

### **Access to Cemetery**

[HSC §711.041]

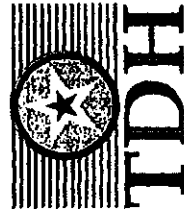
Allow public access and designate the reasonable route(s) to and from the cemetery. Access may be limited to reasonable hours and for purposes associated with cemetery visits. It is suggested that the cemetery be located next to a road which allows other individuals to come in and out of the cemetery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

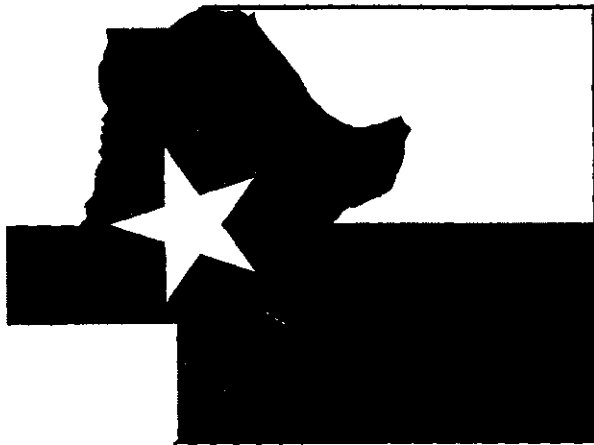


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Stock No. 19-2

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.

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# TEXAS CEMETERIES ASSOCIATION

## Establishing A Family Cemetery

Many people in the State of Texas are interested in establishing a family cemetery on their private property. The opportunity to be buried on their own land is very appealing to many Texans. This is certainly possible, but there are several guidelines that must be followed:

1. **Local regulations and restrictions:** Check with your local county or city government officials to determine if there are any rules or regulations that apply to your property. These could include restrictions such as flood plains, drainage, underground cabling or pipelines, deed restrictions or subdividing and platting requirements.
2. **Location of Cemetery:** Texas law requires that cemeteries be a certain distance outside of the local municipality based upon population. [Texas Health & Safety Code §711.008]
  - a. 5,000 to 25,000 people – must be located one (1) mile outside the municipal boundaries.
  - b. 25,000 to 50,000 people – must be located two (2) miles outside the municipal boundaries.
  - c. 50,000 to 100,000 people – must be located three (3) miles outside the municipal boundaries.
  - d. 100,000 to 200,000 people – must be located four (4) miles outside the municipal boundaries.
  - e. 200,000 + people – must be located five (5) miles outside the municipal boundaries.
3. **Dedication of Land:** Texas law requires that your survey and subdivide your acreage in to gardens or sections and make a map or plat that specifies where the plots are to be located on the property. You should file the map or plat along with a written certificate or declaration of dedication of the land dedicating the property exclusively for cemetery purposes with the office of the county clerk in which your land is located. The filing of the certificate of dedication makes other individuals aware of the location of the cemetery on the land. You can accomplish this requirement yourself and need not hire someone to do it. [Texas Health & Safety Code §711.034]
4. **Depth of Graves:** Texas law states that a body of a decedent may not be buried in a manner such that the outside top surface of the container of the body is: (i) Less than two (2) feet below the surface of the ground if the container is not made of an impermeable material; or (ii) less than 1- ½ feet below the surface of the ground if the container is made of an impermeable material). Follow this guideline carefully as violation of this law is a misdemeanor. [Texas Health & Safety Code §714.001]
5. **Records of Interment:** Keep records of all burials in the cemetery. Each record should reflect at least the following: (i) the date the remains are received and interred, (ii) the name and age of the person interred, if known; and (iii) 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 your land is located. [Texas Health & Safety Code §711.003]

6. Access to Cemetery: Texas law requires that any person who wishes to visit a cemetery or private burial grounds where there is no public access shall have the right to reasonable ingress and egress over your property to visit the cemetery during reasonable hours. [Texas Health & Safety Code §711.041]. The law also provides a process for negotiating a written agreement between the property owner(s) and those wishing access to a cemetery without public access that would be filed with and enforced by the Texas Funeral Service Commission. [Texas Administrative Code §205.2].

