



Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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Ohio Cemetery Law

Most cemeteries in Ohio are operated by private cemetery associations, townships and municipal corporations, and religious, fraternal, or benevolent entities. Townships and municipal corporations may jointly operate a cemetery, called a “union cemetery,” and a “family cemetery” is a cemetery that mostly contains the remains of individuals from the same family. Ohio also is home to several national cemeteries – cemeteries operated by the National Cemetery Administration to provide burial spaces for veterans and veterans’ families.

Cemeteries generally are subject to registration requirements, maintenance standards, and endowment requirements. The Department of Commerce’s Division of Real Estate and Professional Licensing, and the Ohio Cemetery Dispute Resolution Commission oversee cemeteries in Ohio.

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Registration

Cemeteries, including those operated by townships and municipal corporations, are required to register with the Division of Real Estate and Professional Licensing within the Department of Commerce; the registration requirement does not apply to a family cemetery or a cemetery where there have been no interments during the previous 25 years.¹ Registrations

¹ R.C. 4767.02(A) and (D) and 4767.03. Failure to register is a third degree misdemeanor. R.C. 4767.99.

expire annually on September 30 and must be renewed, except the registration of a cemetery operated by a township or municipal corporation does not expire.²

An initial registration or a renewal is proper only if the cemetery provides the Division with certain information, including the name and location of the cemetery, the name and address of the person who owns the cemetery and of the person responsible for operating and maintaining the cemetery, and the cemetery rules and regulations. Private cemetery associations also must provide financial statements related to preneed contracts (discussed below), endowment care trust agreements (discussed below) and related financial statements, and proof that trustees are properly insured or bonded.³

The Division maintains a written record of registered cemeteries, including rules and regulations, financial statements, and endowment information.⁴ As of June 30, 2019, there were over 4,200 cemeteries registered in Ohio.

Maintenance

Cemeteries must provide reasonable maintenance in accordance with suggested maintenance guidelines published by the Cemetery Dispute Resolution Commission, a Commission consisting of nine members appointed by the Governor.⁵ The Division and Commission determine whether a cemetery is reasonably maintained by considering its size and type, the extent and use of available financial resources, the contractual obligations for its care and maintenance, the standard of maintenance of similarly situated cemeteries, and the Commission's guidelines.⁶

A cemetery must maintain in its office electronic or paper cemetery records regarding interment, entombment, or inurnment right owners and interment, entombment, or inurnment records indicating the deceased's name, place of death, and date and location of the interment, entombment, or inurnment.⁷

Complaints and investigations

Any person who feels the person's interest or a family member's interest in a cemetery lot or right has been or will be adversely affected by a cemetery may file a written complaint with

² R.C. 4767.03(C) and 4767.04(C). A township and municipal corporation however must renew or update a registration if the cemetery is expanded or to update information about the cemetery, like its rules and regulations.

³ R.C. 4767.04(A).

⁴ R.C. 4767.02(B)(7).

⁵ The Commission consists of nine members appointed by the Governor with the advice and consent of the Senate. Seven members must have experience in active administration and management of a cemetery while two are public members with no financial interest in the death care industry. Members must meet at least four times each year, are not compensated, but are reimbursed for expenses. R.C. 4767.05.

⁶ R.C. 4767.09 and 4767.06(H).

⁷ R.C. 4767.09(E).

the Division. Within seven days of receiving a complaint, the Division sends a written notice of the complaint to the cemetery, which then has 30 days to respond. The Commission may attempt to resolve a complaint by using informal techniques such as mediation. If the complainant and the cemetery cannot informally resolve a complaint, the Commission holds a hearing within 120 days after the complaint was originally filed with the Division.⁸

Both the Division and the Commission have authority to investigate cemeteries, either upon the Division's or Commission's own desire or upon receiving a complaint against the cemetery.⁹ The Division and Commission may compel witnesses to testify at a complaint hearing, administer oaths, and order the production of books, papers, and documents.¹⁰

If necessary, the Division or Commission may ask a county prosecutor or the Attorney General to initiate proceedings against a cemetery in response to a violation of Ohio law. The Commission may dismiss a complaint at any time if it determines there is not good cause shown for the complaint.¹¹

Annually, the Commission submits a report to the Governor and the General Assembly indicating: the number of complaints the Commission received, initiated, and investigated; the number of complaints for which hearings were held; the number of referrals the Commission made for possible prosecution; and the status or disposition of each referral made within the previous two years.¹²

Township and municipal cemeteries

Townships and counties, as creatures of statute, have only the authority expressly granted to them by statute or impliedly derived therefrom. Ohio law authorizes townships, but not counties, to operate cemeteries within unincorporated areas. A township must obtain voter approval before purchasing or appropriating land for cemetery purposes, unless the township has sufficient funds on hand from selling lots in its existing cemeteries.¹³ A township can expand an existing cemetery without voter approval.¹⁴ Once a cemetery is established, the township may adopt and enforce rules and resolutions as necessary to govern it.¹⁵ A township must charge a "reasonable" price for its lots,¹⁶ and can repurchase a lot from its owner at any time if the

⁸ R.C. 4767.06(A)(4) and 4767.07.

