of general circulation in the county in which the cemetery is located, or if there is not a newspaper of general circulation in the county, in a newspaper of general circulation in an adjacent county. A reasonable good faith effort shall be made to remove all remains and monuments from the cemetery or that portion of the cemetery for which the dedication is to be removed.

(c) The court shall order the removal of the human remains and the dedication on notice and proof satisfactory to the court that the removal is in the public interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 17, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [914](#), Sec. 10, eff. September 1, 2009.

Sec. 711.037. LIEN AGAINST CEMETERY PROPERTY. (a) A cemetery organization by contract may incur indebtedness as required to conduct its business and may secure the indebtedness by mortgage, deed of trust, or other lien against its property.

(b) A mortgage, deed of trust, or other lien placed on dedicated cemetery property, or on cemetery property that is later dedicated with the consent of the holder of the lien, does not affect the dedication and is subject to the dedication. A sale on foreclosure of the lien is subject to the dedication of the property for cemetery purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 18, eff. Sept. 1, 1993.

Sec. 711.038. SALE OF PLOTS. (a) A cemetery organization may sell and convey the exclusive right of sepulture in a plot:

(1) after a map or plat and a certificate or declaration of dedication are filed as provided by Section 711.034;

(2) subject to the rules of the cemetery organization and the restrictions in the certificate of ownership or other instrument of conveyance; and

(3) after payment in full of the purchase price of the plot.

(b) A certificate of ownership or other instrument evidencing the conveyance of the exclusive right of sepulture by a cemetery organization must be signed by the president or vice-president and the secretary or other officers authorized by the cemetery organization.

(c) A conveyance of the exclusive right of sepulture must be filed and recorded in the cemetery organization's office.

(d) A plot or a part of a plot that is conveyed as a separate plot by a certificate of ownership or other instrument may not be divided without the consent of the cemetery organization.

(e) A person is not required to be licensed to sell a plot in a dedicated cemetery.

(f) A cemetery organization may not resell the exclusive right of sepulture in a plot unless the exclusive right of sepulture has been reacquired by the cemetery organization. A sanction or other penalty may not be imposed on a cemetery organization that violates this subsection unless:

(1) the state agency authorized to enforce this section provides the cemetery organization written notice of the violation; and

(2) the cemetery organization does not correct the violation before the 91st day after the date on which the cemetery organization received the notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 19, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. [263](#), Sec. 5, eff. September 1, 2009.

- **Local example: Deed Record Vol. 503 Page 828**

*The County Clerk's office takes no responsibility of verifying the correctness or legality of the instruments contained in the records of the County Clerk of Clay County.*

*References given only as an example to the public.*

## Access to Cemetery

[HSC §711.041]

Allow public access and designate the reasonable route(s) to and from the cemetery. Access may be limited to reasonable hours and for purposes associated with cemetery visits. It is suggested that the cemetery be located next to a road which allows other individuals to come in and out of the cemetery more easily.

## Additional Information

Additional information can be found in Chapters 711 and 714 of the Texas Health & Safety Code (HSC), which may be requested from the Texas Department of Health, Bureau of Vital Statistics, at (512) 458-7393 or accessed at the following Internet web site address: <http://www.state.tx.us/Government/>

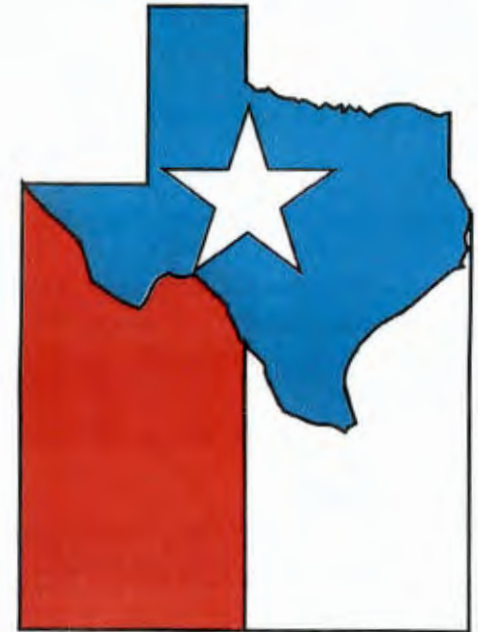
## Perpetual Care Cemeteries and Family Cemeteries Larger Than 10 Acres

For information on how to establish a perpetual care cemetery or family cemetery larger than 10 acres in Texas, see Chapter 712 of the Texas Health & Safety Code and/or contact the Texas Department of Banking, Special Audits Division, at (512) 475-1290 or access the following Internet web site address: <http://www.banking.state.tx.us/>



Texas Department of Health  
Bureau of Vital Statistics  
1100 West 49th Street  
Austin, TX 78756-3191

## How to Establish a Family Cemetery in Texas



*Have you ever considered establishing your own family cemetery, but did not know how to go about it?*

Texas Department of Health  
Bureau of Vital Statistics  
1100 West 49th Street  
Austin, Texas 78756-3191

These days, more and more Texans want the choice to be buried on their own land. This guide addresses some of the most common concerns regarding how to establish a family cemetery (not larger than 10 acres) in Texas.

## **Location of Cemetery**

[HSC §711.008]

Make sure the land, designated for cemetery purposes, is located relative to the nearest municipality, based on the census population of that municipality.

- For a municipality with a population of 5,000 to 25,000, a cemetery may not be established in or within 1 mile from its boundaries.
- For a municipality with a population of 25,000 to 50,000, a cemetery may not be established in or within 2 miles of its boundaries.
- For a municipality with a population of 50,000 to 100,000, a cemetery may not be established in or within 3 miles of its boundaries.
- For a municipality with a population of 100,000 to 200,000, a cemetery may not be established in or within 4 miles of its boundaries.
- For a municipality with a population of at least 200,000, a cemetery may not be established in or within 5 miles of its boundaries.

Exceptions include organized religious societies that wish to attach a columbarium to the primary church building and cemeteries that are already established and operating.

## **County Restrictions**

Contact county officials in which the land, designated for cemetery purposes, is located regarding any restrictions such as flood plain, subdividing land and platting requirements, drainage, underground cabling, deed restrictions, etc.

## **Dedication of Land**

[HSC §711.034]

Survey and subdivide the land, designated for cemetery purposes, into gardens or sections and make a map or plat that specifies where the plots are located on the land. File the map or plat, along with a written certificate or declaration of dedication of the land, that designates the land exclusively for cemetery purposes, with the office of the county clerk in which the land is located. The county clerk numbers and files the map or plat and records the certificate or declaration in the county deed records. The filing of the map or plat with the office of the county clerk makes other individuals aware of the location of the cemetery on the land.

## **Depth of Graves**

[HSC §714.001]

For burial, if the container is not made of an impermeable material, make sure the grave is deep enough so that the outside top surface of the container is at least 2 feet below the surface of the ground.

If the container is made of an impermeable material, make sure the grave is deep enough so that the outside top surface of the container is at least 1 1/2 feet below the surface of the ground.

These restrictions do not apply to burials in a sealed surface reinforced concrete burial vault.

## **Records of Interment**

[HSC §711.003]

Keep records of all burials in the cemetery. Each burial record should reflect at a minimum, the following information:

- the date the remains are received and interred;
- the name and age of the person interred, if known; and
- the identity of the plot in which the remains are interred.

It is suggested that the burial records be filed in the county deed records with the office of the county clerk in which the cemetery is located.