7. Other Considerations:

- a. Future Sale - remember, you are changing forever the character of the property you are dedicating as a cemetery. This may very well affect your ability or the ability of your descendants to sell this property in the future. Future owners will also be required to give reasonable public access to the cemetery.
- b. If you have neighbors, the presence of a cemetery may very well affect their property. The cemetery may affect the valuation of adjacent property, and the requirement that the public have reasonable access to the property might also affect adjacent property owners.
- c. If your property has a mortgage, make sure you consider any effects that establishing a cemetery may have on the mortgage holder.

**MARK YOUR CALENDAR**

September 29 - October 1, 2013  
Cemeteries Maintenance Conference  
Corpus Christi, Texas

.....  
December 17, 2013  
Crematory Training  
Omni Hotel Southpark  
Austin, Texas

**ROSTERS**

New rosters will be printed at the end of May. Check your listing and notify the TCA office of any changes or additions.

Call: 817.339.8210

Email:

Jim Kennerly  
jkennerly@txca.us

Jon Stephenson  
jstephenson@txca.us

**ASSOCIATION MEMBERS**

Please login to access the roster of officers, members, and committees. If you have forgotten your login, call Jim Kennerly @ 817-339-8210

Member Login

## ESTABLISHING A FAMILY CEMETERY

1. **Local regulations and restrictions:** Check with your local county or city government officials to determine if there are any rules or regulations that apply to your property. These could include restrictions such as flood plains, drainage, underground cabling or pipelines, deed restrictions or subdividing and platting requirements.
2. **Location of Cemetery:** Texas law requires that cemeteries be a certain distance outside of the local municipality based upon population. [Texas Health & Safety Code §711.008]
  - a. 5,000 to 25,000: – must be located one (1) mile outside the municipal boundaries.
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3. **Dedication of Land:** Texas law requires that your survey and subdivide your acreage in to gardens or sections and make a map or plat that specifies where the plots are to be located on the property. You should file the map or plat along with a written certificate or declaration of dedication of the land dedicating the property exclusively for cemetery purposes with the office of the county clerk in which your land is located. The filing of the certificate of dedication makes other individuals aware of the location of the cemetery on the land. You can accomplish this requirement yourself and need not hire someone to do it. [Texas Health & Safety Code §711.034]
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5. **Records of Interment:** Keep records of all burials in the cemetery. Each record should reflect at least the following: (i) the date the remains are received and interred, (ii) the name and age of the person interred, if known; and (iii) 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 your land is located. [Texas Health & Safety Code §711.003]
6. **Access to Cemetery:** Texas law requires that any person who wishes to visit a cemetery or private burial grounds where there is no public access shall have the right to reasonable ingress and egress over your property to visit the cemetery during reasonable hours. [Texas Health & Safety Code §711.041]. The law also provides a process for negotiating a written agreement between the property owner(s) and those wishing access to a cemetery without public access that would be filed with and enforced by the Texas Funeral Service Commission. [Texas Administrative Code §205.2].
7. **Other Considerations:**
  - a. **Future Sale** – remember, you are changing forever the character of the property you are dedicating as a cemetery. This may very well affect your ability or the ability of your descendants to sell this property in the future. Future owners will also be required to give reasonable public access to the cemetery.
  - b. If you have neighbors, the presence of a cemetery may very well affect their property. The cemetery may affect the valuation of adjacent property, and the requirement that the public have reasonable access to the property might also affect adjacent property owners.
  - c. If your property has a mortgage, make sure you consider any effects that establishing a cemetery may have on the mortgage holder.

SAMPLE

This certification should be attached to the map made from the survey of your property delineating your family cemetery and subdivided into sections or gardens with numbered plots.

