ALL THINGS CEMETERY

PRESENTED BY:
CINDY DAVIS-DODGE, LIASON
MICHIGAN TOWNSHIPS ASSOCIATION

WHAT ARE THE MOST ASKED QUESTIONS I RECEIVE?

THE NUMBER 1 QUESTION IS....

Who has the right to burial spaces?
WHO HAS THE RIGHT TO BURIAL?

• The original owner(s) and anyone they assign to a burial right.
• What happens if the original owner(s) dies and unused spaces remain?
  • Hopefully, family members have legal documentation stating their ownership right (e.g., a will or other legal document).

BUT WHAT IF THEY DON’T?

DON’T BE CONFUSED BY….

• MCL 700.3206 -- Right and power to make decisions about funeral arrangements and handling, disposition, or disinterment of decedent’s body; presumptions; priority; shared rights and powers; personal representative or nominated personal representative; guardian, special personal representative; additional persons; reasonable attempt to locate person; effect of section on anatomical gift; “nominated personal representative” defined.
  • Order: Spouse, children, parents, siblings, nieces/nephews, grandparents, aunts/uncles, cousins, personal representative outlined in a will, guardian, appointed representative, medical examiner.

OTHERS USE A NOTARIZED RELEASE

• THERE IS NO STATUTORY AUTHORITY TO USE THIS PROCESS.
• Some lawyers endorse this practice.
• If used—make sure your attorney will defend it should an issue arise.
PROBATE COURT

Family must petition to probate court to assign the asset (burial right) to them.

Best Practice

Assign Burial Rights at time of purchase.
HOW LONG DOES SOMEONE OWN A BURIAL RIGHT?

- FOREVER
  -----UNLESS.......Your ordinances says differently!

- Ordinance options:
  - Repurchase
  - Transfers
  - Revert ownership

Cemetery plots are nontransferable, but may be sold back for the original purchase price to the (XXXXX) for resale by the (XXXXX).

The (XXXXX) shall have the right to correct any errors that may be made concerning interments, disinterments, or in the description, transfer or conveyance of any cemetery plot, either by canceling the permit for a particular vacant cemetery plot or plots and substituting and conveying in lieu thereof another vacant cemetery plot or plots in a similar location within the cemetery at issue or by refunding the money paid for the cemetery plot to the purchaser or the successor of the purchaser. In the event that an error involves the interment of the remains of any person, the (XXXXX) shall have the right to remove and transfer the remains so interred to another cemetery plot in a similar location in the same (XXXXX) cemetery in accordance with lav.

Purchase Price and transfer fees:
Fees shall be set by the (XXXXX) from time to time by resolution.

All charges shall be paid to the Treasurer and shall be deposited in the Cemetery Fund.

REPURCHASE

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ASSIGNING & NAME CHANGING

Sale of Cemetery Plots; Nontransferable

After the effective date of this Ordinance, cemetery plots shall be sold to residents and nonresidents by the (XXXXX) for the purpose of burial/cremations for the purchaser of a cemetery plot, or his or her immediate family. No sale shall be made to funeral directors or others, except for those acting as an agent for an eligible purchaser.

All sales and transfers of cemetery plots shall be made on a form approved by the (XXXXX) Board. (XXXXX) official, which grants a right of burial only and does not convey any other title or right to the cemetery plot or burial space sold. Such forms shall be signed by the Clerk or Deputy Clerk, and shall constitute a permit when approved.

