

Texas Laws and Regulations Governing Cemetery Brokers

The following is a restatement of the relevant sections of the Texas Health and Safety Code and the Texas Administrative Code which are applicable to Texas cemetery brokers. The statutory provisions were added by Act of May 17, 2013, 83rd Leg., R.S., H.B. 52. Parts of the new law became effective on September 1, 2013. Other parts became effective on January 1, 2014. The new Chapter 24 (Cemetery Brokers) of Part 2 of Title 8 of the Texas Administrative Code was adopted at 38 Tex. Reg. 9485, and became effective on January 1, 2014.

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TEXAS HEALTH AND SAFETY CODE

TITLE 8

DEATH AND DISPOSITION OF THE BODY

SUBTITLE C:

CEMETERIES AND CREMATORIES

Chapter 711. General Provisions Relating to Cemeteries

Subchapter A.

General Provisions

(Containing Sections 711.001 through 71.012)

(Sections 711.013 through 711.020 are reserved for expansion.)

§711.001. Definitions

In this chapter:

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- (2-b) “Cemetery broker” means a person who sells the exclusive right of sepulture for another person. The term does not include a person who:
- (A) is an officer, agent, or employee of the cemetery organization in which the plot is located and who is exempt from registration under Subchapter C-1; or
 - (B) originally purchased the exclusive right of sepulture for personal use.

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Subchapter C.

Cemetery Organizations

(Containing Sections 711.031 through 71.042.)

(Sections 711.043 through 711.044 are reserved for expansion.)

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§711.038. Sale of Plots by Cemetery Organizations

- (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 who is an officer, agent, or employee of the cemetery organization or its affiliate and who is exempt from registration under Subchapter C-1 is not required to be licensed or registered 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.

§711.0381. Sale or Resale of Plots by Certain Persons

- (a) A person may not act as a cemetery broker in the sale or resale of the exclusive right of sepulture in a plot unless the person is registered as a cemetery broker under Subchapter C-1 or is exempt from registration under Subchapter C-1.

- (b) Resale of the exclusive right of sepulture in a plot is subject to the rules of the cemetery organization and any restrictions in the certificate of ownership, quitclaim agreement, or other instrument of conveyance. A quitclaim agreement or other instrument evidencing the conveyance of the exclusive right of sepulture must be:
 - (1) in a form authorized by or otherwise acceptable to the cemetery organization, subject to Subsection (c);
 - (2) signed by:
 - (A) the grantee named in the certificate of ownership or other instrument of conveyance as filed and recorded in the cemetery organization's office in accordance with Section 711.038 or 711.039(g)(2), as the seller or transferor;
 - (B) the designated purchaser or transferee; and
 - (C) each cemetery broker or other agent assisting in the transfer of the interment rights; and
 - (3) filed and recorded with the cemetery organization not later than the third business day after the date of the sale.
- (c) On request of a person acting as a cemetery broker, a cemetery organization shall provide its rules, conveyance forms, and written guidelines and procedures for brokered sales, if any.
- (d) The resale of the exclusive right of sepulture in a group of interment rights that were conveyed collectively may not be divided without the consent of the cemetery organization.
- (e) A person acting as a cemetery broker that sells or resells the right of sepulture in a plot shall collect and remit to the cemetery organization:
 - (1) all fees required by law; and
 - (2) any other fee required by the rules of the cemetery organization, subject to Subsection (f).
- (f) A fee required by a rule of the cemetery organization for the sale or resale of the right of sepulture in a plot under this section may not exceed the fee

charged by the cemetery organization on the sale of the right of sepulture in a plot under Section 711.038.

- (g) A person acting as a cemetery broker must keep a record of each sale or resale under this section. The record must include:
- (1) the name and address of the purchaser;
 - (2) the date of the purchase;
 - (3) a copy of the purchase agreement, with the name and address of the cemetery;
 - (4) a specific description of the interment rights;
 - (5) the purchase price;
 - (6) the amount of fees collected and remitted in accordance with Subsection (e); and
 - (7) information on the disposal of the purchase agreement, including whether the agreement was conveyed, canceled, or voided.

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Subchapter C-1.
Cemetery Broker Registration
(Containing Sections 711.045 through 71.049.)
(Section 711.050 is reserved for expansion.)

§711.045. Definitions

In this subchapter:

- (1) “Commission” means the Finance Commission of Texas.
- (2) “Commissioner” means the banking commissioner of Texas.
- (3) “Department” means the Texas Department of Banking.

