Chapter 97

1957 REPLACEMENT PART

Cemetery Lots; Property Rights in Human Bodies

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SPECIAL PROVISIONS RELATING TO THIS CHAPTER

97.010 Definitions. As used in this chapter:

(1) "Human remains" or "remains" means the body of a deceased person in any stage of decomposition or after cremation.

(2) "Cemetery" means any place dedicated to and used, or intended to be used, for the permanent interment of human remains.

(3) "Burial park" means a tract of land for the burial of human remains in the ground used, or intended to be used, and dedicated for cemetery purposes.

(4) "Mausoleum" means a structure for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.

(5) "Crematory" means a structure containing a retort for the reduction of bodies of deceased persons to cremated remains.

(6) "Columbarium" means a structure or room containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.

(7) "Interment" means the disposition of human remains by cremation, inurnment, entombment or burial.

(8) "Cremation" means the reduction of a body of a deceased person to cremated remains in a crematory.

(9) "Inurnment" means placing cremated remains in an urn and depositing it in a niche.

(10) "Entombment" means the placement of human remains in a crypt or vault.

(11) "Burial" means the placement of human remains in a grave.

(12) "Grave" means a space of ground in a burial park used, or intended to be used, for burial of the remains of one person.

(13) "Crypt" or "vault" means a space in a mausoleum of sufficient size used, or intended to be used, to entomb uncremated human remains.

(14) "Niche" is a recess in a columbarium used, or intended to be used, for the interment of the cremated remains of one or more persons.

(15) "Cemetery authority" includes cemetery corporation, association, corporation sole or other person or persons owning or controlling cemetery lands or property.

(16) "Cemetery association" means any corporation or association authorized by its articles to conduct any or all the businesses of a cemetery, but does not include a corporation sole or a charitable, eleemosynary association or corporation.

(17) "Cemetery business," "cemetery businesses" and "cemetery purposes" are used interchangeably and mean any business and purpose requisite or incident to, or necessary for establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of cemetery property.

(18) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association.

(19) "Lot," "plot" or "burial space" means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and apply with like effect to one, or more than one, adjoining grave, crypt, vault or niche.

(20) The term "plot owner" or "owner" means any person in whose name a burial plot stands as owner of the right of sepulture therein in the office of the cemetery authority, or who holds from such cemetery authority a conveyance of the right of sepulture or a certificate of ownership of the right of sepulture in a particular lot, plot or space.

(21) "Endowment care" means the general care and maintenance of all developed portions of the cemetery and memorials erected thereon.

(22) "Special care" is any care in excess of endowed care in accordance with the specific directions of any donor of funds for such purposes. [Amended by 1955 c.545 §1]

97.020 Exemption of certain organizations and cemeteries from certain sections of chapter. The provisions of ORS 97.030, 97.120, 97.310 to 97.350, subsection (1) of 97.360, ORS 97.510, 97.550 and 97.810 to 97.860 relating to private cemeteries do not apply to:

(1) Any religious or eleemosynary corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination or any cemetery organized, controlled and operated by any of them.

(2) Any county, town or city cemetery. [Amended by 1955 c.473 §1]

97.030 Vested rights not acquired by this chapter. No cemetery authority or person having a right of sepulture or any other right under this chapter acquires any vested right by virture thereof which the Legislative Assembly may not subsequently amend, alter or repeal.

97.040 Private family burial grounds. Except for ORS 97.730, this chapter does not apply to private family burial grounds where lots are not offered for sale.

97.050 to 97.100 [Reserved for expansion]

DISPOSITION OF HUMAN BODIES

97.110 Human remains not to be attached. No person shall attach, detain or claim to detain any human remains for any debt or demand or upon any pretended lien or charge.

97.120 Human remains to be deposited in accordance with this chapter. A cemetery authority shall deposit or dispose of human remains as provided by this chapter.

97.130 Right to control disposition of remains. The right to control the disposition of the remains of a decedent, unless other directions have been given by him, vests in his surviving spouse, his surviving children, his surviving parents and the person in the next degree of kindred to him, in the order named.

97.140 [Repealed by 1957 c.423 §1 (ORS 97.141 and 97.145 enacted in lieu of ORS 97.140)]

97.141 Authorization of cemetery authority to inter or cremate remains. Any cemetery authority may inter or cremate remains of a decedent without liability therefor upon receipt of a written authorization from the following persons in the order named:

(1) The decedent, in his lifetime or from his papers after death; or

(2) Any person who, by sworn statement, represents himself to be:

(a) The surviving spouse.