At the time of purchase from the (XXXXX), each cemetery plot shall be assigned the name of the specific person who shall be interred in that cemetery plot upon death. If the owner of a cemetery plot desires to make a name change regarding the assigned cemetery plot, that person must notify the (XXXXX) in writing.
Forfeiture of vacant cemetery plots or burial spaces

Cemetery plots or burial spaces sold after the effective date of this Ordinance and remaining vacant for seventy-five (75) years or more from the date of their sale shall automatically revert to the (XXXXX) upon the occurrence of the following events:

Notice shall be sent by the Clerk by first-class mail to the last known address of the last owner of record informing him/her of the expiration of the 75-year period and that all rights with respect to said plots or spaces will be forfeited if he/she does not affirmatively indicate in writing to the Clerk within sixty (60) days from the date of mailing of such notice of his/her desire to retain such burial rights; and

No written response to said notice indicating a desire to retain the cemetery plots or burial spaces in question is received by the Clerk from the last owner of record of said plots or spaces, or his/her heirs or legal representative, within sixty (60) days from the date of mailing of said notice.

WHAT IF WE DON’T ASSIGN, REPURCHASE OR REVERT SPACES?

• You may and/or could have many spaces purchased that are never used and you will never be able to use them!

UNLESS

• Petition Circuit Court to Vacate (MCL 128.11 to 128.16)

HOW DO YOU PETITION TO CIRCUIT COURT?

• Petitioning the court can only be initiated if the space has been vacant for 7 or more years and should be initiated in coordination with the local unit attorney.

• Board adopts a forfeiture/abandonment resolution (MCL 128.12)

• Resolution is served on last know owner by first-class mail.

• If no response within 30 days, then court petition can be initiated.

• The court will comply with further noticing and publishing within 40 days prior to the hearing to vacate.

• If the local unit prevails in vacating by court action, the original owner has up to 2 years redeem or keep their space.
WHAT IF YOU DON'T KNOW WHAT'S VACANT?

• Use volunteers, historical societies, scouts to help provide research necessary to identify the location of specific graves.
• Advertise in the newspaper or newsletter.
• Funeral Home Records
• Radar testing of soil.

WHAT RECORDS DO WE HAVE TO KEEP?

• Required:
  • Land: Deed/Conveyance Documents & Survey
  • Lot Map
  • Burial Transit Permit
• Duplicate copies should be kept.
• Generally should not be kept in homes.
• Cemetery records are permanent government records.
A burial transit permit is retained by the cemetery or crematory to assure there is an accurate record as to the location and final disposition of the deceased.

- Required to transport a body to cemetery, crematory, personal residence, or final place of disposition.
- Issued by county health department or funeral director.
- Funeral directors must supervise the transport and disposition of all bodies.
  - Crematory
  - Cemetery
  - Private Burial Ground
- Not required when moving a body within a cemetery.
BURIAL TRANSIT PERMIT

Burial Transit Permit must be signed by Sexton or person receiving the body.

May also be used as winter storage authorization.

OTHER OPTIONAL RECORDS

- Individual file records may include:
  - Burial Certificate
  - Obituary
  - Authorization for burial
  - Grave opening and closing documents
  - Monument setting records
  - Transfer of ownership documents (if applicable)
  - Disinterment-Reinterment Permit (if applicable)
  - Winter Storage documentation
  - Receipts of Sale or Fees

ARE WE RESPONSIBLE FOR THAT CEMETERY?

- Four types of cemeteries:
  - Public (Townships, Cities, Villages and Counties)
  - Private (for profit)
    - Regulated by State Cemetery Commissioner
    - Controlled by town or county zoning
  - Religious including the Amish
  - Religious Land Use and Institutionalized Persons Act
  - Family Owned
    - Up to 1 acre, permanently deeded to property owner, tax exempt
    - Local Division Act does require assessment taxes.
ARE "TOWNSHIPS" RESPONSIBLE FOR ABANDONED CEMETERIES?  

Yes

- Public Act 49 of 1895, MCL 128.31, et seq., requires townships to reinter in a township cemetery remains disinterred from a private cemetery in the township, when 10 or more township residents complain in writing that the private cemetery is not being cared for.
- Valid petitions are filed with the circuit court to conduct a hearing of judgment.
- If the cemetery vacated belongs to a religious society or church, and another suitable cemetery belonging to the same church or denominational society exists within the township or an adjoining township, then the removal may be made to that cemetery instead of to the township cemetery.
- In all cases where the land embraced in the cemetery so vacated shall not exceed 1 acre in area it shall revert to the original grantor or his heirs, or be so conveyed to him or them by the said township if necessary.
- Provided, said grantor or his heirs shall first pay to said township the value of said land based upon the market price of like land in the immediate vicinity.
- All vacated situations are at the cost of the township.
- Note: This law does not seem to apply to cities.

