

# **A BRIEF OVERVIEW OF CEMETERY LAW IN TEXAS**

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[A Brief Overview of Cemetery Law in Texas by Donald Ray Burger, Attorney, Houston, TX](#)

A cemetery is a place that is used for internment, either in graves or mausoleums. Under Texas statutes, the tract of land that is used or intended to be used for internment in graves is called a "burial park." Health & Safety Code § 711.001(1). Cemeteries can be regulated under state, municipal, and county regulations. Cemeteries are exempt from taxation, seizure by creditors, and eminent domain (§ 711.035).

Once a parcel of land is a cemetery, it stays a cemetery so long as the bodies remain. The location of cemeteries is regulated by § 711.008. The rule effectively prevents the creation of new cemeteries within city limits. Cemeteries existing as of 1993 are exempt from this rule. There are other narrow exceptions, such as for cemeteries attached to church property. However, the basic rule is that new cemeteries must be outside the city limits. How far out depends on the size of the city. Cemeteries cannot be within:

one mile of cities with a population of 5,000 to 25,000;  
two miles of cities with a population of 25,000 to 50,000;  
three miles of cities with a population of 50,000 to 100,000;  
four miles of cities with a population of 100,000 to 200,000; and  
five miles of cities with a population of over 200,000.

According to § 711.021(a), only corporations specifically organized to operate cemeteries can be in the cemetery business. The corporations are called cemetery organizations. Specifically, individuals, regular corporations, partnerships, and trusts cannot operate cemeteries. Exceptions to this section are created for (1) a family, fraternal, or community cemetery 10 acres or less; (2) an unincorporated association of plot owners not operated for profit; (3) churches; and (4) a public cemetery belonging to the state, or a county or municipality. (§711.021(g)).

A corporation conducting cemetery business can be either a "for profit" or a "non-profit" corporation. Cemetery corporations formed after September 1, 1993, must operate perpetual care cemeteries unless the cemetery is a family, fraternal, or community cemetery under ten acres (§711.021(g)(1)) or an unincorporated association of plot owners not operated for profit (§711.021(g)(2)) or a cemetery operated by a church, religious society, or denomination.

(§711.021(g)(3)).

Cemetery organizations may not adopt or enforce a rule that prohibits internment because of race, color, or national origin of a decedent (§ 711.032).

The requirements as to cemetery organizations for the "layout" of cemeteries are controlled by § 711.034. The land must be divided into gardens or sections, and a map made showing the plots contained within the boundaries, with specific numbers assigned to each plot. The map shall be filed with the county clerk.

The public has the right to reasonable ingress and egress to all cemeteries for purposes of visiting the cemetery (§ 711.041).

Violations of the regulations in Chapter 711 are Class A misdemeanors (§ 711.052).

Chapter 712 sets out the rules for the operation of perpetual care cemeteries. The requirements do not apply to family, fraternal, or community cemeteries. Nor does it apply to special non-profit associations of plot owners, or churches or religious societies. Basically, perpetual care cemeteries must have a trust fund established in a trust company or bank (§712.021). The principal of the fund may not be reduced voluntarily. Section 712.003 sets out the minimum capital requirements (ranging from \$15,000 to \$75,000, depending upon the population of the municipality served). Section 712.004 sets out the amounts needed in the initial trust fund (ranging from \$15,000 to \$50,000).

The statute (§ 712.028) sets out the amounts the corporation shall deposit in its fund from sales. Various reports on the funds are also required (§§ 712.041 and 712.043). Penalties for violations are both monetary (up to \$1,000 per day) and criminal.

Chapter 713 deals with county regulations of cemeteries. The first part of Chapter 713 deals with cemeteries operated by municipalities. The second part of Chapter 713 discusses cemeteries operated by counties.

Chapter 714 establishes the depth of graves, which varies based on the type of container. Interestingly, graves do not have to be six feet deep (§ 714.001) The requirement is that the top of the "container of the body" must be at least two feet below the surface if the container is not made of "impermeable" material and at least 1-1/2 feet below the surface if the container is impermeable.

Chapter 715 deals with historic cemeteries and discusses the role of non-profit corporations to restore, operate, and maintain historic cemeteries.

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