STATE OF TEXAS        §  
   §  
COUNTY OF \_\_\_\_\_ §

SMITH FAMILY CEMETERY

CERTIFICATE OF DEDICATION

Pursuant to Texas Health & Safety Code §711.034, the undersigned Owner of the property shown on the map or plat attached hereto and identified as the "Smith Family Cemetery," hereby dedicates such property exclusively to cemetery purposes including any and all purposes necessary or incidental to establishing, managing operating and maintaining a cemetery for the interment of human remains.

The undersigned Owner hereby reserves the right to resurvey and change the size and shape of the property shown on the map or plat, and to amend such map or plat as authorized by Texas Health & Safety Code §711.034, and file an amended map or plat with the County Clerk.

EXECUTED EFFECTIVE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Owner

STATE OF TEXAS        §  
   §  
COUNTY OF \_\_\_\_\_ §

Before me, the undersigned authority, personally appeared \_\_\_\_\_, and acknowledged to me that \_\_\_he executed the foregoing instrument for the purposes and consideration therein stated.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

This certification is provided as a sample ONLY and does not constitute legal advice. You should consult your attorney before making any county filing.

\_\_\_\_\_  
Notary Public, State of Texas

My commission expires:  
\_\_\_\_\_

## Access to a Family Cemetery (Texas Law)

**Sec. 711.041 Texas Health & Safety Code: ACCESS TO CEMETERY.** (a) Any person who wishes to visit a cemetery or private burial grounds for which no public ingress or egress is available shall have the right to reasonable ingress and egress for the purpose of visiting the cemetery or private burial grounds. This right of access extends only to visitation during the hours determined by the owner or owners of the lands under Subsection (b) or at a reasonable time as provided by Subsection (c) and only for purposes usually associated with cemetery visits.

(b) The owner or owners of the lands surrounding the cemetery or private burial grounds may designate the routes of reasonable ingress and egress and reasonable hours of availability.

(c) At a time other than the time provided by Subsection (b), the owner or owners of the lands surrounding a cemetery or private burial grounds must allow a person to enter and exit the owner's land for the purpose of visiting the cemetery or private burial grounds if:

- (1) the person provides written notice to the owner or owners of the lands surrounding the cemetery or private burial grounds of the person's visit;
- (2) the person provides the notice required by Subdivision (1) not later than the 14th day before the date the person wishes to visit the cemetery; and
- (3) the time of the visit is reasonable.

### **RULE §205.2 Texas Administrative Code: Ingress and Egress to Cemeteries and Private Burial Grounds Which Have No Public Ingress or Egress**

(a) Section 711.012(b), Texas Health and Safety Code, authorizes the Texas Funeral Service Commission (commission) to promulgate rules to effectuate §711.041, Texas Health and Safety Code.

(b) Section 711.041(a), Texas Health and Safety Code, provides that any person who wishes to visit a cemetery or private burial grounds for which no public ingress or egress is available shall have, for the purposes usually associated with cemetery visits and during reasonable hours, as determined under §711.041(b), Texas Health and Safety Code, the right to reasonable ingress and egress for the purpose of visiting the cemetery or private burial grounds.

(c) Section 711.041(b), Texas Health and Safety Code, provides that the owner or owners of lands surrounding a cemetery or private burial grounds may designate the route or routes of reasonable ingress and egress and reasonable hours of availability.

(d) The term "owner or owners of lands surrounding a cemetery or private burial grounds" as used in §711.041(b), Texas Health and Safety Code, means any person, persons, entity, or entities that own lands that lie between a public road and a cemetery or private burial grounds that has no public ingress or egress irrespective of whether such lands are contiguous to the cemetery or private burial grounds or to the public road.

(e) The commission finds that the term "reasonable hours" as used in §711.041(b), Texas Health and Safety Code, should be interpreted to mean 8:00 a.m. to 5:00 p.m. on any day of the week. It is provided, however, that the hours during the day and the days of the week during which ingress and egress shall be allowed may be more particularly circumscribed by an agreement reached or an order entered pursuant to subsections (i) - (n) of this section.

