

Burial Arrangements and Memorialization



New York law sets the order of people who have the legal right to make arrangements for final disposition (burial, entombment, cremation). The following people, in this order, can decide the final disposition arrangements for the deceased:

1. the person chosen in writing by the deceased through a will or through a form created by the New York State Department of Health for this purpose, that can be found here: <https://www.health.ny.gov/forms/doh-5211.pdf>;
2. the spouse;
3. the domestic partner;
4. any child who is at least 18 years old;
5. either parent;
6. any sibling who is at least 18 years old;
7. a legal guardian appointed under certain laws;
8. any person who is at least 18 years old who would be entitled to share in the deceased person's estate as specified in section 4-1.1 of the New York Estates, Powers and Trusts Law (<https://www.nysenate.gov/legislation/laws/EPT/4-1.1>), with the person closest in relationship having the highest priority;
9. a fiduciary of the estate;
10. a close friend or relative who is reasonably familiar with the deceased's wishes, including religious or moral beliefs, when no one higher on this list is reasonably available, willing, or competent to act; to handle final disposition, this person must complete a written statement; or
11. a chief fiscal officer of a county or a public administrator appointed under certain circumstances or any other person acting on behalf of the deceased, provided that such person gives a written statement.

These rules also govern who has the right to memorialize the deceased. The right of memorialization means that person can decide what memorial or structure will be placed on the final resting place and what it will say, limited by whatever rules the cemetery has for memorials. Other consents may be required to change a shared memorial on a multi-grave plot



Cemeteries may provide a number of different types of final resting places, such as a grave where remains (bodies or cremated remains) are buried in the ground, a mausoleum for above-ground entombment of full-body remains, and a columbarium for above-ground inurnment of cremated remains. A cemetery might also have a scattering garden where cremated remains of unrelated people can be scattered or an ossuary which is structure in which cremated remains are poured and commingled. This discussion does not address scattering gardens or ossuaries.

When a cemetery sells a final resting place, it is not selling real estate. Instead, it is selling the right of interment (which refers here to either below-ground or above-ground placement of remains) as well as the right to have a memorial.

Public cemeteries must make their price list available and file it with the New York State Department of State, Division of Cemeteries. Different final resting places can have different prices and may hold different numbers and types of remains. When you purchase a final resting place, the cemetery must provide you with a receipt, a deed and a copy of the cemetery's rules and regulations (sometimes contained in a signed contract). The "rules and regulations" of the cemetery describe the rights of lot owners, including rules about memorials, decorations and embellishments. Public cemeteries must sell a final resting place to any person but are not required to sell more than one final resting place to any one person. Certain public cemeteries restrict burial to persons of a particular religious faith.

The person who pays for the final resting place does not have to be the lot owner. Also, there can be more than one lot owner. The buyer(s) of the grave should decide who the owners will be and clearly communicate that to the cemetery. The lot owner can put in writing whose remains can be placed in the final resting place. For this to be effective, it must either be filed with the cemetery or included in the lot owner's will. The writing must meet certain legal requirements; check with your attorney or the cemetery before signing such a document. Spouses, children and parents of a lot owner often have burial rights regardless of whether they are named in a written designation.

If a final resting place is owned by multiple people, the group of lot owners may file a sworn affidavit with the cemetery listing the names and addresses of all the lot owners. When the group of lot owners inherits the final resting place, this is called an Affidavit of Heirship. All of the lot owners must sign the affidavit. If the affidavit appears to be proper and complete, the cemetery is permitted to rely on it. Also, a group of lot owners can file a written designation with cemetery designating a single person who may represent all the lot owners and be responsible for decisions about and control over the final resting place. If the lot owners do not designate someone in writing, the cemetery can choose who it will treat as the representative of the group. Finally, all of the owners can file a written designation reserving specific graves for specific individuals.

The issues of who owns a final resting place, whose remains get placed in it, and who gets to make that decision may become very complicated. This is only a very brief outline of the basic rules and should not be viewed as a complete discussion of these issues. The cemetery and the Division of Cemeteries can provide some additional assistance, but sometimes retaining an attorney is needed to be sure that you understand all your rights and the rights of others.

Cemetery Prices, Charges, Rules, and Regulations



Public cemeteries must make their price list available and file it with the New York State Department of State, Division of Cemeteries, but the Division of Cemeteries does not review or approve prices. Different final resting places can have different prices and may hold different numbers and types of remains.

Cemeteries must set service charges. The most common service charges are interment (opening), pouring a foundation, and cremation. The Division of Cemeteries, working for the Cemetery Board, must review and approve cemetery service charges. These charges must be fair and reasonable.