HOW DO WE EXPAND OR CREATE A NEW CEMETERY?

- Land can be acquired for a new cemetery:
  - Pursuant to a voluntary sale
  - Pursuant to eminent domain (MCL 128.151-164)
  - Donated

EXPANDING OR CREATING NEW CEMETERIES

- Must be approved by the county health department (MCL 333.2458)
  - Submit a request to the Environmental Health Department* for a vacant land evaluation
  - Well-drained soil
  - Sufficient distance from water sources (wells, surface water, etc.)
  - A report with findings and recommendations will be produced.
- The board (or planning commission) will evaluate the report and determine if it is feasible to expand or create a new cemetery on said plot.
- *Note: procedure may vary by county.
HOW DO YOU CLOSE/OPEN AN EXISTING CEMETERY?

• Can you close an existing cemetery?
  No!
  BUT, you can stop selling burial rights.

• Doesn’t that make opening an existing cemetery a “non” question?

CHALLENGE QUESTION

Why is the cemetery closed?

• Don’t know whose buried where?
• So old?
• All sold out?

THERE’S ALWAYS SPACE TO BURY

• Why is there always space to bury?

CREMATION
CREMAINS

- Are not regulated like full body interment.
  - Their final disposition is at the crematory.

- They can be:
  - Buried
    - Columbarium
    - Private headstone
  - Scattered
  - Some people even think they can bury them in your cemetery!

Hold Up, Wait a Minute!

Can people just bury their loved ones cremains if they’ve bought a burial right in your cemetery?
THAT WOULD BE TRESPASSING

- Cremains can only be buried in compliance with your ordinance.
- The Ordinance should state:
  - Who has authority to open and close?
  - Options for interment of cremains?
    - Buried within a space.
    - Interred in a headstone.
    - Interred in a columbarium.
  - How much notice required?
  - What paperwork will be required?
  - Are vaults required?
  - Fees.

Scattering
CAN YOU ALLOW SCATTERING?

- Where can we store or scatter ashes after cremation?
- In Michigan, there are no state laws controlling where you may keep or scatter ashes. Ashes may be stored in a crypt, niche, grave, or container at home. If you wish to scatter ashes, you have many options. Cremation renders ashes harmless, so there is no public health risk involved in scattering ashes. Use common sense and refrain from scattering ashes in places where they would be obvious to others.
- Scattering ashes in an established scattering garden. Many cemeteries provide gardens for scattering ashes. If you're interested, ask the cemetery for more information.
- Scattering ashes on private land. You are allowed to scatter ashes on your own private property. If you want to scatter ashes on someone else’s private land, it’s wise to get permission from the landowner.

NOLO.com / Michigan Burial, Cremation Laws:

Scattering ashes on public land. You may wish to check both city and county regulations and zoning rules before scattering ashes on public land, such as in a city park. However, many people simply proceed as they will, letting their best judgment be their guide. — ORDINANCE LANGUAGE

Scattering ashes on federal land. Officially, you should request permission before scattering ashes on federal land. As with local or state land, however, you will probably encounter no resistance if you conduct the scattering ceremony quietly and keep the ashes well away from trails, roads, facilities, and waterways. You can find guidelines for scattering ashes on the websites for some national parks.

Scattering ashes at sea. The federal Clean Water Act requires that cremated remains be scattered at least three nautical miles from land. If the container will not easily decompose, you must dispose of it separately. The EPA does not permit scattering at beaches or in wading pools by the sea. Finally, you must notify the EPA within 30 days of scattering ashes at sea.