§711.046. Cemetery Broker Registration

- (a) To register under this subchapter, a cemetery broker shall file with the department a sworn, notarized statement that contains:
 - (1) the name and street address of the cemetery broker;
 - (2) the name, street address, and telephone number of the representative of the cemetery broker to be contacted regarding a written complaint; and
 - (3) any Internet or other electronic mail address of the cemetery broker.
- (b) The registration of a cemetery broker is valid until withdrawn or revoked. Periodic renewal of the registration is not required.
- (c) A registered cemetery broker shall update the information contained in the registration statement not later than the 60th day after the date the information changes.
- (d) The department may charge a cemetery broker a reasonable fee to cover the costs of filing and maintaining the registration statement and administering this chapter. The administration fee may not exceed \$ 100 per year.

§711.047. Exemptions

This subchapter does not apply to a person offering to sell or selling the exclusive right of sepulture in a plot if the person is:

- (1) an officer, agent, employee, or affiliate of the cemetery organization in which the plot is located, acting at the direction or under the control of the cemetery organization;
- (2) an employee of a registered cemetery broker;
- (3) with respect to the specific plot for sale:
 - (A) a grantee named in the certificate of ownership or other instrument of conveyance for the plot as filed and recorded in the cemetery organization's office under Section 711.038;
 - (B) a spouse or other heir of the named grantee as described by Section 711.039;
 - (C) an executor, administrator, or guardian of the named grantee appointed by court order; or

- (D) an attorney-in-fact for the named grantee under a durable power of attorney if the person is not otherwise engaged in the business of a cemetery broker and does not solicit appointment as attorney-in-fact for the purpose of offering to sell or selling the exclusive right of sepulture of the named grantee; or
- (4) otherwise exempt in accordance with rules adopted by the commission as necessary to protect the public health and safety.

§711.048. Complaints

- (a) A cemetery broker is subject to rules adopted under Section 11.307, Finance Code, regarding the manner in which the cemetery broker provides consumers with information on how to file complaints with the department. The rules must be consistent with the obligations imposed by this section.
- (b) If the department receives a signed written complaint from a person concerning a cemetery broker, the department shall provide written notification of the complaint to the cemetery broker's designated representative not later than the 31st day after the date the complaint was received and provide a copy of the complaint to the representative. The department may:
 - (1) require the cemetery broker to resolve the complaint or to provide the department with a response to the complaint; or
 - (2) provide written direction requiring the cemetery broker to take specific action to resolve the complaint.

§711.049. Termination of Registration

- (a) A cemetery broker may withdraw the cemetery broker's registration at any time.
- (b) After notice and opportunity for a hearing, the commissioner may revoke the registration of a registered cemetery broker that:
 - (1) fails to pay the annual administration fee and fails to cure the default not later than the 30th day after the date written notice of the default is mailed by the department to the cemetery broker;
 - (2) fails or refuses to comply with the department's written request for a response to a complaint; or

- (3) the commissioner concludes, after considering a complaint filed under this subchapter, has engaged in an intentional course of conduct that:
 - (A) violates federal or state law; or
 - (B) constitutes improper, fraudulent, or dishonest dealings.
- (c) The commissioner shall state the basis of the decision in an order revoking the registration of a cemetery broker. The cemetery broker may appeal an order revoking registration in the manner provided by Chapter 2001, Government Code.

**Subchapter D.
Enforcement**

*(Containing Sections 711.051 through 71.059.)
(Section 711.060 is reserved for expansion.)*

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§711.052. Criminal Penalties

- (a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person:
 - (1) engages in a business for cemetery purposes in this state other than through a corporation organized for that purpose, if a corporation is required by law;
 - (2) fails or refuses to keep records of interment as required by Sections 711.003 and 711.004;
 - (3) sells, offers to sell, or advertises for sale a plot or the exclusive right of sepulture in a plot for purposes of speculation or investment;
 - (4) represents through advertising or printed material that a retail department will be established for the resale of the plots of plot purchasers, that specific improvements will be made in the cemetery, or that specific merchandise or services will be furnished to a plot owner, unless adequate funds or reserves are created by the cemetery organization for the represented purpose;

[Paragraphs 5 and 6 as added by Acts 2013, 83rd Leg., ch. 123.]

- (5) makes more than one interment in a plot in a cemetery operated by a cemetery organization other than as provided by Section 711.0395; or
- (6) removes remains from a plot in a cemetery operated by a cemetery organization without complying with Section 711.004.

[Paragraphs 5 and 6 as added by Acts 2013, 83rd Leg., ch. 220.]

- (5) offers or receives monetary inducement to solicit business for a cemetery broker;
- (6) fails or refuses to keep records of sales or resales or to collect and remit fees as required by Section 711.0381; or
- (7) fails or refuses to register as a cemetery broker as required by Subchapter C-1.