Cemeteries must make rules for:

1. the use, care, management, and protection of the cemetery;
2. the dividing marks between in-ground burial spaces;
3. the kinds of structures allowed;
4. preventing unsightly monuments and structures;
5. plants, trees, and shrubs;
6. preventing burials that are not allowed;
7. removing remains from a final resting place;
8. regulating visitors' behavior while at the cemetery; and
9. activities, meetings, and groups that are not allowed.

The Division of Cemeteries, working for the Cemetery Board, must review and approve cemeteries' rules and proposed changes to those rules.

ABOUT CEMETERIES IN NEW YORK STATE

Endowed or Perpetual Care



**Division of
Cemeteries**

All cemeteries must cut the grass on all graves and provide some degree of maintenance to other types of final resting places. Some cemeteries also sell “endowed” or “perpetual” care services. This means the buyer pays money to the cemetery and the cemetery holds that money and invests it. The cemetery may use the income on that trust, but not the principal, to pay for care beyond basic grass cutting, such as trimming plantings or cleaning the monument. The contract between the cemetery and the buyer will show what care will be provided.

The term “perpetual care” can be confusing. When a family has bought perpetual care, the cemetery must provide care only when the income on the trust (meaning interest and dividends) is large enough to cover the cost of caring for the space. Where the perpetual care account does not generate enough income to cover the cost of care, the cemetery may ask, but may not require, the family to increase the amount of money in the account. If the family does not increase the amount of money the cemetery may stop providing care shown in the contract.

For more information about cemetery regulation in New York, the Department of State Division of Cemeteries, and the State Cemetery Board go to <https://dos.ny.gov/cemetery-disclosures-and-information>

Final Disposition Options and Disinterment



Cemeteries may provide a number of different types of final resting places, such as a grave where remains (bodies or cremated remains) are buried in the ground, a mausoleum for above-ground entombment of full-body remains, a columbarium for above-ground inurnment of cremated remains. Not every cemetery has all of these options. If cremated remains are commingled by being placed in an ossuary or scattered in a scattering garden, there is typically no lot owner.

When a cemetery sells a final resting place it is not selling real estate. Instead, it is selling the right of interment (which refers here to either below-ground or above-ground placement of remains) and the right to have a memorial.

When you purchase a final resting place, it is important to know how many remains and what type (full body or cremated) may be placed in it. This will depend on the cemetery's rules and regulations, the contract of sale, and the deed for the final resting place.

Some other important things to know:

- cemeteries must be open for interments at least six days per week.
- a cemetery is not required to perform a burial during severe weather. If there is severe weather, the body will be placed in storage until weather permits the burial to take place.
- if a request is made for interment on a day that the cemetery and its staff recognize as a holiday, the cemetery must make every effort to conduct the interment on that day but may charge extra for holiday burials.
- some human cemeteries allow for the interment of pet cremated remains along with the remains of the pet owner. Cemeteries that allow this will have specific rules and fees for this service.
- a cemetery may refuse a request to inter remains if there is an unpaid balance or if the interment would violate the cemetery's rules.

Disinterment or removal is the process by which remains that are in their final resting place in a cemetery are moved. Before remains can be moved, everyone who has the legal right to either consent or object must consent in writing. This includes the lot owner or owners and certain close family members. Also, the cemetery where the remains are located must consent. If anyone whose consent is required does not consent, then the person seeking to move the remains must start a court proceeding. There are very specific requirements for such a proceeding; you should consider consulting a lawyer. Remains that have been placed in an ossuary or scattered in a scattering garden cannot be disinterred or removed.

Outer Enclosures



A cemetery may have rules that require a cement vault or grave liner for burials. If a cemetery requires a vault or liner it must tell a customer in writing before a customer agrees to buy a grave. A cemetery may not require this if:

1. the customer bought the grave before January 1, 1985;
2. the cemetery's rules did not require vaults or grave liners when the grave was purchased; or
3. there is a religious objection to the vault or liner. If that happens the cemetery must allow the burial without a vault or liner. But it may charge an extra fee for refilling the grave over time.

Cemeteries may not sell concrete vaults but may sell grave liners. The main differences between vaults and liners is that vaults seal and liners must have two holes in the bottom. Vaults generally cost more than grave liners.

Some cemeteries also sell lawn crypts, which are essentially graves with something similar to a vault pre-installed by the cemetery.



