

The original purchaser must approve any memorials going on the lot. Once a burial has been made, survivors with a right of burial cannot be denied the right to mark the grave, because with the right of burial goes the right to identify that burial. However, the original purchaser has the right to determine the type and nature of the memorial as long as it is in conformance with Cemetery regulations on memorialization.

Heirs and Their Rights

What rights do heirs have? Generally the same as the original purchaser because upon their death, the heirs assume the “owner rights” with respect to burials. However, there may well be a number of heirs which, unless they agree to give one person “heir authority,” will mean that many permissions from all blood heirs must be received before any action can be taken. They may not, however, change any written instructions of the original purchaser unless circumstances are clearly changed such as the purchaser’s designation of a grave to someone who subsequently was buried elsewhere.

Since our Cemetery is about one hundred years old, there are many older multiple grave lots with available graves where there are many living blood heirs. Sometimes many of those heirs whereabouts might be unknown. If there are presumed unknown heirs or heirs which cannot be located, rather than have these graves go unused, the Cemetery can under certain conditions, accept authority for burial from all known heirs by means of an affidavit stating this, thereby protecting the Cemetery from claims of other heirs.

Heirship descends from parents to children, but it is important to know that after death of the original owner, the blood heirs with equal rights are their children and the children of their deceased children. If there is no lineal line remaining, then the heirship goes to what is referred to as the “collateral line” namely the brothers and sisters or parents of the original owner and eventually their heirs. These are some of the reasons why the designation of graves, or the giving of control to one specific heir is very desirable. What happens if there are a number of heirs entitled to burial and no one has decided who will use the graves or crypts? It becomes simply a matter of “first come—first served” among the equal heirs. This is, of course, reasonable but it doesn’t

always solve everything. An heir may be buried without the need for any permission but if the spouse wishes to be buried with the heir, then permission must be granted by the remaining heirs.

Return of Graves

Graves need not be kept if they are not expected to be used. They may be transferred within a family with the approval of the Cemetery, but they may not be sold. Owners have the right to use the graves but not the right of the sale. Under certain conditions, graves may be returned to the Cemetery for burial of indigent members of our faith community, who because of their economic conditions, could not afford to be buried in a Catholic Cemetery.

Lots or crypts which have no burials in them, may be returned to the Cemetery for the price which was originally paid by the purchaser.

Christian Burial

Catholic cemeteries are integrally united with Catholic belief, both in the religious values that people live by and in the belief of eternal life. Burial in a Catholic cemetery carries with it explicit acceptance of these beliefs.

Consequently, all rights and interest noted herein are subject to the right of Christian burial. Catholic cemeteries are not public cemeteries. Their use is limited to those of the Catholic faith, but does include family members who may not embrace the Catholic faith.

This brochure is not intended to cover every possible situation, but to give you a general idea of what is involved. Should you have any questions not specifically covered herein, we strongly suggest that you get in touch with the Cemetery for clarification, since these situations are best handled on a pre-need basis and not at the time of a need.



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Whose Lot Is It?



Mt. Olivet Cemetery

Located at 6881 E. Canal Road, Brockport, NY 14420

A Roman Catholic Cemetery managed by
Church of the Nativity of the Blessed Virgin Mary
Brockport, NY 14420
(585) 637-4500
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Whose Lot Is It?

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 is 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 brochure is to explain as simply as possible what is involved. If the information herein affects your own cemetery lot, please call the Nativity Parish Office for clarification, so that there are no unnecessary problems at the time of need.

Ownership of graves or crypts in Catholic cemeteries is not ownership in the same sense as you might own your own home. When you purchase a grave, lot or crypt you receive a Certificate which entitles the purchaser to the perpetual use of said space for the purpose of the burial of human remains only. This is subject to the discipline of the Roman Catholic Church and the rules of the Diocese of Rochester with respect to burials and funerals. Title to all Cemetery land remains in the Cemetery Cooperation.

A purchase of grave or crypt spaces has several options for determining title or ownership of record.

In the case of single graves or crypts, it would be in the name of the person who will use the space, or if deceased, in the name of "the estate of," or the name of the purchaser.

For two grave lots, where the purchasers are husband and wife, it may be in the name of either spouse or in both names. If the two people are not related, the title would be in both names, this is known as "Tenants in Common."

In the case of lots of three or more graves, the title is usually in the name of the purchaser. If at all possible grave designation should be made at the time of purchase. If designations are not made or if there are joint purchaser, designation options become quite complex and should be discussed with Cemetery management.



Rights of Lot Holders

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. They can direct who may be buried in the lot or crypt and who may not be buried in there. Their control is virtually limitless. Not even one of their blood heirs can be buried in the lot or crypt without the purchaser's permission.
2. They can designate individual burial spaces to various people, whether they are blood relatives or relatives by marriage, but only with the approval of Cemetery management. On larger lots this is a wiser thing to do rather than waiting to give approval when there is an at-need situation. If the original purchaser dies without designating graves, there might be a number of heirs—perhaps more than the grave space in the lot—and thus there could be a problem as to who will use them.
3. They can transfer their right and interest to another family member or members.

In the lifetime of the original purchaser, they have almost absolute control as to who may be buried in the lot or crypt. After all, they purchased the burial rights and therefore they have a reasonable right to direct how they will be used, and their instructions, if filed with the Cemetery, continue past their own lifetime. The Nativity Parish Office can prepare such documents for lot holders and after their decease, for their heirs.

Designation of Graves

The importance of grave designation on larger lots cannot be stressed enough. In the original purchaser's lifetime, their judgement prevails, but after their death, there are specific rights of the blood heirs, that must be recognized, even if this might cause some inconvenience to the family. 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 a burial right ahead of a blood heir.

Since the original owner has passed away without granting a right of burial to her, it would then require a Transfer document, prepared by the Cemetery, granting her a right of burial. The Transfer would require the written and notarized approval signatures of all living blood heirs. If any of these heirs object, then the permission cannot be granted. All this can be avoided by the designation of graves by the original purchaser during his lifetime.

The only person automatically protected after the death of the original 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 any blood heirs. That, however, does not extend to spouses of blood heirs.

When the original purchaser decides to make grave designations, there is one of three choices to be made. They may stipulate that the designation will be:

- Fully revocable by buyer or buyer's heirs.
- Revocable only during buyer's life
- Irrevocable

However, to designate grave allocations as revocable may cause a hardship on those to whom they were granted, as they could not reasonably plan for their own burial needs. Therefore some deliberation should be made before making any decisions. If a person to whom a designation has been made, decides not to use it, they have no right to transfer the right to someone else, it must be relinquished to the original purchaser or if deceased to their 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 their cemetery lot or crypt with that residue. They must give it specifically and by intent to a certain person or persons. Otherwise, all the blood heirs still have of a right of burial. The purpose of this is, in case the burial space is forgotten by the drawer of the will, their blood heirs are not cut off from using it by this omission.

