

TOWNSHIP CEMETERIES

Cemetery Oversight Act sets up Consumer Bill of Rights

Townships may need to apply for exemption

Erin Valentine

Associate Editor

EVEN CEMETERIES are not protected from ignorance.

Because of last year's discovery that graves had been dug up and plots resold at a Chicago-area cemetery, Illinois legislators have passed the Cemetery Oversight Act that will affect most cemeteries, including those maintained by townships.

Member townships have reported to TOI that there are 1,219 township cemeteries in Illinois maintained by more than 500 townships.

Effective March 1, House Bill 1188 passed the Illinois legislature Jan. 13 and was signed into law by Gov. Pat Quinn on Jan. 17. The Act will repeal the Cemetery Care Act and Cemetery Association Act on March 1, 2012.

LuAnn Johnson, who serves as both the Executive Director of the Oak Ridge Cemetery in Springfield as well as President of the Alliance of Illinois Cemeterians, spoke at hearings of the Cemetery Oversight Task Force for the past six months, making the Alliance's concerns known.

"We chose to be part of the solution. We worked diligently, and the Department of Financial and Professional Regulation was very understanding. When House Bill 1188 passed both the House and Senate, it was what we had worked on," Johnson said. "The

initial bill was very detrimental and would have been extremely costly; it would have caused a number of cemeteries to become abandoned. HB 1188 is not as burdensome as what was originally mandated ... The AIC did have input in the Consumer Bill of Rights and feels it contains sound business practices that most cemeteries are following at this time. Upon reflection, I think all cemeteries will agree that this Consumer Bill of Rights is fair to all parties involved."

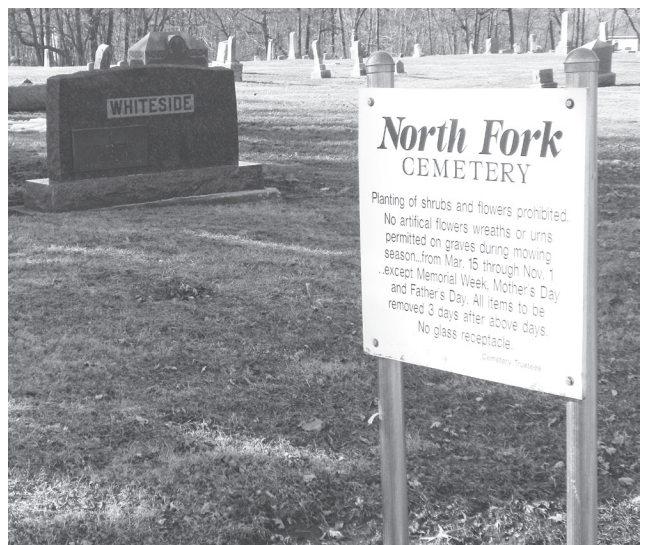
Among the Act's key protections is the establishment of a Consumer Bill of Rights. Under the Consumer Bill of Rights, a consumer is entitled to (1) purchase merchandise from a third-party vendor without incurring a penalty, (2) receive a standardized price list disclosing prices for all cemetery-related products, (3) obtain a burial contract that describes the exact location of the burial, (4) extend a "term burial," which is a burial that is for a limited period of time, and (5) be protected from deceptive or unfair practices by the cemetery.

Partial exemptions are available for the following, but the exemption must be applied for by cemetery authorities (1) that engaged in 25 or fewer interments, inurnments, or entombments of human remains for each of the preceding 2 calendar years and does not accept or maintain care funds, (2) that is

FYI ...

All township cemeteries should be complying with all of these requirements except entering each interment in the database. This database is not yet up and running. Later in 2010, township cemeteries will be required to apply for their partial exemption, but those applications have not yet been written or made available.

TOI will be notified when township cemeteries are to apply for their partial exemption. This is not something that is automatic; townships must apply for this. Those that do not will be considered to have no exemption and will be required to follow all provisions of the Cemetery Oversight Act.