When a cemetery sells a final resting place it is not selling real estate. Instead, it is selling the right of interment (which refers here to either below-ground or above-ground placement of remains) as well as the right to have a memorial. People who have bought or inherit a final resting place in a public cemetery, such as a grave or space in a mausoleum or columbarium, are “lot owners,” which gives them certain rights concerning that space. In addition, lot owners are members of the cemetery corporation.

Public cemeteries must have annual meetings of their lot owners. The meeting must take place at the time and place identified in the cemetery’s certificate of incorporation or by-laws. Cemeteries also usually give notice of the meeting by publishing notice in a newspaper or other regular publication. Cemeteries must also post the notice on their website if they have one. At these meetings, each “lot” gets one vote. If a lot has more than one owner, the owners must designate in writing which one of them gets to vote. A lot owner or group of lot owners can also designate someone else to vote for them by a signed document called a proxy. It takes only five lot owners who have the right to vote to have enough people present (a quorum) to conduct the meeting, unless the cemetery’s bylaws or certificate of incorporation requires more.

At the annual meeting the lot owners vote to fill positions on the board of directors. Lot owners themselves can be members of the board of directors (some cemeteries require that all directors must be lot owners). Lot owners also might be asked to vote on changes to the by-laws or on other major decisions of the cemetery at the annual meeting. At the annual meeting, the board of directors must provide a report on finances and membership.

In addition to the annual meeting a cemetery may call a special meeting of the lot owners. When a special meeting is called, it is usually because the matter is urgent and cannot wait for the annual meeting. A special meeting can also be called by the lot owners themselves if at least ten percent of all lot owners who have the right to vote request it. Special meetings are usually held at the same place as the annual meeting.

A non-profit corporation that has members generally must keep business records at its main office, such as: its books and records of accounts; minutes of the meetings of its members, its board of directors and its executive committee if it has one; and a list of its members and certificate holders (special types of creditors). A lot owner who has been a lot owner for at least six months can request the right to examine the following records and copy information from them:

- the cemetery’s minutes of lot owner meetings;
- the list or record of members (lot owners); and
- the cemetery’s annual balance sheet and profit and loss statement or similar financial statement for the preceding fiscal year as well as any interim balance sheet or profit and loss or similar financial statement.

In addition, lot owners who have purchased perpetual care for the lot(s) they own or who has otherwise provided trust funds to the cemetery may inspect and copy the record pertaining to that perpetual care or trust fund.

Transferring a Final Resting Place



Cemeteries may provide a number of different types of final resting places, such as a grave where remains (bodies or cremated remains) are buried in the ground, a mausoleum for above-ground entombment of full-body remains, and a columbarium for above-ground inurnment of cremated remains. When a cemetery sells a final resting place, it is not selling real estate, it is selling the right of interment (which refers here to either below ground or above ground placement of remains) as well as the right to have a memorial. The person who owns these rights is called the lot owner.

Lot ownership can be transferred to another person in a number of ways: by gift; by the death of the lot owner; or by a sale of the final resting place. A lot owner who wants to give a final resting place as a gift should contact the cemetery to arrange for a change of ownership; the cemetery is allowed to inquire whether the gift is really a disguised sale.

When a lot owner dies, the final resting place and all lot owner rights will transfer to (1) a person specifically named in the lot owner's will; (2) the lot owner's descendants (children, grandchildren, etc.); (3) the lot owner's spouse if there are no descendants; or (4) other relatives designated by law if there are no descendants or spouse.

Selling a final resting place is much more complicated. It is generally against the law to purchase a final resting place for the purpose of reselling it. If you purchase a final resting place and later realize neither you nor any of your family will use it, you may be permitted to sell it if no burials have occurred. Before you can sell a final resting place you must first offer it back to the cemetery in writing by registered or certified mail. The cemetery should also respond in writing. If the cemetery agrees to buy it back and offers at least the original purchase price plus four percent simple (i.e., not compounded) annual interest from the date of purchase, you cannot sell it to anyone else (but you can decide not to sell it at all rather than sell it to the cemetery at that price). If the cemetery does not offer at least that sum, you have one year to try to sell it to someone else at any price you and that other person agree to. You may not sell the final resting place through a broker and may not sell to a funeral director. A cemetery does not have to buy graves back from lot owners.

Different rules can apply when a final resting place is owned by more than one person. There are different ways people can own property together: as tenants in common; as joint tenants; or, if they are a married couple, as tenants by the entirety. Each type of multiple ownership has different rules that can be very complex. People who own property together as tenants in common do not inherit the other person's rights in the property when that person dies. People who own property together as either joint tenants or tenants by the entirety generally do inherit rights from each other. If you own a final resting place with other people, you should check with the cemetery and also consider speaking with a lawyer before making any type of transfer.