



MEMORIAL GARDEN  
AND COLUMBARIUM  
AT THE FOUNTAINS

# By-Laws

**Purpose:** These By-Laws are designed to identify and protect the interests of those parties to any written Agreement with respect to the Memorial Garden and Columbarium of The Fountains, a United Methodist Church in Fountain Hills, AZ. Acceptance and adherence to these By-Laws by such parties are essential to maintain and preserve the desirability and beauty of these facilities.

**Definitions:**

“**Church**” means The Fountains, a United Methodist Church, located in Fountain Hills, AZ. The Trustees of the Church (“**Trustees**”) are the Church’s authorized representatives and can take appropriate legal actions on behalf of the Church, including the execution of any necessary legal documents and the interpretation of these By-Laws.

“**Agreement**” means the completed, signed document in a form created by the Church which details the materials and services to be provided by the Church, and includes Owner agreement to the terms of these By-Laws as they may be amended from time to time.

“**Right-owner**” (“**Owner**”) means one or more individuals or legal entities who have entered into a signed Agreement with the Church for the right to the use of one of the Church’s columbarium niches as specifically identified in that Agreement. This term includes such Owner’s heirs, successors, administrators, executors, assigns, and authorized representatives.

“**Donor**” means anyone who has made a financial gift to the Church to create one or more memorial features of the Memorial Garden and Columbarium and related amenities other than a financial contribution for use of a niche. A Donor may also be (but is not necessarily) an Owner.

**Compliance Obligations:** An Owner and the Church are equally obligated to comply with the provisions of the most recent edition of these By-Laws and the signed Agreement between that Owner and the Church. Owner obligations are enforceable by the Church and its successors. Church obligations extend to its successors.

**Amending By-Laws:** These By-Laws may be changed by the Trustees when and as they deem necessary and appropriate without requiring notice or consent of any Owner.

**Availability of the By-Laws** The official copy of the latest By-Laws is filed in the Church office, and may be viewed there during regular Church office hours. If requested, the Church will mail the latest edition to an Owner furnishing a current address.

**Rights Conferred by the Agreement:** The Agreement is solely to provide each Owner a reserved space for the inurnment of cremated human remains (“**Cremains**”) at a later time and/or to provide for any tangible memorial recognition desired by an Owner or Donor. Its execution does not constitute a sale of property or convey any property or ownership rights to an Owner or Donor. The Memorial Garden/ Columbarium may not be used for any purpose other than stated above.

**Non-Covered Services:** The Church does not provide mortuary or other related services that require licensing by the State of Arizona or its agencies or political sub-divisions. Likewise the Church does not provide tax advice or appraisals; however, it will furnish any relevant financial information requested in writing by an Owner/Donor’s authorized tax advisor.

**Eligibility for Inurnment:** While use of columbarium niches is primarily for Church members, their immediate family members, and friends of the Church, others are also welcome with the written approval of the Trustees and the Church pastor in their sole discretion.

**Immediate family members** include spouse, children, stepchildren, parents, grandparents, plus any other family members living with an Owner or for whom the Owner is financially responsible.

**Single Inurnment:** Unless the Agreement states otherwise, only single inurnment shall be permitted in the assigned niche, subject to the Special Situations provision of these By-Laws.

**Urn Requirement:** Before they can be accepted for inurnment, Cremains must be contained in an urn compatible with one supplied by the manufacturer of the niche being used.

**Disposal of Unused Niche:** The Owner of an unused niche may relinquish it to the Church, but may not sell or convey it to any other party without written Trustee agreement. Any relinquishment must be in writing, signed, dated and notarized, using a Church-supplied form. Within 90 days of receiving such relinquishment in proper form, the Church shall refund 60% of the amount originally paid (without interest) to the Church by the Owner for the niche. Such refund shall completely discharge any and all obligations of the Church to the Owner.

*(Continued on reverse)*

**Identification of Cremains:** Cremains delivered for inurnment must be identified by permanent marker with the full name of the deceased and the date of death. The Church shall not be responsible or liable for identifying the Cremains of any person, but will act in good faith that the Cremains so identified are those of the person named.