DECATUR'S NORTH FORK CEMETERY is maintained by Long Creek Township

operating as a public cemetery, or (3) that is operating as a religious cemetery. Those cemeteries that qualify and apply for this exemption are still required to comply with the following sections of this Act: Sections 20-5 (a), 20-5 (b), 20-5 (b-5), 20-5 (c), 20-5 (d), 20-6, 20-8, 20-10, 20-11, 20-12, 20-30, 25-3, 25-120, and Article 35. (*see sidebar*) Cemetery authorities that claim a partial exemption must apply for licensure within one year as provided in Article 10 or be subject to discipline in accordance with Article 25 of this Act.

The only cemeteries that will not fall under this new legislation are: (1) any cemetery authority operating as a family burying ground, (2) any cemetery authority that has not engaged in an interment, inurnment, or entombment of human remains within the last 10 years and does not accept or maintain care funds, or (3) any cemetery authority that is less than 2 acres and does not accept or maintain care funds. Even these potentially exempt cemeteries must apply for exempt status as required in Article 10 of this Act. Potentially exempt cemeteries must apply for the exemption within one year or be subject to discipline in accordance with Article 25 of this Act.

The law is not that onerous, agrees Bryan Smith, TOI Executive Director. These are things cemeteries should be doing anyway, he said.

The alleged happenings at Burr Oak Cemetery are unusual, Johnson said. The vast majority of Illinois cemeteries are extremely well run.

“Most cemeteries do not sell “term graves.” Term graves are legal in Illinois, but most cemeteries do

not offer them to families. When news of possible misdeeds hit the news, it was obvious to the AIC that new legislation was inevitable and passage would be swift. We made sure our voices were heard and we were part of the intense negotiations.”

Both TOI and the Illinois Municipal League greatly assisted the AIC with lobbying and the dissemination of information, she said.

“Our partnership was enhanced and will continue to grow. Change is not necessarily a bad thing. We are all comfortable in circumstances in which we are familiar. But change does not have to be seen as a negative,” Johnson said. “Worthwhile legislation has come about because of concerns of impropriety. Our partnership worked diligently with the Illinois Department of Financial and Professional Regulations to assure that we were part of the solution as new legislation was being formulated. The Cemetery Oversight Act is a palatable law for all cemeteries.”

Members of the Alliance of Illinois Cemeterians will receive email keeping them updated on the new

Act; if not members, they can watch the web site <http://www.idfpr.com/cemetery/cemeteryoversight.asp>.

IDFPR will contact Illinois cemeteries currently under the Cemetery Care Act to alert them to the new law. FAQs for cemeteries will be included in that mailing. IDFPR will oversee this law; in the past, the Cemetery Care Act was administered by the Comptroller's Office.

It is the responsibility of every cemetery to read and comply with the Cemetery Oversight Act. But until the administrative rules for this law are created, no cemetery is required to register for an exemption, partial exemption or new license. Any cemetery currently licensed under the Comptroller should continue to file reports to that office until such time as they are able to apply for and receive a new license under IDFPR.

For partially exempt cemeteries ...

A brief description of each requirement of the partially exempt cemeteries is as follows:

- Section 20-5 (a) The cemetery authority shall provide reasonable maintenance of the cemetery property.
- Section 20-5 (b) The cemetery authority shall have an overall map of its cemetery property delineating all lots or plots, blocks, sections, avenues, walks, alleys and paths and their respective designations.
- Section 20-5 (b-5) The cemetery authority shall maintain an index that associates the identity of deceased persons interred, entombed, or inurned after the effective date of this Act with their respective place of interment, entombment, or inurnment.
- Section 20-5 (c) The cemetery authority shall open the map to public inspection.
- Section 20-5 (d) The cemetery authority shall keep a record of every interment, entombment and inurnment completed after the effective date of this Act.
- Section 20-6 Within 10 business days after an interment, entombment, or inurnment of human remains the cemetery manager shall cause a record of the interment, entombment, or inurnment to be entered into the Cemetery Oversight Database. The requirement of this subsection also applies in any instance in which human remains are relocated. If obtaining use of an Internet connection would be an undue hardship on the cemetery authority this data can be provided to the Department through alternative mechanisms including but not limited to the telephone.
- Section 20-8 A cemetery authority shall use its reasonable best efforts to ensure that funeral processions entering and exiting the cemetery grounds do not obstruct traffic on any street for a period in excess of 10 minutes, except where such funeral procession is continuously moving or cannot be moved by reason of circumstances over which the cemetery authority has no reasonable control.
- Section 20-10 At the time cemetery arrangements are made and prior to rendering the cemetery services, a cemetery authority shall create a written contract to be provided to the consumer, signed by both parties, that shall contain: (1) contact information, (2) the price of the service selected and the services and merchandise

Calling All History/ Genealogy Buffs ...

