

REQUIREMENTS FOR CHURCHES  
OPERATING OR PROPOSING TO OPERATE  
A MEMORIAL GARDEN OR COLUMBARIUM  
IN THE EPISCOPAL DIOCESE OF MASSACHUSETTS

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## BACKGROUND

Given recent developments, clarification of the status of “Memorial Gardens” is essential.<sup>1</sup> The rights and responsibilities of congregations with Memorial Gardens have recently been defined after years of expensive litigation.

Many times the history and documentation concerning creation and maintenance of Memorial Gardens has lacked formality, with the creation of the Memorial Garden having occurred many years ago. For purposes of this discussion, the term Memorial Garden will be used to refer to any arrangement by which human remains in any state<sup>2</sup> are located on property owned by an entity associated with the Episcopal Diocese of Massachusetts.

The recent clarification of burial rights in Massachusetts is contained in the decision [\*Church of the Holy Spirit of Wayland v. Heinrich\*, 491 Mass. 464 \(2023\)](#) (“Holy Spirit”). Holy Spirit was a parish in Wayland which voted to close and was converted to a mission. The Executive Committee of the mission entered a Purchase and Sale Agreement promising to convey the real estate owned by Holy Spirit. The agreement provided that the “cremains” buried in the adjacent churchyard would be removed. The descendants of some whose cremains were buried there objected to relocation of the cremains, resulting in years of delay and litigation.

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<sup>1</sup> The term “Memorial Garden” is but one designation for a place associated with a congregation where remains are placed. For example, the terms “churchyard,” “cemetery,” “columbarium,” and “burial ground” have been used almost interchangeably.

<sup>2</sup> For example, cremated remains, known as “cremains,” can raise the same issues as remains placed in or on the grounds of property owned by a congregation.

First and foremost, a Memorial Garden which creates any restrictions on sale or use of real estate<sup>3</sup> is an “encumbrance” allowed only with the written consent of the Bishop and Standing Committee. Diocesan Constitution and Canons at Canon 18; Canons of The Episcopal Church, Canon 7, Sec. 4 (“the Dennis Canon”) (all property held in trust). While it appears that some older Memorial Gardens were not so approved, they are subject to these canonical provisions, limiting the power of a congregation to convey or create any permanent rights to occupy or use a Memorial Garden.

One thing is very clear as a result of the recent *Holy Spirit* decision. The rights to restrict use or conveyance of a Memorial Garden may depend on the documentation. A certificate or other document describing the rights of “purchasers” of burial plots can be critical. The by-laws or other documents creating such rights can be dispositive and can be changed by an amendment to “Churchyard Regulations.” The court found that certificates given to purchasers were contracts which clearly gave the Vestry (or in this case of a mission, the Executive Committee) the right to amend the Churchyard Regulations.

The bottom line is that rights with respect to Memorial Gardens can result in misunderstandings and even years of expensive litigation. However, attention to proper documentation can avoid such misunderstandings.

#### REQUIREMENTS FOR OPERATORS OF EXISTING MEMORIAL GARDENS

1. For these purposes the term “Memorial Garden” shall include any and all arrangements whereby human remains in any state are deposited or released on property owned by an organization associated with the Diocese.

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<sup>3</sup> Including cemeteries, etc.

2. Any congregation which operates an existing Memorial Garden shall request a review of their by-laws, purchase agreements, regulations and any other governing documents.
3. These documents are to be submitted to the Rev. Canon Bill Parnell, canon to the ordinary, at [bparnell@diomass.org](mailto:bparnell@diomass.org), who will request a review of the documents by the diocesan chancellor.
4. For future purchases: A separate document is provided as a template for a purchase agreement for a burial plot in a Memorial Garden. Please note the clauses in bold which provide clarity about the rights and responsibilities of the Church and of “purchasers” of burial plots or niches. This template is recommended for use with any new purchase agreements for existing memorial gardens.

#### REQUIREMENTS FOR PROPOSED MEMORIAL GARDENS

1. For these purposes the term “Memorial Garden” shall include any and all arrangements whereby human remains in any state are deposited or released on property owned by an organization associated with the Diocese.
2. No new Memorial Garden may be created without the written consent of the Bishop, acting with the advice and consent of the Standing Committee.
3. Any documentation associated with any proposed Memorial Garden shall be submitted to the Bishop and Standing Committee for approval through the Real Estate Advisory Committee by contacting the Rev. Margaret Lias, administrator for governance and grants, at [mlias@diomass.org](mailto:mlias@diomass.org).
4. A separate document is provided as a template for a purchase agreement for a burial plot in a Memorial Garden. Please note the clauses in bold which provide

clarity about the rights and responsibilities of the Church and of “purchasers” of burial plots or niches.

Any questions concerning the above should be directed to the Rev. Bill Parnell, canon to the ordinary, at [bparnell@diomass.org](mailto:bparnell@diomass.org). Thank you for understanding the need to plan ahead to avoid burdensome emotional and financial problems.