(b) A surviving child or adopted child over the age of 21 years.

(c) A surviving parent or adoptive parent.

(d) A next of kin.

(e) Any other person who has acquired the right to control disposition of the remains.

The sworn statement signed by any person mentioned in this subsection shall contain a further affirmation by the signator that to the best of his knowledge there is no other existing person having a prior right to the control of the remains or that any person having such a prior right has given to the signator written or telegraphic permission to sign such authorization to the cemetery authority. If any signator is acting under written or telegraphic permission from a person having a prior right, the original of such written or telegraphic permission shall be filed with the cemetery authority. [1957 c.423 §2 (ORS 97.141 and 97.145 enacted in lieu of ORS 97.140)]

97.145 Liability of cemetery authority for failure to conform to priority of control of remains. Any cemetery authority interring or cremating remains pursuant to ORS 97.141 shall not be liable for any failure to conform to the priority of control of remains provided in ORS 97.130, except when it shall have received two or more conflicting written authorizations prior to interment or cremation of said remains. [1957 c.423 §3 (ORS 97.141 and 97.145 enacted in lieu of ORS 97.140)]

97.150 Actions against cemetery authority or funeral directors. No action lies against any cemetery authority or licensed funeral director relating to any cremated remains which have been left in its possession for a period of five years unless a written contract has been entered into with the cemetery authority for their care or unless permanent interment has been made.

97.160 Duty of hospital or sanitorium to notify person chargeable with funeral expenses before sending remains to undertaker. (1) No hospital or sanitorium, or the employes, agents or representatives thereof, shall send or cause to be sent to any funeral director, undertaker, mortician or embalmer the remains of any decedent without first having made a reasonable effort to inform a relative, friend or person chargeable with the funeral expenses of such decedent, of the death of such decedent.

(2) Nothing in this section limits or governs the authority of any administrator or executor, trustee or other person having a fiduciary relationship with the deceased or to the state, counties, cities or towns in the disposition of the remains of a deceased person.

97.170 Disposition of the body of an indigent. (1) Any public officer having charge of the body of a deceased person required to be buried at public expense shall, if he knows or can with reasonable diligence ascertain any of them, promptly notify the relatives of such deceased person or any other person having an interest in him and shall deliver the body to any relative who claims it or to any friend of the deceased person who will pay the expense of burying or cremating the body. If no one claims the body within 72 hours after death, or if those notified acquiesce, the officer, at the expense of the recipient of the body shall notify, by telegraph or telephone, the Demonstrator of Anatomy of the State Department of Higher Education. The Demonstrator of Anatomy, who shall be appointed by the State Board of Higher Education from the staff of the University of Oregon Medical School, shall immediately inform the officer whether the body is deemed to be in fit condition and is desired for medical instruction or the advancement of medical science. If the body is desired for these purposes, the officer shall deliver it to a licensed embalmer who, after such preparation as is necessary for transportation, shall, within 72 hours, deliver it in his own conveyance to the University of Oregon Medical School, the University of Oregon Dental School or any other school or college within the State of Oregon qualifying applicants for examina-

tion in the fundamental sciences as required and specified in ORS chapter 676 to chapter 686, as the Demonstrator of Anatomy directs, or shall deliver it to the agent of the express company at the nearest railroad station, consigned as instructed by the demonstrator. The expenses of transportation of the body to such school or college and return of the container to the embalmer making the shipment shall be borne by the institution receiving the body. Such expenses shall not exceed the public carrier rates for such services between the points of shipment and destination.

(2) The educational institution receiving the body shall pay the licensed embalmer handling it such fee as shall be established from time to time by the State Board of Higher Education.

(3) If the Demonstrator of Anatomy does not require any such body for instruction or research, it may be assigned, on request, to any other properly authorized institution within this state or to any qualified physician for instruction or research.

97.180 Period within which body may not be used. Upon receipt of any body by a school or college pursuant to ORS 97.170, it shall be properly embalmed for anatomical purposes, but shall be retained 30 days before being used or dismembered. If it is claimed by any relative or friend within that period, it shall be delivered to the claimant.

97.190 Post mortem examination of indigent's body. Unless required by the coroner to determine the cause of death or specifically authorized and ordered by the superintendent of the hospital or institution in which any person coming under the provisions of ORS 97.170 may die, no such body as is mentioned in ORS 97.170 is subject to post mortem examination, except by consent of the Demonstrator of Anatomy.

