

AN ACT in relation to property.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 5. The Cemetery Protection Act is amended by changing Section 16 and by adding Section 14.5 as follows:

(765 ILCS 835/14.5 new)

Sec. 14.5. Correction of encroachment on interment, entombment, or inurnment rights.

(a) Whenever a cemetery becomes aware that there is an encroachment on or in the lawful interment, inurnment, or entombment rights of another, and when the cemetery buried or placed or permitted the burial or placement of the encroaching item in or on these rights, the cemetery may correct the encroachment in accordance with this Section. This Section shall not apply to, or be utilized in connection with, any eminent domain, quick-take, or other condemnation proceeding that is designed to relocate a cemetery or portion thereof to another location.

(b) When the encroaching item is a marker, monument or memorial that should be placed on or in another interment, inurnment, or entombment right located within the cemetery, or when the item is the foundation or base for any of the foregoing, the cemetery may with reasonable promptness, and without being required to obtain any permit, relocate the item to its proper place. Notice of the corrective action shall be given no later than 30 days following the correction in accordance with subsection (d) of this Section.

(c) When the encroaching item is a vault, casket, urn, outer burial container, or human remains that should be placed in or on another interment, inurnment, or entombment right located within the cemetery, the cemetery may with reasonable promptness, and without being required to obtain any permit,

relocate the item to its proper place. Except as otherwise provided in this subsection, notice of the corrective action shall be given no later than 30 days prior to the correction in accordance with subsection (d) of this Section. When the involved encroachment would, if uncorrected within 30 days, interfere with a scheduled interment, inurnment, or entombment, then the notice shall be given in accordance with subsection (d) of this Section with as much advance notice as reasonably possible or, if advance notice is not reasonably possible, no later than 30 days following the correction. In the event the correction is to occur in a religious cemetery that, for religious reasons, maintains rules that preclude advance notice of corrections, the notice shall occur no later than 30 days following the correction.

(d) Notice under this Section shall be by certified mail or other delivery method that has a confirmation procedure, in 12-point type, to the owner of any affected interment, inurnment, or entombment right or, when the owner is deceased, to the surviving spouse of the deceased, or if none, any surviving children of the deceased, or if no surviving spouse or children, a parent, brother, or sister of the deceased, or, if failing all of the above, any other listed heir of the deceased in the cemetery records. In providing notice, the cemetery authority shall exercise due diligence to engage in a reasonable search of available funeral home of record or cemetery records to obtain the current address of the party to be notified. The notice shall provide a clear statement of the correction taken or to be taken, together with the reasons for the correction, and shall outline a simple process for the notified person to obtain additional information regarding the correction from the cemetery. When advance notice is required, the notice shall inform the notified party of his or her right to be present for any reinterment, reinurnment, or reentombment, as well as his or her option to object by obtaining an injunction enjoining the contemplated correction. The cemetery shall maintain for no less than 5 years a record

of any notice provided under this Section.

(e) Nothing in this Section shall make a cemetery financially responsible for the correction of encroachments that are directly or indirectly caused by the owner of an interment, inurnment, or entombment right or by his or her heirs or by an act of God, war, or vandalism. The cemetery shall be financially responsible for the correction of all other encroachments covered by this Section.

(f) Nothing in this Section shall be construed to limit the liability of any party.

(765 ILCS 835/16)

Sec. 16. When a multiple interment right owner becomes deceased, the ownership of any unused rights of interment shall pass in accordance with the specific bequest in the decedent's will. If there is no will or specific bequest then the ownership and use of the unused rights of interment shall be determined by a cemetery authority in accordance with the information set out on a standard affidavit for cemetery interment rights use form if such a form has been prepared. The unused right of interment shall be used for the interment of the first deceased heir listed on the standard affidavit and continue in sequence until all listed heirs are deceased. In the event that an interment right is not used, the interment right shall pass to the heirs of the heirs of the deceased interment right owner in perpetuity. This shall not preclude the ability of the heirs to sell said interment rights, in the event that all listed living heirs are in agreement. If the standard affidavit for cemetery interment rights use, showing heirship of decedent interment right owner's living heirs is provided to and followed by a cemetery authority, the cemetery authority shall be released of any liability in relying on that affidavit.

The following is the form of the standard affidavit:

) SS

COUNTY OF .....)

AFFIDAVIT FOR CEMETERY INTERMENT RIGHTS USE

I, ....., being first duly sworn on oath depose and say that:

1. A. My place of residence is .....

B. My post office address is .....

C. I understand that I am providing the information contained in this affidavit to the ..... ("Cemetery") and the Cemetery shall, in the absence of directions to the contrary in my will, rely on this information to allow the listed individuals to be interred in any unused interment rights in the order of their death.

D. I understand that, if I am an out-of-state resident, I submit myself to the jurisdiction of Illinois courts for all matters related to the preparation and use of this affidavit. My agent for service of process in Illinois is:

Name ..... Address .....

City ..... Telephone .....

Items 2 through 6 must be completed by the executor of the decedent's estate, a personal representative, owner's surviving spouse, or surviving heir.

2. The decedent's name is .....

3. The date of decedent's death was .....

4. The decedent's place of residence immediately before his or her death was .....

5. My relationship to the decedent is ..... and I am authorized to sign and file this affidavit.

6. At the time of death, the decedent (had no) (had a) surviving spouse. The name of the surviving spouse, if any, is ....., and he or she (has) (has not) remarried.

7. The following is a list of the cemetery interment rights that may be used by the heirs if the owner is deceased:

.....

.....

8. The following persons have an ownership interest in and the a right to use the cemetery interment rights in the order of their death:

..... Address .....

..... Address .....

..... Address .....

..... Address .....

..... Address .....

..... Address .....

..... Address .....

9. This affidavit is made for the purpose of obtaining the consent of the undersigned to transfer the right of interment at the above mentioned cemetery property to the listed heirs. Affiants agree that they will save, hold harmless, and indemnify Cemetery, its heirs, successors, employees, and assigns, from all claims, loss, or damage whatsoever that may result from relying on this affidavit to record said transfer in its records and allow interments on the basis of the information contained in this affidavit.

WHEREFORE affiant requests Cemetery to recognize the above named heirs-at-law as those rightfully entitled to the ownership of and use of said interment (spaces) (space).

THE FOREGOING STATEMENT IS MADE UNDER THE PENALTIES OF PERJURY. (A FRAUDULENT STATEMENT MADE UNDER THE PENALTIES OF PERJURY IS PERJURY AS DEFINED IN THE CRIMINAL CODE OF 1961.)

Dated this ..... day of ....., .....

..... (Seal) (To be signed by the owner or the individual who completes items 2 through 6 above.)

Subscribed and sworn to before me, a Notary Public in and for the County and State of ..... aforesaid this ..... day of ....., .....

Public Act 093-0772

HB2572 Enrolled

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..... Notary Public.

(Source: P.A. 92-419, eff. 1-1-02.)