The Clean Water Act also governs scattering in inland waters such as rivers or lakes. For inland water burial, you may be legally required to obtain a permit from the state agency that manages the waterway. For more information, see Burial of Human Remains at Sea on the EPA website.

Scattering ashes by air. While there are no state laws on the matter, federal aviation laws do prohibit dropping any objects that might harm people or property. The U.S. government does not consider cremains to be hazardous material, all should be well as long as you remove the ashes from their container before scattering.
More than 50 years ago the Catholic Church said it was ok for members to choose cremation. October 2016 strict caveats were issued for those wishing to be cremated.

- Must be kept in a sacred space.
- Not:
  - Scattered on land, in air, at sea, or in some other way
  - Kept in an urn at home
  - Divided among family
  - Use for jewelry.

Local Unit Liability vs. Family Liability
LIABILITY

• Liability responsibility should be stated in the ordinance:
  • The maintenance, repair and upkeep of a cemetery memorial, marker, urn or similar item is the responsibility of the heirs or family of the person buried at that location. The (XXXX) has no responsibility or liability regarding the repair, maintenance or upkeep regarding any such memorial, marker, urn or similar item.
  • Every person who enters, remains in and travels within a (XXXXX) cemetery does so at their own risk. The (XXXXX) is not responsible for any injury, accident or other calamity that might occur to any person present in a (XXXXX) cemetery. Furthermore, the (XXXXX) is not responsible for any damage or vandalism to, theft or determination of any burial monument, headstone, flower urn or other item placed or erected at or near a cemetery plot, burial site or anywhere in a (XXXXX) cemetery. The purchaser or transferee of any cemetery plot or the equivalent (and all subsequent transferees, assignees, heirs, beneficiaries) hereby releases, waives, indemnifies and holds harmless the (XXXXX) for, from and against any injury, damages, causes of action, claims, costs and expenses associated with, relating to and/or involving the cemetery plot or similar right, any headstone, monument or similar item, and any matter related to the cemetery involved. Such waiver, release and hold harmless provision shall apply not only to (XXXX), but also as to the Sexton and any employee, officer, official or agent.
• It is the responsibility of the family to keep an updated address on file with (XXXX).

FOUNDATIONS

The foundation is the responsibility of the local unit.
The family is only buying the headstone and base as their personal property.

FOUNDATIONS

• Ordinance will direct the fees and setting of the foundation:
  • The footing or foundation upon which any marker or memorial must be placed shall be constructed by the (XXXX), or such person(s) as may be designated by the (XXXX) Board. Fees for such work shall be set from time to time by resolution of the (XXXX) Board, payable to the (XXXX).
CAN WE SPEND MONEY TO RESTORE AN OLD CEMETERY?

YES

KEEP CALM AND PRESERVE CEMETERIES

NO

WHO DOES WHAT?

• Maintenance Job Functions:
  • Opening and closing graves
  • Foundation placement
  • Leveling and seeding all new graves
  • Leveling and seeding old graves that have settled
  • Cutting the grass and trimming around stones and markers
  • Removing dead flowers from new graves, removing winter grave blankets and other grave decorations in spring and fall
  • Raking leaves from all sections of the cemetery during the fall and spring
  • General clean up, including removal of fallen tree limbs and brush
  • Emptying all rubbish containers
  • Snow removal during winter season

DUTIES MAY INCLUDE

• Cemetery Administrative Job Functions:
  • Show available grave sites to family
  • Mark grave sites for burial
  • Lot sales and assistance in locating sites
  • Burial rights certificates sold, recorded, filed (Timely deposits to Treasurer)
  • Keep lot maps current
WHO DOES WHAT?