97.200 Disposition of indigent's remains after educational use thereof. The remains of any corpse used for the purposes authorized by ORS 97.170 shall, upon completion of such use, be decently buried or cremated and the ashes, in case of cremation, shall be delivered to any relative who claims them, after establishing relationship. All expenses incident to burial and cremation and the delivery of ashes to any relative shall be borne by the educational institution which used the body for educational purposes.

97.210 Exceptions to application of ORS 97.170 to 97.200. The body of any person who died of smallpox, diphtheria, scarlet fever or other disease that the State Board of Health, by rule, may prescribe, shall not be subject to the provisions of ORS 97.170 to 97.200.

97.220 Disinterment. (1) The remains of a deceased person interred in a plot in a cemetery may be removed therefrom with the consent of the cemetery authority and written consent of the person who has the right to control the disposition of the remains of the deceased person. If the consent of any such person or of the cemetery authority cannot be obtained, permission by the county court or the board of county commissioners of the county where the cemetery is situated is sufficient. Notice of application to the court for such permission must be given at least 60 days prior thereto, personally or by mail, to the cemetery authority, to the person not consenting and to every other person or authority on whom service of notice is required by the county court or the board of county commissioners.

(2) If the payment for the purchase of an interment space becomes past due and so remains for a period of 90 days, this section does not apply to or prohibit the removal of any remains from one plot to another in the same cemetery or the removal of remains by the cemetery authority from a plot to some other suitable place.

(3) This section does not apply to the disinterment of remains upon order of court or coroner.

97.230 Public use of state crematories. Any resident and inhabitant of the State of Oregon has the right to use any of the crematories owned by the state for the cremation of bodies of deceased relatives, friends or members of his family under such regulations as may be adopted by the board or institution having such crematory in control. The state shall charge for such services actual expenses of the cremation plus 10 percent of such expense, which charges shall be paid to the State Board of Control and by it turned over to the State Treasurer, who shall credit all sums so received to the Institional Betterment Fund, to be used as other moneys in such fund.

97.240 to 97.300 [Reserved for expansion]

DEDICATION TO CEMETERY PURPOSES; PLATTINGS

97.310 Survey and subdivision of land; map or plat of mausoleum or columbarium. Every cemetery authority, from time to time as its property may require for cemetery purposes, shall:

(1) In 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 them, with descriptive names or numbers.

(2) In case of a mausoleum or columbarium, make a good substantial map or plat on which are delineated the sections, halls, rooms, corridors, elevation and other divisions, with descriptive names or numbers.

97.320 Filing map or plat and declaration of dedication of land to cemetery purposes. In case of a cemetery lot, the cemetery authority shall file the map or plat in the office of the recording officer of the county in which all or a portion of the property is situated, and it forthwith shall file for record in that officer's office a written declaration dedicating the property delineated on the plat or map exclusively to cemetery purposes.

97.330 When dedication is complete. Upon the filing of the map or plat and of the declaration for record, the dedication is complete for all purposes, and thereafter the property shall be held, occupied and used exclusively for cemetery purposes.

97.340 Effect of dedication. After property is dedicated to cemetery purposes pursuant to ORS 97.310 to 97.330 and subsection (1) of 97.360, neither the dedication nor the title of a plot owner shall be affected by the dissolution of the cemetery authority by nonuser on its part, by alienation of the property, by any encumbrances, by sale under execution or otherwise, except as provided in ORS 97.310 to 97.350, subsection (2) of 97.360, ORS 97.440, 97.510 to 97.650, 97.710, 97.720 and 97.810 to 97.860.

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

97.360 Resurvey and alteration in shape or size; vacation of streets, walks, driveways and parks and replatting into lots. (1) Any part or subdivision of the property so mapped and platted may, by order of the directors and consent of the lot owners, be resurveyed and altered in shape and size and an amended map or plat filed, so long as such change does not disturb any interred remains.

(2) Whenever a majority of the lots as platted or laid out in any cemetery established before March 3, 1927, or any part thereof, has been sold without the owners or persons in control of the cemetery having made provision for the establishment of an adequate endowment fund for the perpetual maintenance, upkeep and beautification of the cemetery and of the lots therein, the avenues, streets, alleys, walks, driveways and parks therein may be vacated or altered and replatted into lots which may be sold for burial purposes in the manner provided in this subsection and in ORS 97.370 to 97.430. Application for the vacation or alteration of any avenues, streets, alleys, walks, driveways or parks, and for the replatting of the same, or any portion thereof, for cemetery lots in any such cemetery shall be made to the county court or board of county commissioners in the county where the cemetery is situated. The application may be by the owners or persons in control of the cemetery or by a group of 20 or more persons owning lots or having relatives buried therein. The application shall be verified and shall specify the lots owned by each petitioner in which are buried bodies of relatives in which he is interested and shall state the reason for the proposed change and what provisions have theretofore been made for the perpetual upkeep, maintenance and beautification of the cemetery, and there shall be presented therewith a plat of the cemetery, together with the proposed replat, which shall have clearly indicated thereon the proposed changes.

