

To Whom Will Your Burial Plots Pass Upon Death?

At first contemplation of this issue, your immediate answer might be that the plots should pass according to the terms of your Last Will and Testament. Or, perhaps, if you do not have a Will, according to the heirship laws in the State of Texas. But upon further digging into the matter, one learns that is not necessarily always the case.

In Texas, the Health and Safety Code, along with the contract you have signed with the cemetery association which governs the cemetery where the plots are located, controls who receives your unused burial plots upon your death.

Surprisingly, it is difficult to effectively transfer your burial plots in your Will upon your death. The Texas Health and Safety Code Section defines a burial plot to be a space in a cemetery owned by an individual or organization that is used or intended to be used for interment, including a grave, or adjoining graves, a crypt or adjoining crypts, a lawn crypt or adjoining lawn crypts, or a niche or adjoining niches. During lifetime, one may leave his or her unused burial plots to specific beneficiaries in a Will as long as the Testator has made a specific disposition of the plot by express reference to the plot in the Will. Alternatively, one may execute a written declaration with the same specificity, filed and recorded in the cemetery association's office, naming the beneficiary of the plot upon death.

If neither of these options are chosen during the lifetime of the burial plot owner then the burial plots pass pursuant to cemetery law under the Texas Health and Safety Code by an automatic right of interment. Texas' automatic right of interment states that the plots pass first to your surviving spouse, otherwise to your children on a first come, first need basis and then finally to your heirs at law.

One way to avoid having to specifically mention your burial plots in your Will or other written declaration and also avoid being forced to rely on the automatic right of interment in Texas, is to deed your unused burial plots to your intended beneficiaries during your lifetime. However, even though a burial plot is real property, its ownership is not conveyed by filing a deed in the real property records in the county in which the burial plots are located. Rather, a burial plot deed is recorded with and controlled by the records of the cemetery organization which govern the cemetery where the plot is located. Even then to effectuate the transfer of burial plots, a surviving spouse and the original plot owner's children will have to agree to the transfer of the plots because of their exclusive right to sepulture meaning, burial, due to Texas' automatic right of interment.

Many times burial plots are not specifically mentioned in a Will or other document nor are they transferred during the lifetime of the owner. Often, burial plots just keep descending down generation to generation to the heirs of the original owner. This can lead to confusion as to who has the right to be buried in the plots. It can also make the plots difficult to sell.

It is worthy to note, if a burial plot in a private cemetery is unoccupied and abandoned for failure to maintain or pay assessments for maintenance for ten years, the ownership or right to be buried reverts to the cemetery on a finding of abandonment by a court.

You may visit our website at www.wrightabshire.com. Wesley E. Wright and Molly Dear Abshire are attorneys with the firm Wright Abshire, Attorneys, P.C., with offices in Bellaire, the Woodlands, and Carmine. Both are Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and are certified as Elder Law Attorneys by the National Elder Law Foundation. Nothing contained in this publication should be considered as the rendering of legal advice to any person's specific case, but should be considered general information.