

## CHAPTER 5. ACQUISITION OF CEMETERY PROPERTY

### § 301. Right to acquire property

Cemetery authorities may take by purchase, donation or devise, property consisting of lands, mausoleums, crematories and columbariums, or other property within which the interment of the dead is or may be authorized by law.

*Acts 1974, No. 417, § 1.*

### § 302. Surveys and maps

A. Every cemetery authority from time to time as its property is developed for cemetery purposes shall, in the case of land, survey and subdivide it into sections, blocks, plots, avenues, walks, or other subdivisions, and make a good and substantial map or plat showing the sections, plots, avenues, walks or other subdivisions, with descriptive names or numbers. In the case of a mausoleum or a columbarium, it shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevations and other divisions, with descriptive names or numbers.

B. The preparation and use of any survey, map or plat hereinabove contemplated shall not constitute the dedication of the property depicted thereon solely for cemetery purposes, until and unless such property is actually used for said purposes. Accordingly, each such survey, map or plat may include undeveloped areas which may be marked "reserved for future development" and, when so marked, said areas, when subsequently developed and used for cemetery purposes shall be considered dedicated for such purposes, but if such areas are not to be used for cemetery purposes, the cemetery authority shall have the right to use such areas for any other lawful purposes.

C. Copies of such surveys, maps or plats shall be available for inspection by any interested party at the office of the cemetery authority.

D. Cemetery authorities organized after January 1, 1981, shall file the survey, map, or plat provided for in Subsection A of this Section with the board. Each cemetery authority shall file with the board a copy of any such survey, map, or plat affecting property acquired, developed, or used for cemetery purposes after January 1, 1981.

*Acts 1974, No. 417, § 1. Amended by Acts 1980, No. 428, § 1.*

### § 303. Maps and plats; amendment

Any part or subdivision of the property as shown in the survey, map or plat referred to in R.S. 8:301 may, by order of the directors of the cemetery authority, be resurveyed and altered in shape and size and an amended survey, map or plat may be prepared so long as such change does not disturb the interred remains of any deceased person. Said amended survey, map or plat shall be available for inspection as hereinabove provided.

*Acts 1974, No. 417, § 1.*

### **§ 304. Permanency of dedication**

A. After property is dedicated to cemetery purposes pursuant to this Chapter, neither the dedication nor the title of a plot owner shall be affected by the dissolution of the cemetery authority, by nonuse on its part, by alienation of the property, or otherwise, except as provided in this Title.

B. An official act of dedication of cemetery property shall be filed with the clerk of the district court for the parish in which the cemetery is located and with the Louisiana Cemetery Board. These requirements shall not apply to individual cemetery spaces within dedicated cemetery property. The provisions of this Subsection shall apply only to a cemetery established after June 21, 2008.

*Acts 1974, No. 417, § 1. Amended by Acts 2008, No 423, § 1.*

### **§305. Rule against perpetuities, etc., inapplicable**

Dedication to cemetery purposes pursuant to this title is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to and for the benefit of the general public.

*Acts 1974, No. 417, § 1.*

### **§ 306. Removal of dedication; procedure**

A. The following is the intent of the legislature:

(1) That the protection of unmarked human burial sites has been entrusted to the Louisiana Division of Archaeology and the attorney general.

(2) Notice of judicial proceedings shall be given to the Louisiana Division of Archaeology and the attorney general in an action to cause the cemetery's dedication protection to be removed.

B. Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes unless and until the dedication is removed from all or any part of it by judgment of the district court of the parish in which the property is situated in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing to the board and by publication as hereinafter provided, and proof satisfactory to the court: (1) That no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed; and (2) That the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

C. When a petition is filed in court pursuant to Subsection B of this Section, a copy of the petition shall be served upon the Louisiana Division of Archaeology and the attorney general.

D.(1) The board or Louisiana Division of Archaeology shall have the right to intervene in any action filed pursuant to Subsection B of this Section.