97.370 Fixing date of hearing; notice. When any application mentioned in subsection (2) of ORS 97.360 is filed, the court or board shall fix the time for the hearing of it and notice of the time thereof shall be given by publication in a paper of general circulation published in the town in which

the cemetery is situated or in the town to which it is nearest once a week for a period of six successive weeks prior to the date of the hearing and a copy of such notice shall be posted for a like period at three public and conspicuous places in the cemetery. Such notice shall be addressed to all persons owning lots or having an interest in the cemetery, but need not name them, and shall set forth in a general way the proposed changes, the reason stated in the application for making it, the time when the hearing of the application will be had, and shall state that a plat showing the proposed changes is on file with the county clerk of the county in which the cemetery is situated.

97.380 Hearing; order allowing replatting. (1) At the hearing mentioned in ORS 97.370 the court or board shall consider and hear any evidence introduced in favor of the proposed change and all objections thereto and, after a full hearing thereon, may allow the proposed change and replat in whole or in part. If the proposed change is allowed, either in whole or in part, an order allowing it shall be made providing that title to any new lot created by the alteration or vacation of any avenues, streets, alleys, driveways, walks or parks, or any part thereof, shall be vested in the owner of the fee of the part of the cemetery sought to be vacated in trust for burial purposes, or vested in any association which may be formed for the purpose of taking over the cemetery and operating and maintaining it in accordance with the provisions of ORS 97.400.

(2) No such replat shall be approved unless each lot is left at least one adequate means of ingress and egress by an avenue, street, alley, walk, driveway or park.

97.390 Assessment of benefits and damages. If any damages are claimed by the owner of any lot in any such cemetery as is mentioned in subsection (2) of ORS 97.360, which lot is adjacent to the avenues, streets, alleys, driveways or parks vacated as provided in ORS 97.380, they shall be ascertained by the county court or board of county commissioners and offset against the benefits accruing to the lot owner on account of the upkeep and beautification of the cemetery in the manner provided in ORS 97.400. Any person feeling aggrieved at the amount of damages so assessed by the board may appeal from such order of allowance to the circuit court of the county in which the cemetery is situated in the same manner as is provided by statute for appeal from the assessment of damages by the exercise of eminent domain in locating a county road and on such appeal the jury, in assessing the amount of damages to be allowed to the appellant, shall offset against such damages the benefits accruing to the appellant as in this section above provided.

97.400 Disposal of newly created lots; disposition and use of proceeds from sale; failure of owner to perform duties. Any owner or association accepting the trust of handling and disposing of lots newly created pursuant to ORS 97.380 shall by the acceptance thereof agree to dispose of the lots only for burial purposes and at a price not less than that fixed by the county court or board of county commissioners. The net funds derived from the sale of the lots remaining after the payment of the reasonable expenses incident to the vacation and of the sale shall be placed in an irreducible and perpetual fund and the interest therefrom shall be used for the perpetual upkeep and beautification of the cemetery and the lots therein situated. The fund shall be placed in some reliable trust company specified by the court or board, which trust company shall invest the same and pay the income therefrom to the owner or association charged with the disposal of such lots. Any owner or association taking over the sale of the lots shall comply with such provisions as the court or board may require of it in the upkeep, beautification and care of the cemetery with the income thereof, and if such owner or association for any reason fails to perform such duties, the court or board may, on its own motion, from time to time, appoint some other association or individual to perform them. The restrictions of this section shall not apply to the sale of lots obtained by replatting cemeteries owned and maintained by any county.

97.410 Right of adjacent lot owner upon vacation of way. The vacation of an avenue, street, alley, driveway, walk or park adjacent to a cemetery lot shall vest in the owner of such lot no interest in the vacated portion thereof; but the adjacent owner shall, for 30 days after the date of such an order of vacation, have the right to purchase any new lot adjacent to his lot at the price fixed by the court or board at which the lots are to be sold, and if there is more than one adjacent lot owner, the new

lot shall be sold to the one offering the highest price therefor.