**Inurnment Hours:** Inurnment and other services will be provided at any time mutually agreed upon by the Church and an Owner. Only the Church pastor or the pastor's designated substitute shall officiate at an inurnment on Church property.

**Removal of Cremains:** Any designation by the individual(s) signing the original Agreement regarding the specific niche location(s) for the inurnment of named individuals shall be faithfully honored by the Church except in the case of error as provided below. Thus, an Owner other than one who signed such original Agreement will not be allowed to change the location of inurned Cremains or cause them to be removed from their assigned space, without a legal order from a court having authority to demand such a change.

**Remedy in the Event of Error:** Should it be determined that Cremains have been placed in the wrong niche, the Church, at its cost, will move them to the proper niche. Should a previous claim exist for a niche resold in error, the subsequent Owner will be provided an alternative available niche, which will constitute full remedy and redress.

So as not to delay a committal service, if a niche cannot be opened when needed, the Church may provide a temporary, alternate niche without liability to the Church. The Church will move the Cremains to the permanent location later at no charge.

**Property Maintenance:** The Church reserves the right to limit, restrict or remove any item it deems unsafe, hazardous, unsightly or objectionable, and under no circumstances will permit the use of glass containers within the Memorial Garden. The Church will not be responsible to maintain, retain or return to an Owner any decorations, or other items placed on Church property.

**Access to Church Grounds:** The Church has the right to set hours that the Memorial Garden will be open for visiting or services, and has the right to refuse entrance to its grounds or buildings. Owners, their relatives and friends, however, may visit the Memorial Garden at any time during daylight hours, unless temporarily restricted due to maintenance or construction operations.

**Right to Alter or Move the Memorial Garden and/or Columbarium:** The Church has the right to alter the Columbarium and other elements of the Memorial Garden when and as the Church sees fit, without the need to notify or obtain the approval of Owners and Donors.

The Church in its sole discretion, also has the right to remove, relocate and/or dismantle the Columbarium and/or Memorial Garden if the Church deems it to be in its best interest. However, at least one month prior to any such action, notification shall be published in the Church newsletter and the local newspaper serving Fountain Hills.

The Church shall not be responsible for locating Owners, Donors, or next-of-kin to inform them of the intended action; however, the Church will make a good faith effort to do so by mailing a notice to the last known address of such persons. Under no circumstances will any Owner, Donor, or other interested party be entitled to a refund or other monetary consideration with respect to such actions.

**Communicating Instructions:** All instructions from an Owner must be in writing, signed and dated, using the appropriate Church-supplied form or such other instrument specified by the Church. Such instructions will become effective upon written acknowledgment by the Church. Verbal instructions or oral statements will not be binding on any party.

**Church Liability and Warranty Limitations:** The Church does not guarantee or warrant the durability, expected life or condition of grounds, facilities, products or services offered the Owner or Donor, but simply offers them for the sole purpose of providing a means of dignified, economical Christian inurnment in an attractive setting.

The Church will take reasonable care to protect against loss or damage, but will not assume liability for causes beyond its control, including, but not limited to, acts of God, vandalism, theft, accidents, riots, or military or police actions. Loss or damage within the reasonable control of the Church shall be limited to not more than the amount of money specified in the Owner's Agreement for the affected items.

**Authorized Agents:** The Trustees may appoint one or more individuals to serve in the operations and/or administration of the Memorial Garden/Columbarium facility. The powers and duties of each such individual will be strictly controlled by the Trustees within the scope encompassed in these By-Laws. Any action or decision by such individuals in a matter requiring Trustee authorization will not be considered final until the Trustees provide such authorization in writing.

**Special Situations:** The Trustees are authorized to interpret these By-Laws in resolving unique, emergency, and/or special situations that may arise, and make binding rulings on behalf of the Church.

**Subject to Governmental Law:** These By-Laws and any Agreements executed there under are subject to applicable governmental laws and regulations which will control in the event of any dispute.