Do You Have a Plot Deed We Should Know About?

MORAINÉ TOWNSHIP (Lake Co.) operates two historic cemeteries, Daggitt and Mooney. These were relatively recent acquisitions, and are not filled with paupers' graves. In fact, they each have an interesting history associated with our earliest settlers. The township would like to enlist history/genealogy buffs to help update our records.

Daggitt Cemetery (also called Grace, sometimes Braeside, or spelled Daggett) was essentially abandoned until taken over by the township in 1996. *Mooney's Cemetery*, adjacent to St. Mary's Cemetery, was acquired from the family in 1960. To our knowledge, no plots remain in Daggitt, and few are known with certainty to be available in Mooney.

"No plots have been sold since my tenure began in 2005," says Supervisor Mari Barnes. "The inherited record-keeping for Mooney is chiefly on typed, undated index cards, sometimes overwritten with new notations (also undated) or contradicted by another index card (also undated)—and is simply unreliable. While previous administrations undertook surveys and made attempts to confirm grave locations and ownership, the

historical development of these sites is such that it may be impossible to ever have certainty.”

Mooney’s deeds were recorded at the county seat in Waukegan for initial transactions in 1908 and thereafter, but if plots changed hands by being sold or given privately, that would not have made it into township records. Our records do show that some lots sold in recent decades had to be reassigned when subsequent investigation revealed them to be already occupied.

“We would love to have the cooperation of the public who may have family deeds for Mooney, so we can update and modernize our records. We hope residents will search for and share their deeds with us—especially in advance of the need for burial someday,” urges Barnes.

There have been burials at Mooney in the last few years. These have gone smoothly when, happily, their deeds match township files. However, the time has come to explore with modern instruments where plots are occupied and where they are not. Tombstones seem to have been placed randomly, at the head or foot of graves, and only approximately on the grave being marked—and possibly stolen or tampered with over the decades by vandals. Locating a plot without exact documentation caused some confusion as recently as last year.

The township will be engaging in an exhaustive documentation project. In the meantime, we have begun the fascinating exploration of the history of these cemeteries from their pioneer days, and will be posting on our website [<http://morainetownship.org>] as much documentation as can be made electronic.

Each generation, it is said, “discovers” anew their own history. Moraine Township would like to

included for that price, (3) the supplemental items of service and merchandise requested and the price of each item, (4) the terms or method of payment, and (5) a statement as to any monetary advances made on behalf of the family.

Section 20-11

All cemetery authorities shall include in the contract described in Section 20-10 the name, address, and telephone number of the cemetery manager. Upon written request additional information can be requested by the consumer.

Section 20-12

No cemetery authority shall require payment for any goods, services or easement by cash only.

Section 20-30

The Department shall create and each cemetery authority shall conspicuously post signs in English and Spanish in each cemetery office that contain the Department’s consumer hotline number, information on how to file a complaint, and whatever other information that the Department deems appropriate.

Section 25-3

All cemetery authorities maintaining a partial exemption must submit to the investigation and mediation procedure of the Department in the event of a consumer complaint.

Section 25-120

This Section provides Whistleblower Protection. The cemetery authority shall not take any retaliatory action against a cemetery manager, customer service employee or cemetery worker for disclosing practices in violation of a law, rule or regulation.

Article 35

Cemetery authorities shall respect the rights of consumers of cemetery products and services. Failure to abide by the cemetery duties listed in this Article could result in activation of the disciplinary processes in Article 25 of this Act.