(f) The phrase "purposes usually associated with cemetery visits" as used in §711.041(1), Texas Health and Safety Code, means a visit by any person or group of persons for the purpose of interring a person or persons in a cemetery or private burial grounds or for the purpose of paying respect to a person or persons interred in a cemetery or private burial grounds.

(g) The use by the Texas Legislature of the word "reasonable" in the phrase "designate the routes of reasonable ingress and egress" as set out in §711.041(b), Texas Health and Safety Code, means:

(1) that an "owner or owners of land surrounding the cemetery or private burial grounds" may not designate a route or routes of ingress and egress that discourages visits to a cemetery or private burial grounds during "reasonable hours" for the "purposes usually associated with cemetery visits" as defined in subsections (e) and (f) of this section; and

(2) that an "owner or owners of land surrounding a cemetery or private burial grounds" may not thwart the right of ingress and egress guaranteed by §711.041, Texas Health and Safety Code, by the imposition of liability insurance or other indemnification requirements that render impractical or impossible visits during "reasonable hours" for the "purposes usually associated with cemetery visits" as defined in subsections (e) and (f) of this section.

(h) Within the framework provided by subsections (d) - (g) of this section, persons or entities that are interested in establishing a visitation schedule and a route or routes of reasonable ingress and egress with respect to a particular cemetery or private burial grounds shall make contact with and negotiate with each owner or owners of lands that surround the cemetery or private burial grounds for the purpose of agreeing to and reducing to writing the visitation schedule and route or routes of reasonable ingress and egress to a cemetery or private burial grounds for which no public ingress and egress is available. The person or entities making contact with the owner or owners of land that surround such a cemetery or private burial grounds shall inform the executive director of the commission that such contact is being initiated.

(i) If the parties reach agreement during the negotiations prescribed by subsection (h) of this section, the persons or entities making contact with the owner or owners of lands shall file a written agreement signed by all parties with the executive director of the commission.

(j) If the parties cannot reach agreement during the negotiations prescribed by subsection (h) of this section, any party to the negotiations may request of the executive director of the commission that the dispute be mediated pursuant to the commission's alternate dispute resolution policy and procedure as set out in §207.1, of this title (relating to Examining Boards).

(k) If the mediation is successful, the mediated agreement shall be reduced to writing and filed with the executive director of the commission.

(l) If the mediation is not successful, the executive director shall propose to the commission the adoption of an order setting out a reasonable visitation schedule and a route or routes of reasonable ingress to the cemetery or private burial grounds for which no public ingress or egress is available.

(m) Notice and a copy of the proposed order will be sent by certified mail to all interested parties no less than 30 days prior to the commission meeting at which the adoption of an order will be considered. At the meeting at which the adoption of an order will be considered, each affected party will be given an opportunity to offer testimony with respect to the proposed order. Subject to expansion by the commission on the day of the meeting, time limits on testimony shall be set by the executive director in the notice accompanying a copy of the proposed order.



(n) After consideration of the proposed order and any testimony taken, the commission may adopt the order as proposed, may adopt the order with changes, or may defer action to a future meeting. An order adopted by the commission under this section is final as of the date of the commission's adoption of the order, as proposed or with changes, at a meeting. A copy of the commission's final order will be sent to the parties by certified mail.

### **Alternate Dispute Resolution policy and procedure of the Texas Funeral Service Commission**

#### **RULE §207.1 Texas Administrative Code**

(a) Policy. The Texas Funeral Service Commission encourages the resolution and early settlement of all contested matters through voluntary settlement procedures. Commission employees shall implement this policy.

(b) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ADR--Alternative Dispute Resolution.

(2) Alternative dispute resolution director or ADR procedure--A non-judicial and informally conducted forum for the voluntary settlement of contested matter through intervention of an impartial third party.

(3) Alternative dispute resolution director or ADR director--The director of the agency office empowered by the commission to coordinate and oversee ADR procedures and mediators.

(4) Contested matter--A request for an order or other formal or informal authorization from the commission that is opposed.

(5) Mediator--The person appointed by the ADR office director to preside over ADR proceedings regardless of which ADR method is used.