§711.056. Pattern of Wilful Disregard

- (a) If after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact shall recommend to the commissioner that the maximum administrative penalty permitted under Section 711.055 be imposed on the person committing the violation or that the commissioner cancel or not renew:
 - (1) the person's registration under Subchapter C-1, if the person is registered under that subchapter; or
 - (2) the person's permit under Chapter 154, Finance Code, if the person holds such a permit.
- (b) For the purposes of this section, violations corrected as provided by Section 711.055 may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

§711.057. Emergency Order

- (a) The commissioner may issue an emergency order that takes effect immediately if the commissioner finds that immediate and irreparable harm is threatened to

the public or a beneficiary under a sale of the exclusive right of sepulture in a plot.

- (b) An emergency order remains in effect unless stayed by the commissioner.
- (c) The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. On receipt of the request, the commissioner shall set a time for the hearing before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order.
- (d) The hearing is an administrative hearing relating to the validity of findings that support immediate effect of the order.

§711.058. Restitution

The commissioner may issue an order to a person requiring restitution if, after notice and opportunity for hearing, the commissioner finds that the person:

- (1) failed to remit a fee in accordance with Section 711.0381; or
- (2) misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to a cemetery organization under an instrument of conveyance.

§711.059. Seizure of Accounts and Records

- (a) The commissioner may issue an order to seize accounts in which funds from the sale or resale of the exclusive right of sepulture in a plot, including earnings, may be held and may issue an order to seize the records that relate to the sale or resale of the exclusive right of sepulture in a plot if the commissioner finds, by examination or other credible evidence, that the person:
 - (1) failed to remit a fee in accordance with Section 711.0381;
 - (2) misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to a cemetery organization under an instrument of conveyance;
 - (3) refused to submit to examination by the department;

- (4) was the subject of an order to cancel, suspend, or refuse a registration under Subchapter C-1; or
 - (5) is required to register under Subchapter C-1 and is not registered or has transferred the ownership of the business that required registration to another person who is not registered.
- (b) An order shall be served on the person named in the order by certified mail, return receipt requested, to the last known address of the person.
 - (c) An order takes effect immediately and remains in effect unless stayed by the commissioner, if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a sale of the exclusive right of sepulture in a plot. If such a threat does not exist, the order must state the effective date, which may not be before the 16th day after the date the order is mailed.
 - (d) An emergency order remains in effect unless stayed by the commissioner. The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. On receipt of the request, the commissioner shall set a time before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order. The hearing is an administrative hearing relating to the findings that support immediate effect of the order.
 - (e) A nonemergency order takes effect as proposed unless the person named in the order requests a hearing not later than the 15th day after the date the order is mailed.
 - (f) After the issuance of an order under this section, the commissioner may initiate an administrative claim for ancillary relief, including a claim for:
 - (1) costs incurred in the administration, transfer, or other disposition of the seized assets and records; or
 - (2) costs reasonably expected to be incurred in connection with the administration and performance of any outstanding certificate of ownership or other instrument of conveyance that is a part of a sale by the person subject to the order.
 - (g) The remedy provided by Subsection (f) is not exclusive. The commissioner may seek an additional remedy authorized under this subchapter.

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Subchapter F.
Powers and Duties of Department Relating to Cemetery Brokers
(Containing Sections 711.081 through 71.084.)

§711.081. Definitions

In this subchapter:

- (1) “Commission” means the Finance Commission of Texas.
- (2) “Commissioner” means the banking commissioner of Texas.
- (3) “Department” means the Texas Department of Banking.

§711.082. Administration; Fees

- (a) The department shall administer Subchapters C and C-1 relating to cemetery brokers.
- (b) The commission may adopt reasonable rules concerning:
 - (1) fees to defray the cost of administering Subchapters C and C-1;
 - (2) the retention and inspection of records relating to the sale or resale of the exclusive right of sepulture in a plot;
 - (3) changes in the management or control of a cemetery broker’s business; and
 - (4) any other matter relating to the enforcement and administration of Subchapters C and C-1.
- (c) A fee set by the commission may not produce unnecessary fund balances.

§711.083. Records; Examination

- (a) A person acting as a cemetery broker shall maintain records in accordance with this subchapter and Section 711.0381.
- (b) The department shall examine the records of each person acting as a cemetery broker if the commissioner determines the examination is necessary to:

- (1) safeguard the interests of purchasers and beneficiaries of the exclusive right of sepulture in a plot; and
 - (2) efficiently enforce applicable law.
- (c) A person may maintain and provide a record required to be maintained under this section in an electronic format if the record is reliable and can be retrieved in a timely manner.