Consumer privileges include:

- (1) The cemetery authority shall provide a copy of the interment, entombment or inurnment that includes the deceased’s name and date of burial to the person with authority to dispose of the decedent’s remains.
- (2) Consumers have the right to purchase merchandise or services directly from the cemetery authority when available or through a third-party vendor of the consumer’s choice without incurring a penalty or additional charge by the cemetery authority.
- (3) Consumers have the right to complain to the cemetery authority or to the Department regarding cemetery-related products and services as well as issues with customer service, maintenance or other cemetery activities.

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record that history as accurately and completely as possible. The township invites readers and residents to add their family reminiscences and records to ours. Then, check out our website [<http://morainetownship.org>] for the

complete story—such as is known and as it develops—of Mooney/Mooney’s and Daggitt/Daggett/Grace/Braeside Cemetery. Add your knowledge to ours, for the record!

TOWNSHIP CEMETERIES: *Obtaining Additional Burial Space*

Robert F. Russell

Russell, English, Scoma & Beneke, P.C.

Princeton, IL 61356

A QUESTION THAT I AM OFTEN ASKED by my township clients is: “How can we obtain additional land in the township cemetery to provide for more burials?” This can be a particularly vexing problem when there is no vacant land next to the township cemetery, or when the owner of the adjoining land wants a prohibitive price for the land. The recent publicity of the despicable behavior at the Burr Oak Cemetery in Chicago instructs us that it is not a proper solution to obtain more land by digging up and removing the remains of people who have previously been buried in cemetery lots.

There is a way to obtain new burial space within the boundaries of an existing cemetery, provided that there are unused burial lots in the cemetery. This procedure is established in the Illinois Cemetery Protection Act (the “Act”) (765 ILCS 835/0.001, *et seq.*).

The Act provides that when cemetery lots are abandoned, they may be made available for resale to or use by the public. Section 9 of the Act provides that a cemetery lot is presumed to be abandoned when

there is no memorial, monument, or marker installed on a cemetery lot; no person is known to be buried or interred in the lot; no transfer or assignment of a cemetery interment right is contained in the cemetery records; 50 years have passed since the interment right was sold; there has been no contact by an owner recorded in the township cemetery authority records; and the cemetery authority has followed the remaining steps contained in the Act to investigate whether there are parties who have or claim to have an interest in the interment rights in the cemetery lot. Alternatively, if the owner of the right or easement for burial has failed to pay the required annual or periodic maintenance or care charges for a period of 30 years or more, such continuous failure to do so creates and establishes a presumption that the interment right has been abandoned.

Section 9 of the Act provides that if the cemetery authority believes that the interment rights in the lot have been abandoned, and the cemetery authority wishes to reclaim the right of burial, then the cemetery authority must make a publication in a news-

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Cemetery duties include:

- (4) Prices for all cemetery-related products offered for sale by the cemetery authority must be disclosed to the consumer in writing on a standardized price list.
- (5) A contract for the interment, inurnment or entombment of human remains must be signed by both parties: the consumer and the cemetery authority or its representative.
- (6) The cemetery authority shall have the legal right to extend a term burial, prior to disinterment, for the cost as stated on the cemetery authority’s current price list. The Cemetery authority shall, prior to disinterment, provide notice to the family or other authorized agent of the cemetery authority’s intention to disinter the remains and inter different human remains in a term burial space.
- (7) If any rules or regulations of a cemetery change after the date a contract is signed for the purchase of cemetery-related or funeral-related products or services, the cemetery may not require the consumer to purchase any merchandise or service not included in the original contract or in the rules and regulations in existence when the contract was entered unless the purchase is reasonable.
- (8) No cemetery authority or its agent may engage in deceptive or unfair practices.
- (9) The Department may adopt rules regarding green burial certification, green cremation products and methods, and consumer education.
- (10) The contractual requirements contained in this Section only apply to contracts executed after the effective date of this Act.

The description of each of the above Sections is meant only as a brief summary. Each cemetery authority must read and comply with the full law in detail.

paper of general circulation in the county in which the interment rights are located. If no response is received, and at least 50 years have passed since the cemetery interment rights were sold, there is a presumption that the cemetery interment rights in that lot have been abandoned. A sample of such a publication notice follows at the end of this discussion.