97.420 Effect of failure to object. Any owner of such cemetery as is mentioned in subsection (2) of ORS 97.360, or of any lot therein, or any relative or heir of any deceased person buried in such cemetery who fails to appear and file written objection to any proposed replat, alteration or vacation, authorized by subsection (2) of ORS 97.360, shall be deemed to have consented to the proposed change and shall be forever barred from claiming any right to use and have open for traffic or passageway any streets, alleys, driveways or parks vacated, or any right, title or interest therein, except as provided in subsection (2) of ORS 97.360 and 97.370 to 97.410.

97.430 Declaration of exercise of police power and right of eminent domain. The enactment of subsection (2) of ORS 97.360 and 97.370 to 97.430 is hereby declared to be a necessary exercise of the police powers of the state in order to preserve and keep existing cemeteries as resting places for the dead and to preserve old and historic cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are located. The taking of avenues, streets, alleys, walks, driveways and parks for the purpose and by the method specified in subsection (2) of ORS 97.360 and 97.370 to 97.420 is hereby declared an exercise of the right of eminent domain in behalf of the public health, safety, comfort, pleasure and historic instruction.

97.440 Removal of dedication. 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 an order and decree of the county court or board of county commissioners of the county in which the property is situated in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the court that the following conditions exist:

(1) That the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

(2) That notice of hearing provided in this section shall be given by publication once a week for at least four consecutive weeks in a newspaper of general circulation in the county where the cemetery is located and by posting copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed. The notice shall:

(a) Describe the portion of the cemetery property sought to be removed from dedication.

(b) 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.

(c) Specify the time and place of the hearing.

97.450 Discontinuance of cemetery and removal of remains and markers. Whenever any cemetery which is within the limits of any county, city or town has been abandoned, or it is desirable to abandon such cemetery, or such cemetery has been allowed to remain in a dilapidated condition for a period of five years or longer, the governing body of any county, if the cemetery is owned by the county, or the corporate authorities of the city or town, if the cemetery is owned by the city or town, or the trustees or directors, if the cemetery is owned by an association or corporation, may order that such burial ground be discontinued, cause the remains of all persons interred therein to be moved to some other suitable place and provide for the removal and reerection of all stones and monuments marking said graves. However, such removal shall be made in an appropriate manner and in accordance with the directions of the State Health Officer, and written notice shall first be given to the family, or next of kin of the deceased, if known, and if unknown, notice of the removal shall be published for at least four successive weeks in a newspaper of general circulation in the county in which the cemetery is located. Such removal and the costs of the proceedings under this section shall be at the expense of the county, city or town, party, corporation or association owning the cemetery to be moved. [Amended by 1955 c.472 §1]

97.460 to 97.500 [Reserved for expansion]

SALES AND RIGHTS IN RESPECT OF CEMETERY PLOTS

97.510 Sale and conveyance of plots by cemetery authority. After filing the map or

plat and recording the declaration of dedication, a cemetery authority may sell and convey plots subject to such rules and regulations as may be then in effect and subject to such other and further limitations, conditions and restrictions made a part of the declaration of dedication by reference or included in the instrument of conveyance of the plot.

97.520 Sale or offer to sell cemetery plot upon promise of resale at financial profit. No person, firm or corporation shall sell or offer to sell a cemetery plot upon the promise, representation or inducement of resale at a financial profit, except with the consent and approval of the Corporation Commissioner. Each violation of this section constitutes a separate offense.

97.530 Commission, bonus or rebate for sale of plot or services. No cemetery authority shall pay or offer to pay, and no person, firm or corporation shall receive, directly or indirectly, a commission, bonus, rebate or other thing of value for the sale of a plot or services. This does not apply to a person regularly employed by the cemetery authority for such purpose. Each violation of this section constitutes a separate offense.

97.540 Commission, bonus or rebate for recommendation of cemetery. No person shall pay, cause to be paid or offer to pay, and no person, firm or corporation shall receive, directly or indirectly, except as provided in ORS 97.530, any commission, bonus, rebate or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any cemetery. Each violation of this section constitutes a separate offense.

97.550 Plots are indivisible. All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the cemetery authority, or as provided by law.

97.560 Presumption of sole ownership in grantee of plot. All plots conveyed to individuals are presumed to be solely and separately owned by the person named in the instrument of conveyance.