⁹ R.C. 4767.08(A).

¹⁰ R.C. 4767.021.

¹¹ R.C. 4767.08.

¹² R.C. 4767.06(D) and (E).

¹³ R.C. 517.01, 517.04, and 517.05.

¹⁴ R.C. 517.13.

¹⁵ R.C. 517.06 and 517.12.

¹⁶ R.C. 517.07.

township and lot owner come to an agreement regarding price.¹⁷ The proceeds the township receives from selling its lots must be used to maintain and enhance the cemetery.¹⁸

Boards of township trustees generally control cemeteries, but the trustees may appoint a board of directors.¹⁹ Townships may place terms on the sale of a burial lot or right. For instance, the township might require the purchaser to provide a list of names and addresses of people who would receive the purchaser's lot or right upon the purchaser's death.²⁰

Townships may experience an issue with lots that have been sold but never used. Since 1986, townships have had authority to "reenter" – in other words, to reassume ownership of the lots – purchased in 1986 or after so they can be sold to others who may put them to use. More recently, the General Assembly enacted a law to allow townships to reenter lots purchased before 1986, but townships first must attempt to communicate with the lot's owner and provide the owner an opportunity to continue the owner's interest in the lot or to receive compensation in lieu of the interest.²¹

Municipal corporations also operate cemeteries under their constitutionally granted Home Rule authority and pursuant to statutory provisions. Most notably, municipal corporations may own and operate cemeteries outside their corporate limits. Municipal corporations pass ordinances as necessary to govern their cemeteries.²²

Townships can operate a cemetery jointly.²³ Alternatively, one or more townships and one or more municipal corporations can operate a cemetery jointly. These are referred to as "union cemeteries" and they operate in accordance with a separate set of statutes. This Members Brief does not go into detail regarding union cemeteries.²⁴

Finally, townships and municipal corporations sometimes are required to assume ownership of and maintenance responsibilities for a transferred or defunct cemetery. See "**Other types of cemetery transfers and defunct cemeteries**" below.

¹⁷ R.C. 517.073.

¹⁸ R.C. 517.08. Except when the funds are used to purchase or appropriate new cemetery grounds.

¹⁹ R.C. 517.20.

²⁰ R.C. 517.07.

²¹ R.C. 517.07 and 517.073. The relevant date for entombment rights other than lots is September of 2015. A township's reentry to a lot purchased before 1986 might be unconstitutional. Article I, Section 19 of the Ohio Constitution provides that "Private property shall ever be held inviolate, but subservient to the public welfare. When taken . . .," compensation must be made to the owner. Although Ohio law provides compensation to a pre-1986 lot owner who responds to the notice, a court could find that applying the law to an owner who responds *after* the notice period ends constitutes an unlawful taking without compensation.

²² R.C. 759.02, 759.03, and 759.11.

²³ R.C. 517.14.

²⁴ R.C. 759.27 to 759.48.

Cemetery Grant Program

In 2018, the General Assembly established a Cemetery Grant Fund, which the Division – with assistance from the Cemetery Grant Advisory Committee – uses to provide \$1,000²⁵ grants to cemeteries to defray the costs of exceptional (nonroutine, nonrepetitive) cemetery maintenance or for training cemetery personnel in the maintenance and operation of cemeteries. The Cemetery Grant Program is funded using \$1 from each \$2.50 burial permit fee. Each grant recipient must provide the Division a final report accounting for all expenditures and disbursements of the grant funds.²⁶

Endowment funds

Cemetery associations are required to establish endowment care trusts, which must be held separately from other cemetery assets. The trust initially is funded with \$50,000 and the cemetery must put 10% of its gross sales proceeds from the sale of lots and rights into the trust. The cemetery may remove money from the trust in \$50,000 increments, but only if \$50,000 remains in the trust from the initial deposit or the additional gross sales proceeds. The dividends and interest income from the trust must be used to establish, manage, and administer the trust or for the maintenance, supervision, improvement, and preservation of the grounds, lots, buildings, equipment, statues, and other real and personal property of the cemetery.²⁷ The Division and Commission audit the trust's financial records every five years to ensure compliance with these requirements.²⁸ The Division may revoke the registration of a cemetery that violates these requirements.²⁹

Townships are permitted, but not required, to create a permanent cemetery endowment fund for maintaining, improving, and beautifying township cemeteries. However, the law authorizes a township to use the principal of the fund if the board of township trustees unanimously agrees that the township is unable to otherwise maintain, improve, and beautify township cemeteries using only income from the fund. The township may deposit money from various sources into the fund, including gifts, charges from the sale of burial lots or rights, and contributions from the township general fund.³⁰

Preneed cemetery merchandise and services contracts

An individual can purchase, on a preneed basis, items or services customarily sold by a cemetery such as outer burial containers, monuments, markers, urns, or opening and closing

²⁵ A grant application may be considered for requests over \$1,000 if the applicant provides proof of one-to-one matching funds and includes an impact statement with proof of extenuating circumstances. Ohio Administrative Code (O.A.C.) 1301:13-7-01.