Once the cemetery authority has reached the point of establishing a presumption of abandonment, the authority may file in the circuit court a verified petition praying for the entry of an order adjudging the cemetery interment right to have been abandoned. Section 10 of the Act provides that the petition shall describe the cemetery interment right, shall allege ownership of the cemetery by the petitioner, and, if known, the owner of the right or easement for burial in such cemetery interment right. If the owner is known to the cemetery authority to be deceased, then the names, if known, of the claimants to the interment right or the heirs at law and next of kin or the specific legatees under the Will of the owner of the easement for burial in such lot shall be included in the petition. A cemetery authority may include in one petition as many cemetery interment rights as are alleged to have been abandoned.

Section 12 of the Act provides that in the event the owner or claimant, or the heirs at law or specific legatees under the Will of the owner, submits proof of ownership to the court or appears and answers the petition, the presumption of abandonment no longer exists, and the court shall set the matter for hearing.

In the event no one appears and answers the petition, or in the event the court determines from the evidence presented that there has been an abandonment of the cemetery interment right, then an order shall be entered adjudicating such interment right to have been abandoned and adjudging the right or easement for burial therein to be subject to sale by the cemetery authority.

However, this order of abandonment is to also provide that the cemetery authority must wait not less than one year from the date of the entry of such order before the cemetery authority can exercise any rights concerning the disposition of the burial rights in the cemetery lot. Section 13 of the Act provides that during that year the owner or claimant of an interment right may register his or her claim with the cemetery authority, and pay all maintenance or care charges that are due and unpaid. If such contact is made and these expenses are paid, then, upon the petition of the owner or claimant, the order adjudging the interment right to have been abandoned shall be vacated.

Section 14 of the Act provides that if no claim to the interment right is made after the expiration

of one year from the date of the order adjudging an interment right to have been abandoned, a cemetery authority shall have the right to sell such interment right at public sale. The cemetery authority may also bid at and purchase such interment right at the sale.

Notice of the time and place of any sale held pursuant to an order adjudicating the abandonment of a cemetery interment right shall be published once in a newspaper of general circulation in the county in which the cemetery is located not less than 30 days prior to the date of sale.

Section 14 further provides that the proceeds derived from any sale of an interment right shall be used to reimburse the cemetery authority for the costs of such proceeding to establish abandonment and related expenses, including attorney's fees, and the balance, if any, shall be used by the cemetery authority for the care of its cemetery, and for no other purpose.

In summary, in order to regain control of unused burial rights in cemetery lots, the township cemetery authority must first make a diligent review of the records and a good faith effort to find the owner or owners of those burial rights. If no ownership interest is discovered, a notice must be placed in a local newspaper. If no person comes forward subsequent to the publication of the notice, a petition can be filed in the circuit court asking that the court find the burial rights to be abandoned. If the court declares the rights to be abandoned, the burial rights can be sold after the expiration of one year from the date of the entry of the court order.

Is this procedure somewhat cumbersome and time consuming? Yes, of course. But, it does provide an opportunity for landlocked township cemeteries to regain burial spaces, or to obtain additional burial spaces without the necessity of using scarce township resources to purchase additional land.

Robert is an attorney with the law firm of Russell, English, Scoma & Beneke, P.C. in Princeton, Illinois. A graduate of Stanford University and the University of Illinois College of Law, a substantial portion of Robert's practice is concentrated in representing townships and other local governments. He is presently a director and Vice President of the Illinois Township Attorneys' Association.

(SAMPLE FORM OF PUBLICATION NOTICE)

Heavenly Township Cemetery
Any County, Illinois

NOTICE

This notice is being made pursuant to the provisions of Section 9 of the Illinois Cemetery Protection Act for the purpose of finding the person or persons who have or may claim to have an interest in the interment right(s) in the Heavenly Township Cemetery, Any County, Illinois, located at [address]. The interment right(s) is (are) described as follows:

Description of Lot and Block

Last Known Owner

Any person or persons who have or may claim to have any interest in the above interment right(s) must contact _____, _____
(name) (address)
_____, _____, by [date not less than 30
days from date of publication]. (phone)

If no claim of interest is made to the above interment rights(s), the Township may file a petition in the Any County Circuit Court seeking to have the court find the interment rights to have been abandoned, and, once found to be abandoned, sold at public sale.

Dated: _____

Township Clerk

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