§711.084. Examination Fee

- (a) For each examination conducted under Section 711.083, the commissioner or the commissioner's agent shall impose on the cemetery broker a fee in an amount set by the commission under Section 711.082.
- (b) The amount of the fee must be sufficient to cover:
 - (1) the cost of the examination, including:
 - (A) salary and travel expenses for department employees, including travel to and from the place where the records are kept; and
 - (B) any other expense necessarily incurred in conducting the examination;
 - (2) the equitable or proportionate cost of maintaining and operating the department; and
 - (3) the cost of enforcing this subchapter.

Chapter 712. Perpetual Care Cemeteries

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Subchapter B

Perpetual Care Trust Fund

(Containing Sections 712.021 through 712.030)

(Sections 712.031 through 712.040 are reserved for expansion.)

§712.029. Accounting for and Depositing Amounts.

- (a) The part of the purchase price of a plot in a perpetual care cemetery that is to be deposited in a fund must be shown separately on the original purchase

agreement from the total purchase price. A copy of the agreement shall be delivered to the purchaser of the plot.

- (b) On the sale of a plot, a commission may not be paid to a broker or salesman on the amount to be deposited in the fund.
- (c) A corporation shall deposit in its fund the amount required under Section 712.028 not later than the 20th day after the end of the month in which the original purchase agreement has been paid in full. A corporation may prepay funds into its fund at any time and, if a surplus exists in the fund from the prepayments, may credit against the surplus the amounts otherwise required to be deposited in the fund under Section 712.028 until the surplus has been depleted. In determining whether a surplus exists from prepayments, no part of the fund resulting from gifts to the fund under Section 712.030 may be considered.

TEXAS ADMINISTRATIVE CODE

TITLE 7

BANKING AND SECURITIES

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PART 2:

TEXAS DEPARTMENT OF BANKING

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Chapter 24. Cemetery Brokers

§24.1. Registration.

- (a) To register as a cemetery broker, a person must file with the Texas Department of Banking (the department) a statement that complies with Texas Health and Safety Code §711.046, and pay a \$100 registration fee. The statement must be filed on a form promulgated by the department.
- (b) The department shall notify each registrant within 45 days either that the statement is complete and accepted for registration, or that the statement is deficient. If the statement is deficient, the department shall specify the additional information that is required.
- (c) Registration as a cemetery broker is not transferable.

§24.2. Responsibilities After Registration.

- (a) No later than January 31 of every year, a registered cemetery broker must pay a \$100 administration fee.
- (b) A registered cemetery broker must notify the department in writing not later than the 60th day after the date any of the information filed during registration changes.
- (c) A new cemetery broker registration must be filed if:
 - (1) 25 percent or more of the ownership of a cemetery broker changes; or
 - (2) the power to directly or indirectly vote 25 percent or more of the outstanding voting interests of a cemetery broker changes.

- (d) A registered cemetery broker must notify the department in writing at least 30 days before ceasing operations as a cemetery broker. The notice must include:
 - (1) the effective date of the closing; and
 - (2) a signed declaration that no broker transactions remain pending, and that the cemetery broker has satisfied all outstanding customer obligations.

§24.3. Consumer Complaints.

- (a) Definitions.
 - (1) “Consumer” includes both the transferor and transferee of the exclusive right of sepulture in a plot.
 - (2) “Consumer complaint” means a written complaint received by a registered cemetery broker regarding the sale or transfer of the exclusive right of sepulture in a plot. The term includes a written complaint received either directly from a consumer or through the department. The term does not include an oral complaint.
- (b) Information about filing a consumer complaint.
 - (1) A registered cemetery broker must provide consumers with written notice about how to file a consumer complaint. The notice must be provided when the consumer enters into an agreement with the cemetery broker.
 - (2) The notice must state that consumer complaints concerning a cemetery broker transaction involving the exclusive right of sepulture in a plot should be directed to the Texas Department of Banking. The notice must include the department’s physical address, toll free telephone number, and website address, and be in the language in which the transaction is conducted.
 - (3) If a cemetery broker maintains a website, the consumer complaint notice must also be posted prominently on the website. The notice must state that consumer complaints concerning a cemetery broker transaction involving the exclusive right of sepulture in a plot should be directed to the Texas Department of Banking. The notice must include the department’s physical address and toll free telephone number.

- (c) Responding to a consumer complaint.
 - (1) Unless directed otherwise by the department, within 30 days of receipt of a consumer complaint, a cemetery broker must respond to the complaint in writing, and send a copy of the written response to the department.
 - (2) The written response to a consumer complaint must:
 - (A) list all actions the cemetery broker has taken and plans to take, including a corresponding timeline, to resolve the consumer complaint; or
 - (B) explain why no corrective action is required, and refer to any supporting legal authority.
 - (3) The cemetery broker must document the steps taken to resolve the consumer complaint, and must retain this documentation with the records required to be kept under Health and Safety Code §711.0381(g).