(2) The attorney general may represent the board or the Louisiana Division of Archaeology in any action filed pursuant to Subsection B of this Section.

*Acts 1974, No. 417, § 1. Amended by Acts 2010, No. 79, § 1.*

### **§ 307. Notice of hearing**

The notice of hearing by publication provided in R.S. 8:306 shall be given by publication once a week for at least three consecutive weeks in a newspaper of general circulation in the parish where the cemetery is located and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed. Said notice shall: (1) describe the portion of the cemetery property sought to be removed from dedication; (2) state that all remains have been removed or that no interments have been made in the portion of the cemetery property sought to be removed from dedication; and (3) specify the time and place of hearing.

*Acts 1974, No. 417, § 1.*

### **§ 308. Sale of cemetery spaces; abandoned spaces, defined, sale**

A. After completing the map or plat, a cemetery authority may sell and convey interment spaces, subject to such rules and regulations as may be then in effect or thereafter adopted by the cemetery authority, and subject to such other limitations, conditions and restrictions as may be inserted in the instrument of conveyance of such cemetery spaces.

B. In the event that any of the interment spaces in municipal, religious and nonprofit cemeteries, in the city of New Orleans have been abandoned as defined in Subsection C of the Section for more than a period of ten years, then a cemetery authority managing the cemetery in which such space is located, after advertising in the official journal of the city of New Orleans a notice attesting to such fact, may take possession of but not demolish such abandoned interment spaces and sell and convey same subject to rules and regulations as set forth in Subsection A of this Section.

C. Interment space shall be deemed to have been abandoned (1) after a cemetery authority shall have been unable after diligent efforts for twenty-five years to locate any of the owners or their successors or heirs, or, (2) in the event such interment space is no longer fit for human burial, there has been no interment in the preceding twenty-five years and the cemetery authority shall have been unable, after diligent efforts for one year, to locate any of the owners or their successors or heirs to provide care, maintenance or repairs for an interment space. A cemetery authority shall be deemed to have made diligent efforts to locate the owners or their successors or heirs of an interment space for a specified period of time if such authority (1) has advertised a notice stating that such authority proposes to acquire such interment space pursuant to this Section, which notice shall be advertised (a) in the case of the twenty-five year period provided herein (i) once a year in each of the first twenty-four years of such period, and (ii) once a month during the last year of such twenty-five year period, and (b) in the case of the one year period provided herein, once a month during such one year period; (2) has posted a notice on the space to the same effect as that specified in clause (1) of this sentence, once a month during the last year of either of such periods of time; and (3) has mailed a registered/certified letter to the last known owners of said interment space which letter shall contain a notice to the same effect as that specified in clause (1) of this statement; provided, however, that the requirement of clause (3) of this sentence shall not be applicable to

the extent that the records of the cemetery authority acting pursuant to this Section do not contain the name and address of any owner of said interment space or (4) be determined by a court of competent jurisdiction to have exercised diligent efforts to locate the owners; provided, however, that prior to the initiation of any such legal action the cemetery authority has conformed with the requirements of the one year period of monthly advertisements, postings, and mailings as provided hereinabove and evidence of such notices has been exhibited to the court.

*Acts 1974, No. 417, § 1. Amended by Acts 1978, No. 747, § 1, eff. July 17, 1978. Amended by Acts 2011, 1<sup>st</sup> Ex. Sess. No. 34, § 1, eff. June 12, 2011.*

### **§ 308.1. Franklin; interment space ownership**

A. If the city of Franklin determines that the ownership of an unused interment space in a cemetery it governs is ambiguous because the right to use the space for interment may have been sold more than one hundred years previously, but no record of such a sale is extant, the city may assume control of and sell the interment space after diligent effort to locate possible current owners by a review of the public records and the procedure established in Subsection B of this Section.

B. The city shall publish a public notice in its official journal, once a month for twelve consecutive months, attempting to locate owners of any such spaces. Such notice shall, at a minimum, provide each of the following:

(1) The identity of the interment spaces, either individually or by description of the general area of the cemetery where multiple spaces are located.