- Cemetery Ordinance should state who is responsible for specific activities:
  - Authority of the Sexton
    - The (XXXXX) Board shall appoint a Sexton, who shall serve at the discretion of the (XXXXX) Board.
    - The Sexton may be an employee or independent contractor for the (XXXXX) at the discretion of the (XXXXX) Board.
    - The Sexton shall assist other officials with the enforcement and administration of this Ordinance.
    - The Sexton shall have such duties and obligations with regard to (XXXXX) cemeteries as may be specified from time to time by the Board.

WHO CAN ENFORCE?

- Who Can Enforce this Ordinance
  - Unless otherwise specified by the (XXXXX) Board by resolution, the following officials or officers shall have the authority to enforce this Ordinance and to issue municipal civil infraction citations/tickets pursuant to this Ordinance:
    - Supervisor
    - Clerk
    - Sexton
    - Zoning Administrator
    - Ordinance Enforcement Officer
    - Any deputy of the county sheriff’s department
    - Any State Police officer

APPEALS

- Process Should be Stated in Ordinance:
  - Interpretation/Appeals to the (XXXXX) Board
    - The (XXXXX) Board shall have the authority to render binding interpretations regarding any of the clauses, provisions, or regulations contained in this Ordinance and any rules or regulations adopted pursuant to this Ordinance, as well as their synonyms.
    - The (XXXXX) Board (or its designee) is also empowered to render, in good faith, any ruling of any provision of this Ordinance or any rule or regulation promulgated under this Ordinance, where practical difficulties in carrying out the literal or plain meaning of any rule or regulation adopted hereunder would result in hardship to a particular person or persons or the public.
    - Any such action, however, shall be of such a character as to not impair the purpose and intent of this Ordinance.
    - Any party aggrieved by any interpretation or decision made by the Sexton or any official, agent or contractor pursuant to this Ordinance, or any matter relating to a (XXXXX) cemetery, may request a hearing thereon by petition to the (XXXXX) Board. Any such appeal shall be in writing and shall be filed with the (XXXXX) within thirty (30) days of the date of the decision, determination, or other matter being appealed from. The (XXXXX) Board shall grant the aggrieved party who filed the written appeal with the (XXXXX) at least fifteen (15) days prior written notice of the meeting at which the (XXXXX) Board will address the matter unless an emergency is involved, in which case the (XXXXX) shall utilize reasonable efforts to notify the aggrieved party who filed the appeal of a special or emergency meeting of the (XXXXX) Board at which the matter will be addressed. Pursuant to any such appeal, the decision of the (XXXXX) Board shall be final.
EMPLOYEE VS. INDEPENDENT CONTRACTOR

Many cemetery maintenance duties can be contracted:
- Lawn Care
- Grave Digging
- Foundation Setting
- Snow Plowing

Administrative duties are generally performed by an employee:
- Record keeping
- Sales
- Funeral Service and other maintenance oversight.

EMPLOYEE VS. INDEPENDENT CONTRACTOR

IRS:
- Independent Contractors: People such as contractors, subcontractors who are in an independent trade, business or profession in which they offer their services to the general public are generally independent contractors. However, whether these people are independent contractors or employees depends on the facts in each case. The general rule is that an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done or how it will be done.
- Employees: are not independent contractors if they perform services that can be controlled by an employer (what will be done and how it will be done). This applies even if they are given freedom of action. What matters is that the employer has the legal right to control the details of how the services are performed.

HANDLING MONEY

All money must be transmitted to the municipal treasurer, deposited and accounted for by the municipal clerk or other bookkeeper.

The municipal cemetery property and services—including burial rights and the arrangements for burial—are municipal assets. The result is that a private individual or business cannot use the municipal cemetery as a private business, and any fees paid for municipal cemetery services must be paid to the municipality.

If the municipality authorizes the sexton to receive cemetery fees on behalf of the municipality, then all fees received by the sexton must be receipted for using official receipts, delivered to the municipal treasurer according to an established schedule, and deposited by the treasurer in a municipal bank account.

The municipality should notify its insurance carrier of any officer, employee or contractor handling money to ensure that the appropriate liability insurance covers each person.