(6) Parties--The agencies, employees, managers, supervisors or customers who are in conflict.

(7) Participants--The executive director, the agency legal counsel, the complainant, the respondent, the person who timely filed hearing requests which gave rise to the dispute or if parties have been named, the named parties.

(8) Private mediator--A person in the profession of mediation who is not a Texas state employee and who has met all the qualifications prescribed by Texas law for mediators.

(c) Referral of Contested Matter for Alternative Dispute Resolution Procedures. The commission or the ADR director may seek to resolve a contested matter through any ADR procedure. Such procedures may include, but are not limited to, those applied to resolve matters pending at the State Office of Administrative Hearing (SOAH) and in the state's district courts.

(d) Appointment of Mediator.

(1) For each matter referred for ADR procedures, the ADR director shall assign a mediator, unless the participants agree upon the use of a private mediator. The ADR director may assign a substitute or additional mediator to a proceeding as the ADR director deems necessary.

(2) A private mediator may be hired for commission ADR procedures provided that:

(A) the participants unanimously agree to use a private mediator;

(B) the participants unanimously agree to the selection of the person to serve as the mediator;

(C) the mediator agrees to be subject to the direction of the commission's ADR director and to all time limits imposed by the director, the judge, statute or regulation.

(3) If a private mediator is used, the costs for the services of the mediator shall be apportioned equally among the participants, unless otherwise agreed upon by the participants, and shall be paid directly to the mediator. In no event, however, shall any such costs be apportioned to a governmental subdivision or entity that is a statutory party to the hearing.

(4) All mediators in commission mediation proceedings shall subscribe to the ethical guidelines for mediators adopted by the ADR Section of the State Bar of Texas.

(e) Qualifications of Mediators.

(1) The commission shall establish a list of mediators to resolve contested matters through ADR procedures.

(A) To the extent practicable, each mediator shall receive 40 hours of formal training in ADR procedures through programs approved by the ADR director.

(B) Other individuals may serve as mediators on an ad hoc basis in light of particular skills or experience which will facilitate the resolution of individual contested matters.

(2) SOAH mediators, employees of other agencies who are mediators and private pro bono mediators may be assigned to contested matters as needed.

(A) Each mediator shall first have received 40 hours of Texas mediation training as prescribed.

(B) Each mediator shall have some knowledge in the area of the contested matter.

(C) If the mediator is a SOAH judge, that person will not also sit as the judge for the case if the contested matter goes to public hearing.

(f) Commencement of ADR.

(1) The commission encourages the resolution of disputes at any time, whether under this policy and procedure or not. ADR procedures under this policy may begin, at the discretion of the ADR director, anytime once deemed administratively complete and at least one letter of appeal has been filed with commission.

(2) Upon unanimous motion of the parties and the discretion of the judge, the provisions of this subsection may apply to contested hearings. In such cases, it is within the discretion of the judge to continue the hearing to allow use of the ADR procedures.

(g) Stipulations. When ADR procedures do not result in the full settlement of a contested matter, the participants, in conjunction with the mediator, shall limit the contested issues through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the judge assigned to conduct the hearing on the merits and shall be included in the hearing record.

(h) **Agreements.** Agreements of the participants reached as a result of ADR must be in writing and are enforceable in the same manner as any other written contract.

(i) **Confidentiality of Communications in Alternative Dispute Resolution Procedures.**

(1) Except as provided in subsections (3) and (4) of this section a communication relating to the subject matter made by the participant in an ADR procedure whether before or after the institution of formal proceedings, is confidential, is not subject to disclosure and may not be used as evidence in any further proceedings.

(2) Any notes or record made of an ADR procedure are confidential, and participants, including the mediator, may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(3) An oral communication or written material used in or made a part of and ADR procedure is admissible or discoverable independent of the procedure.

(4) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the judge to determine, in camera, whether the facts, circumstances and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure.

(5) The mediator may not, directly or indirectly, communicate with the judge or any commissioner, of any aspect of ADR negotiations made confidential by this section.

