

# THE LAST MAN STANDING: WHAT TO DO WHEN YOUR TOWNSHIP INHERITS A CEMETERY

By

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# Overview of Township Cemeteries

- If land used as a public burial ground is abandoned for 10 years and is located in the Township, the cemetery becomes Town Property.
- Town can prohibit future burials in the cemetery.
- Town can operate the cemetery, including selling burial lots.
- Town should maintain the cemetery.

# Obtaining Township Cemeteries

- By vote of electors to buy, condemn or receive cemetery as a gift. (M.S. 365.26)
- By operation of law when a public burial ground is abandoned for 10 years and is located in the Township. (M.S. 365.28)
- Obtaining maintenance rights only over a cemetery that has been neglected for 10 years, even if it is not a public burial ground. (M.S. 306.245)

## Obtaining Township Cemeteries (cont.)

- Minn. Stat. 306.025 allows the Town Board to accept the transfer of a cemetery from an active public cemetery association.
- Town must accept by resolution and must agree to operate for same purposes as originally established.
- Once transferred, Town must continue to maintain.

# Abandoned Public Cemetery— Requirements:

- Public burial ground—“public” not defined. Likely means open to anyone who wants to be buried there.
- If it was a church cemetery that only allowed members of the church to be buried there, it probably is not a public cemetery.
- Likely difficult to tell for many abandoned cemeteries, as many of these cemeteries have not been operating for many years, making it difficult to tell whether they were open to the public.

# Operations

- Town Board may choose to not allow new burials—  
Township just maintains the grounds.
- Town Board can operate the cemetery:
  - Sell lots.
  - Maintain grounds.
  - Reclaim lots that were sold more than 40 years ago and are not occupied.

# Township Expenditures on Non-Public Cemeteries

- Minn. Stat. 306.246 authorizes the Township to spend money for general maintenance of an abandoned or neglected cemetery. No requirement that it be a public burial ground.

# Township Expenditures on Non-Public Cemeteries (cont.)

- Minn. Stat. 306.41 allows the Town Board to establish a permanent care and improvement fund for a cemetery, even if it was not a public burial ground.
- Establishment must be by unanimous vote of the Town Board.
- Cemetery must be at least one-half acre in size and must be recorded at County Recorder's office in order to qualify for Minn. Stat. 306.41 permanent care fund.



# Cemetery Funds

- If Township receives donations or if the cemetery association that owned the cemetery has funds left over, the Town Board may require these funds to be deposited with the County in a special cemetery fund.
- We don't recommend the use of a County special cemetery fund as it will make it harder to administer the funds.

# Management of the Cemetery—Common Issues

- Township must maintain grave ownership records.
- Should keep track of when a property was sold, to whom it was sold, purchase price and location of lot.
- Lot reverts to the Township under Minn. Stat. 365.27 if not used 40 years after the sale of the lot. Your records need to be sufficient to make this determination 40 years from now.
- Township should have a map showing location of all plots and who is in which grave.

# Management of the Cemetery— Common Issues

- Likely have to use general Township funds to maintain the grounds as very few cemetery associations that go out of business have excess funds to turn over to the Township.
- Town Board determines level of maintenance.
  - How often to mow the lawn?
  - Repair broken/damaged/sunken headstones?

# Management of the Cemetery—Common Issues

- Price of graves—
  - Lower price for Township residents?
  - Higher price for non-residents?
- Transfer of graves from one person to another—
  - Among family only?
  - Free transfer without restriction?
  - Registration requirements with the Township?

# Management of the Cemetery— Common Issues

- Grave locations
  - What records did the Township get from the prior cemetery management?
  - Are the burial records accurate?
  - Has the cemetery been surveyed with survey monuments marking the graves?

# Management of the Cemetery— Common Issues

- Who opens and closes the graves?
  - Usually the Township has an arrangement with a local excavator who has experience with burials.
  - Township should set a policy for how/when graves are opened and closed and what precautions are taken.
  - Winter burials must be allowed (Minn. Stat. 306.99), but Town can charge extra.

# Management of the Cemetery— Common Issues

- Policies
  - Headstone policies—how big, what materials, how installed? Flush with the ground?
  - Require a deposit to ensure headstone is placed?
  - Require a concrete burial vault to hold the casket?
    - Keeps grave from settling and prevents headstones from sinking.
    - Costs more than a simple casket burial.

# Management of the Cemetery— Common Issues

- Policies
  - Allow relatives to decorate graves?
    - Plastic flowers?
    - Bushes?
    - Wooden or metal ornaments?
    - Will these items complicate maintenance?
    - Township may remove?



# Management of the Cemetery— Common Issues

- Policies
  - Only sell lots to Town Residents?
    - Town resident who moved to Florida eight years ago?
    - Town resident who moved to the neighboring city's nursing home 2 years ago?
    - Non-Town resident spouse of deceased Town resident who is already buried in the cemetery?
    - Non-Town resident children of Town residents already buried in the cemetery?

# Management of the Cemetery—Common Issues

- Burial of cremated remains—
  - Where? In regular graves? Only in a columbarium?
  - How many urns can be buried in a grave?
  - Reduced burial fee for burying cremated remains?

# Management of the Cemetery— Common Issues

- Policies
  - Allow for Township flexibility.
    - Township should make sure that it always has the ability to modify its policies, even on a case-by-case basis.
    - Remember you will be dealing with families that are grieving—compassion and flexibility on the Township's part from time to time can go a long way.