(2) A statement explaining that the right of interment in such a space may have been sold more than one hundred years previously, but the city has no record of such a sale.

(3) An address where a person who can show an ownership interest in such a space may present evidence of such ownership.

(4) A specific date after which the city assumes full ownership of any unclaimed spaces and after which a previous owner has no right, title, or interest in or to such a space.

C. After compliance with Subsection B of this Section, the city shall have full ownership and control of any interment spaces referenced in the notices specified in Subsection B of this Section, if no person files suit or otherwise presents sufficient evidence of an ownership interest on or before the date specified in Paragraph (B)(4) of this Section. However, if a person's claim of ownership is presented on a timely basis but evidence is insufficient to justify a belief therein, the claim for which the person may file suit is subject to a liberative prescription of one year from the date specified in Paragraph (B)(4) of this Section. If the person does not timely file suit as specified in this Subsection, the city may thereafter sell and convey such interment spaces as provided by law.

*Acts 2015, No. 73, § 1.*

### **§ 309. Execution of conveyances**

All conveyances made by a cemetery authority shall be signed by such officer or officers as are authorized by the cemetery authority.

*Acts 1974, No. 417, § 1.*

### **§ 310. Interment spaces indivisible**

All interment spaces the use of which has been conveyed by deed or certificate of ownership are indivisible except with the consent of the cemetery.

*Acts 1974, No. 417, § 1.*

### **§ 311. Commission on sales prohibited**

It shall be unlawful for a cemetery authority, directly or indirectly, to pay or offer to pay to any person, firm or corporation not licensed under this title, a commission or bonus or rebate or other thing of value for the sale of an interment space. This shall not apply to a person employed by the cemetery authority to make such sales.

*Acts 1974, No. 417, § 1.*

### **§ 312. Employment of solicitors prohibited**

It shall be unlawful for any person, firm or corporation, directly or indirectly, to pay or cause to be paid or offer to pay to any other person, firm or corporation, except the employee of a cemetery authority or a duly licensed cemetery sales organization, any commission, bonus, rebate or other thing of value in consideration for recommending that a dead human being be disposed of in any crematory or interred in an interment space.

*Acts 1974, No. 417, § 1.*

### **§313. Exemption from seizure and sale; mortgage prohibited**

Property dedicated for cemetery purposes, including cemetery spaces and the land on which they stand, shall be exempt from seizure and sale for debt and shall not be susceptible for mortgage or other hypothecation, whether legal or conventional, and it shall be unlawful for any clerk of court or recorder of mortgages to record or certify any mortgage or encumbrance as bearing against any such property.

*Acts 1974, No. 417, § 1.*

### **§ 314. Record of ownership and transfers**

A record shall be kept by each cemetery authority of the ownership of each interment space in the cemetery conveyed by it and of all transfers thereof. No transfer of any interment space heretofore or hereafter made, or of any right of interment, shall be complete or effective until actually recorded in the

official records of the cemetery authority.

*Acts 1974, No. 417, § 1.*

### **§ 315. Inspection of records**

The official records of each cemetery authority shall be open to inspection by the owner or duly authorized representative of an interment space during the customary office hours of the cemetery.

*Acts 1974, No. 417, § 1.*

### **§316. Opening of roads, railroads through cemetery; consent required, exception**

After dedication pursuant to this title, and as long as the property remains dedicated to cemetery purposes, no railroad, street, road, alley, pipe line, pole line or other public thoroughfare or utility shall be laid out, through, over or across any part of it without the consent of the cemetery authority owning and operating it. If said cemetery authority is not in existence or not operating, then the consent of not less than two-thirds of the owners of interment spaces shall be required.

*Acts 1974, No. 417, § 1.*

### **§ 317. Certain cemetery lands exempt from taxes**

Property dedicated for cemetery purposes, including cemetery spaces and the land on which they stand, shall be exempt from all taxation to the fullest extent permitted by the constitution and laws of this state.

*Acts 1974, No. 417, § 1.*