

Dying to Get In: Cemeteries on Private Property

By [Bill Drabble](#) on October 25, 2019

Are Private Cemeteries Legal in Texas?

Yes. As with most Western states, private property burials were fairly common in Texas and are still legal here — **if compliant with the Texas Health and Safety Code and any local rules and regulations.**

New Texas cemeteries are permitted [if at least one to five miles from any municipal boundaries](#) (depending upon population) and buried [at a minimum depth](#). Interestingly, [“six feet under” is not required](#).

Beware: Digging a shallow grave is a misdemeanor. And, cemeteries need not be on specifically dedicated property; using the land for a single burial is enough.

Consequences of a Cemetery on Private Property

A single burial on private property invokes restrictions on the property owner’s rights.

First, the property cannot be sold in a manner that would interfere with its use as a cemetery; “[b]urial lots, whether public or private, are not the subject of trade and commerce” [Even though sold, the buyer must continue to permit the property to be used as a cemetery.](#)

Second, the property owner may be prohibited from otherwise benign use of the property that may unintentionally disturb the graves. [One Texas court](#) enjoined a property owner from pasturing livestock or drilling oil wells on property dedicated as a cemetery, stating that “[t]hose who have loved ones buried there are entitled to have the hallowed spots protected from the headless search for hidden wealth and from the rapacious hands who would convert its sacred confines to a place of money getting.”

Third, the property owner loses the right to exclude people from property that has a “cemetery or private burial ground.” [The general public gets access](#), not just the deceased’s family and friends. Those visiting the cemetery have the right to repair and beautify the graves and the surrounding grounds, including erecting headstones, markers, and other memorials. The property owner, however, can select the route to access the cemetery and may designate reasonable hours of visitation.

Fourth, the property owner may be required to permit further burials in the cemetery. Although no Texas case has decided the issue, [one court](#) has stated that “[t]he right of burial extends to all the descendants of the owners who devoted the property to burial purposes, and they may exercise it when necessity arises.”

Can a Private Property Cemetery be Removed?

The Texas Legislature makes cemetery dedication removal difficult, pretty much only if:

- (1) the cemetery is maintained, located, or used in violation of Texas law;
- (2) the cemetery is so neglected that is offensive to surrounding inhabitants making it a nuisance,
- (3) the cemetery is abandoned or unknown, or
- (4) all remains have been relocated. The cemetery becoming inconvenient or tiresome is not enough.

Texas law even prohibits disruption of the grave itself and moving the monuments around it. Even the property owner who knowingly damages or vandalizes a grave commits [a crime](#) in Texas.

Titling the Scales in Your Favor

Carefully weigh the consequences of a private cemetery on your property, even though it's legal. Your loss of many valuable property rights, including the right to exclude visitors, will undoubtedly affect your property's resale value.

If there's already a cemetery, consider locating the access road to a route least intrusive to your property use, and consider building a fence around it or ask the claiming family to build it and to provide for its regular maintenance.

If you're buying a ranch, your due diligence should include investigating whether there are any graves tucked away in a remote corner. A purchaser takes subject to these restrictions whether known at purchase or not.

<https://www.tiltingthescales.com/2019/10/25/dying-to-get-in-cemeteries-on-private-property/>

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From Nolo.com:

Where can bodies be buried in Texas?

Most bodies are buried in established cemeteries, but burial on private property may be possible in Texas. Before conducting a home burial or establishing a family cemetery, check with the county or town clerk for any local zoning laws you must follow. If you bury a body on private land, you should draw a map of the property showing the burial ground and file it with the property deed so the location will be clear to others in the future.

<https://www.nolo.com/legal-encyclopedia/burial-cremation-laws-texas.html#6>

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