²⁶ R.C. 4767.10 and O.A.C. Chapter 1301:13-7.

²⁷ R.C. 1721.21.

²⁸ R.C. 4767.02(B)(11) (the Division may audit the records more often if necessary), 4767.06(A)(9), and 4767.08(A)(1).

²⁹ R.C. 4737.02(B)(8).

³⁰ R.C. 517.15.

services. An agreement for the merchandise or services is called a “preneed cemetery merchandise and services contract.”³¹ To safeguard the funds, cemetery associations must retain a certain amount of money received under the contracts (110% of the seller’s actual cost, or 30% of the seller’s retail price of merchandise and 70% of the retail price of services to be provided under the contract). The retained money must be kept in a trust until the merchandise or services are rendered or until the contract is cancelled.³² The Division and Commission audit the financial records of a cemetery’s trust every five years to ensure compliance with these requirements.³³ The Division may revoke the registration of a cemetery that violates these requirements.³⁴

These provisions do not apply to other cemeteries – a national cemetery, family cemetery, or a cemetery operated by a township, municipal corporation, or religious, charitable, or fraternal organization – so long as the cemetery has rules and other measures to safeguard and secure all money received under a preneed cemetery merchandise and services contract.³⁵

Transfer of cemetery from association to association

A cemetery association that intends to sell its cemetery to another cemetery association must hold a meeting for which the association has provided two weeks’ general notice in the newspaper. The transfer must be approved by a majority or two-thirds vote of the members of the association. The purchasing association must carry out the purpose of the selling association (to operate a cemetery) and must apply the money received in the transfer to laying out, preserving, protecting, and embellishing the cemetery. The Commission reviews any proposed transfers that would include substantially all of the assets or stock of a cemetery. The cemetery must provide the Commission an audit of the funds in the cemetery’s preneed trust and endowment care trust, and must formulate an agreed plan pursuant to which the seller and the purchaser will cause the trusts to be properly funded. The Division cannot issue a registration to the purchaser until the Commission has received either the result of the audit or the agreed plan.³⁶

Other types of cemetery transfers and defunct cemeteries

If a cemetery that is operating within the unincorporated territory of a township wishes to convey its grounds to a township, the township must accept that conveyance and provide continued maintenance of the cemetery. (A municipal corporation cannot use this provision to transfer a cemetery to a township.)³⁷

³¹ R.C. 1721.211(A) (does not include the purchase of a burial lot or other right).

³² R.C. 1721.211(C), except some contracts are irrevocable (R.C. 1721.211(I)).

³³ R.C. 4767.02(B)(11) (the Division may audit the records more often if necessary), 4767.06(A)(9), and 4767.08(A)(1).

³⁴ R.C. 4737.02(B)(8).

³⁵ R.C. 1721.211(O).

³⁶ R.C. 1721.17, 4767.02(B)(10), and 4767.06(G).

³⁷ R.C. 517.27.

If a cemetery becomes defunct and the cemetery owner did not convey the grounds, title to the cemetery vests in the municipal corporation where the cemetery is located, or in the township if it is located in unincorporated territory.³⁸ No instrument of conveyance is necessary, because title vests automatically by virtue of statute.³⁹ After title to a defunct cemetery vests in a township, the township can move the remains to a nearby township cemetery and re-erect any stones or monuments marking the graves if the township provides notice to family, friends, or next of kin of the decedents allowing them to remove their decedent's remains. If, after a township assumes ownership of a cemetery, the cemetery's previous owner regains its financial footing, is properly registered, and is otherwise in compliance with state law, the previous owner may petition the county probate court to transfer ownership back to the previous owner.⁴⁰

If land that contains a public cemetery is annexed to a municipal corporation, title to the cemetery vests in the municipal corporation.⁴¹ By this means, a cemetery that belongs to a township may be transferred to a municipal corporation.

If a village owns a cemetery but fails to properly maintain it, and the township where the village is located wants to assume ownership and responsibility, the village and township may enter into an agreement to transfer the cemetery.⁴²

If a cemetery has stopped operating but a township or municipal corporation has not yet assumed ownership and maintenance, the Division of Real Estate may ask a court to appoint a temporary receiver or trustee.⁴³

³⁸ R.C. 517.10 and 759.08. If a cemetery is located in multiple townships, the townships jointly take possession and jointly maintain the cemetery. R.C. 517.14.

³⁹ Ohio Attorney General (O.A.G.) Opinion 1928-2446.

⁴⁰ R.C. 517.21 and 517.271.

⁴¹ R.C. 759.08; *Ravenna Twp. Trustees v. City of Ravenna*, 117 Ohio App. 3d 152 (Portage County 1996); and O.A.G. 1991-062.

⁴² R.C. 759.19.

⁴³ R.C. 4767.11.