

What You Need to Know if You Have a Cemetery

While churches with cemeteries are more common in eastern parts of Canada than western, many of them have historic roots dating back to before church union. Regardless of their age or stage, cemeteries need to be managed, and congregations have an obligation to ensure this occurs now and into the future.

Church Board/Trustees vs. Cemetery Board/Trustees

A governance structure needs to be in place to oversee the functioning of the cemetery and to ensure that necessary local and provincial requirements are met. If the cemetery is using the name of the United Church in any way, this governing body needs to be accountable to a council of the church. Here are three different governance models:

- Church trustees: Under this model, the existing trustees also act as trustees of the cemetery. Possibly the easiest model, these trustees are accountable to the community of faith and take direction from the board/church council. Finances for the cemetery must be clearly identified as being related to the operation of the cemetery property, particularly in terms of revenue related to the sale of plots and burials, or donations and payments to the perpetual trust fund.
- Cemetery trustees: Under this model, the trustees are accountable to the church board/council. Tracking of finances is still very important.
- Separate cemetery board: Under this model, property ownership comes into play. If the board is to own the property, then they most likely need to be incorporated. Accountability then moves to the regional council if a United Church affiliation is to be maintained.

Receipting donations is an important piece of work that must be done properly. If the cemetery is a registered charity, the cemetery can issue receipts only if all the financial results are reported as part of the annual T3010 consolidated report. It is also important that all the necessary information is included on the receipts. Check the [Canada Revenue Agency webpage on issuing receipts](#) to ensure you meet all the requirements.

What Happens When the Congregational Structure Changes

Where a cemetery exists in conjunction with congregational property, it is important to understand what happens if the congregational structure changes. This may be due to either amalgamation or closure, but how governance and accountability for the cemetery continues must be considered.

- Amalgamation: Property belonging to congregations that amalgamate flows automatically through to the new congregational structure. The governing structure that was in place before amalgamation continues as well. Trustees continue to take

instruction from the board/council of the newly formed community of faith. New trustees may be named in due course by the newly formed congregation.

- If the cemetery board was separate from other trustee boards, they continue as is, taking direction from and being accountable to the new board/council.
- Closure: When a community of faith closes, ideally provisions for the cemetery are made before the closure. This includes identifying a governing body if one does not already exist separate from the congregational board/council or trustees. Arrangements may be made with the local municipality, another church, or a community organization to assume operations. An agreement to transfer the perpetual care fund to the new operating body may be an incentive for the group to take on ownership. If the congregational property is to be sold, a portion of the sales may also be designated for the ongoing maintenance of the cemetery.
- If the cemetery is part of the congregational property, it may be necessary to sever the land in order to be able to sell the property. Check local legislation around this—don't assume it is a simple transaction.

What Constitutes a Cemetery?

A cemetery is broadly defined as a designated place where the remains of people who have died are laid to rest in specific, identifiable burial sites. There may or may not be grave markers. Provincial and territorial legislation may further broaden the definition to include columbariums and memorial or scattering gardens. Review the legislation that applies to your location to determine when you are required to have a licence to operate any form of “internment” of a person's remains.

A memorial garden has become popular with communities of faith in recent years. The community of faith may designate space on their property for scattering ashes or burying a small portion of the ashes. A memorial garden cannot be used to bury the complete urn.

The decision to develop a memorial garden should not be taken lightly because there is no turning back once you have scattered or buried ashes. Such areas may now be considered a cemetery as defined by legislation. If at some time the property is to be changed in some way—further development, redevelopment, or sold—having a memorial garden can make the process more complicated or impossible. Municipal codes and bylaws may also affect the ability to establish a memorial garden. Do your research to fully understand the implications.

Abandoned Cemeteries

Legislation is in place that identifies what happens to the upkeep and maintenance of an abandoned cemetery. Usually the local municipality becomes responsible for it. However, if a connection to the church can be established, the regional council may become responsible. Even though the community of faith may be long gone, the United Church continues to exist as an entity. In these situations, being able to offer an incentive, such as the perpetual trust fund,

to the municipality may convince them to take on responsibility. It is important to carry liability insurance for such properties until ownership is transferred to another party.

Provincial and Territorial Legislation

All cemeteries and crematoria are regulated by provincial or territorial legislation. Recent legislation in some provinces has expanded to include memorial gardens—dedicated spaces for burying or spreading ashes. Congregations must be aware of this legislation and how it impacts them. This same legislation affects what happens to a cemetery should it be sold or, in the case of a church property, a portion of the land is sold.

Prov	Name	Website
BC	Cremation, Interment and Funeral Services Act	bclaws.gov.bc.ca
AB	Cemeteries Act - General Regulation	qp.alberta.ca
AB	Cemeteries Act - Crematory Regulation	qp.alberta.ca
SK	The Cemeteries Act	publications.saskatchewan.ca
MB	The Cemeteries Act	web2.gov.mb.ca
ON	Funeral, Burial and Cremation Services Act	ontario.ca/laws
QC	Cemetery Companies Act	legisquebec.gouv.qc.ca/
NB	Cemetery Companies Act	laws.gnb.ca
NS	Cemetery and Funeral Services Act	nslegislature.ca
PE	Cemeteries Act	princeedwardisland.ca
NL	Cemetery Site	gov.nl.ca
YT	Cemeteries and Burial Sites Act	legislation.yukon.ca
NT	Crematorium Regulations	justice.gov.nt.ca
NU	Consolidation of Cemetery Regulations	nunavutlegislation.ca

Public Guardian and Trustees Act

In addition to legislation related to cemeteries, cemetery trustees and boards are accountable through the Public Guardian and Trustees legislation in most provinces. Check provincial/territorial legislation to understand fully the obligations of trustees.