

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.