

The purchaser of a lot must approve any memorials going on the lot. Once a burial has been made, he cannot deny the survivor the right to mark the grave because with burial goes the right to identify the burial. However, the purchaser has the right to determine the type and nature of the memorial.

## Heirs and Their Rights

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What rights do heirs have? Generally, the same as the purchaser because upon his or her death, the heirs become the “owners”. However, there may well be a number of owners which, unless they agree to give one heir authority, require many permissions when some action is required. They may not, however, change any written instructions of the purchaser unless circumstances are clearly changed, such as the purchaser’s allocation of a grave to someone who subsequently was buried elsewhere.

There are many cemetery lots in older cemeteries where many heirs exist. Sometimes there may be so many whose whereabouts might be unknown, that use of a lot could be tied up if common sense were not used. Where there are presumed, unknown, or unlocatable heirs, the cemeteries will accept authority for burial from existing heirs by means of an affidavit stating this, and protecting the cemetery from claims from other heirs.

Heirship descends from parents to children, but it is important to know that after the death of the owner, his blood heirs with equal rights are his children and the children of his deceased children. If there is no lineal line left, then heirship goes to what is called the collateral line – the brothers and sisters of the deceased and eventually their heirs. These are some of the reasons why the simpler approach of joint tenancy purchase, and the allocation of graves, or the giving of control to one heir is very desirable for good order.

What happens if there are a number of heirs entitled to burial and no one has decided who will use the graves? It becomes then simply a matter of “first come – first served” among equal heirs. This is, of course, reasonable, but it doesn’t solve everything. An heir may be buried without need for any permission but, if his wife is to be buried with him, permissions are still needed.

## Multiple Interments

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Questions are often asked as to what permissions are needed to make a multiple interment. Two permissions are required, although often they are the same people. One permission is that of the “owner” or “owners” of the lot. The second permission is the nearest relation of the deceased in whose grave the additional burial is to be made. In this instance, the spouse, while not a blood relative, is considered the nearest of all relationships.

An example shows the basic justice of the rule. The owner might bury his son in a grave on the lot. Later, because of space limitations in the lot, he might want to bury another blood relative in the same grave.



The wife of the deceased son, even though she is not a blood heir, has the right to prevent this. By the same token, the nearest relative cannot decide along that someone else may be buried in the same grave. The owner of the lot must also approve.

## Whose Lot Is It?

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## Whose Lot Is It?

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For one of the most universally owned items in the lives of everyone, rights and interest in a cemetery lot are still a great mystery to many people. Often it's an unimportant mystery, but when there is a death it can become very important and a source of real strain for the bereaved. The purpose of this article is to explain as simply as possible what is involved. "Ownership" of graves or crypts is not ownership in the same sense as you might own your own home. One who acquires graves or crypts holds his interest by "easement". That is, the purchaser has a permanent right of use for himself and his family, to the extent that space in the holding permits.

An easement may be held in various ways. A single name, of course, means that one person has all the rights to the lot. Generally today, most lots purchased are two-grave lots, or more.

In years past, if there were two names on the easement, what is called "tenancy in common" was frequently practiced. If one party died, the new "owners" were the

surviving purchasers and the blood heirs of the deceased purchasers. This obviously created problems because, depending on family size, there could be many eventual owners, each with an equal interest. Today, when there are two or more owners, cemeteries strongly encourage, that the lot be held in "joint tenancy" with the right of survivorship. That means simply that if one purchaser dies, the other becomes the sole holder of rights on the lot. This of course tremendously simplifies questions of control and use.

## Rights of Lot Holders

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What exactly are the rights of a lot holder – generally described as "right, title, and interest?" The party who purchases graves or crypts can do a number of things: (1) direct who may be buried in the lot, and who may not be buried in the lot. His control is virtually limitless. Not even one of his blood heirs can be buried in the lot without his permission; (2) allocate individual graves in the lot to various people, whether they are blood relatives or relatives by marriage. On larger lots, this is a wiser thing to do, rather than waiting to give approval when there is a death. If the purchaser dies without allocating graves, there might be a number of heirs – perhaps more than the grave space in the lot – and sometimes problems develop as to who will use them; 3) transfer his right

title and interest to another family member or members. He might, for example, simply give control of the lot to one son.

In the lifetime of the purchasers, he, she or they have almost absolute control. After all, they acquired the lot and, therefore, have a reasonable right to direct how it is to be used – and their instructions, if filed with the cemetery, continue past their lifetime. Forms should be available in every cemetery office where instructions of the purchaser(s) may be placed on file.

## Allocation of Graves

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The importance of grave allocation on larger lots cannot be stressed enough. In the purchaser's lifetime, his judgment prevails. Afterwards, there are specific rights of blood heirs that must be recognized, even if inconvenience is caused. For example, a father might well expect that his son and his son's wife will be buried in the lot. However, she is not a blood heir and does not have rights ahead of a blood heir. It would require the permission of all blood heirs for her burial. At best, this requires a number of permissions that otherwise would not have been necessary. At worst, blood heirs may not choose to give up their own rights to a non-blood heir. All this can be avoided by allocation of graves by the purchaser.

The only person automatically protected after the death of the purchaser is his or her spouse. Even if the spouse was not an owner in joint tenancy, he or she is guaranteed a right of burial ahead of blood heirs. That, however, does not extend to spouses of heirs

There are some limitations on a purchaser once he makes grave allocations. He cannot change them or cancel them once made. That would be unfair to those to whom they were allocated, because they could never reasonably plan on their own burial needs. However, if a person to whom a grave has been allocated decides not to use it, he has no right to reallocate it. It must return to the purchaser, or if the purchaser is dead, to his heirs.

Cemetery lots are a strange phenomenon. They are considered neither real nor personal property. In a will, they cannot pass "residually". That means that someone making a will, who gives certain things to certain people, and the "rest and residue" to one person, cannot give his cemetery lot with that residue. He must give it specifically and by intent to a certain person or persons. Otherwise, all blood heirs still have a right of burial.

The purpose of this is, in case the burial place is forgotten by the maker of the will, his blood heirs are not cut off from using it by this omission.