97.570 Spouse has vested right of interment. (1) The spouse of an owner of any plot containing more than one interment space has a vested right of interment of his remains in the plot, and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains in the plot if more than one interment space is unoccupied at the time the person becomes the spouse of the owner.

(2) The purchase by a married person of more than one interment space shall create in the spouse a right of interment therein.

97.580 Divestiture of spouse's right of interment. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of his vested right of interment, except that a final decree of divorce between them terminates the right unless otherwise provided in the decree.

97.590 Transfer of plot or right of interment. No transfer of any plot, heretofore or hereafter made, or any right of interment is complete or effective until recorded on the books of the cemetery authority.

97.600 Descent of plot. Upon the death of the owner, unless he has disposed of the plot either by specific direction in his will or by a written declaration filed and recorded in the office of the cemetery authority, if no interment has been made in an interment plot which has been transferred by deed or certificate of ownership to an individual owner or if all remains previously interred are lawfully removed, the plot descends to the heirs at law of the owner, subject to the rights of interment of the decedent and his surviving spouse.

97.610 Determining occupant of burial plot having co-owners. When there are two or more owners of a burial plot or of rights of interment therein, such owners may designate one or more persons to designate the burials to be made in the plot and file written notice of such designation with the cemetery association. In the absence of such notice or of written objection to its so doing, the cemetery association is not liable to any owner for interring or permitting an interment therein upon the request or direction of any registered co-owner of the plot.

97.620 Death of co-owner; authorization to use plot under directions of surviving owners. An affidavit by any person having knowledge of the fact, setting forth the fact of the death of one owner and establishing the identity of the surviving owners named in the deed to any plot, when filed with the cemetery authority operating the cemetery

in which the plot is located, is authorization to the cemetery authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving owners or their successors in interest.

97.630 Family plots; order of occupation. (1) Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner, or of the remains of the record owner, is made in a plot transferred by deed or certificate of ownership to an individual owner, and the owner dies without making disposition of the plot, either by direction in his will, or by a written declaration filed and recorded in the office of the cemetery authority, the plot thereby becomes inalienable and shall be held as the family plot of the owner, and occupied in the following order:

(a) One grave, niche or crypt may be used for the owner's interment; one for the owner's surviving spouse, if there is one, who by this chapter has a vested right of interment in it; and in those remaining, if any, the children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot.

(b) If no child survives, the right of interment goes in order of death, first, to the spouse of any child of the record owner, and second, in the order of death to the next heirs at law of the owner or the spouse of any heir at law.

(2) Any surviving spouse, child or heir who has a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of either the deceased owner or of his spouse, and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot.

97.640 Waiver or termination of vested right of interment. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom it is vested.

97.650 Limitations upon vested right of interment. No vested right of interment gives to any person the right to have his remains interred in any interment space in which the remains of any deceased person having equal or prior vested right of interment have been interred; nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules and regulations of the cemetery in which the interment space is located.

97.660 to 97.700 [Reserved for expansion]

CEMETERY MANAGEMENT

97.710 Power of cemetery to make rules and regulations. (1) The cemetery authority may make and enforce rules and regulations for:

(a) The use, care, control, management, restriction and protection of its cemetery;

(b) Restricting and limiting the use of all property within its cemetery;

(c) Regulating the uniformity, class and kind of all markers, monuments and other structures within its cemetery;

(d) Prohibiting the erection of monuments, markers or other stuctures in or upon any portion of its property;

(e) Regulating or preventing the erection of monuments, effigies and structures within any portion of the cemetery grounds and for the removal thereof;

(f) Regulating the care or preventing the introduction of plants or shrubs within such grounds;

(g) Preventing the interment in any part thereof of a body not entitled to interment therein;

(h) Preventing the use of burial plots for purposes violative of its restrictions;

(i) Regulating the conduct of persons and preventing improper assemblages therein; and

(j) All other purposes deemed necessary by the cemetery authority for the proper conduct of its business and the protection and safeguarding of the premises and the principles, plans and ideals on which the cemetery was organized.

(2) The cemetery authority from time to time may amend, add to, revise, change or modify such rules and regulations.

(3) Such rules and regulations shall be plainly printed or typewritten and maintained, subject to inspection, in the office of the cemetery authority.

97.720 Record of interments and cremations; inspection. (1) The person in charge of any premises on which interments or cremations are made shall keep a record of all remains interred or cremated on the premises under his charge, in each case stating the name of each deceased person,

the date of interment or cremation, and the name and address of the funeral director. The interment records shall be open to inspection by survivors of the decedent during the customary office hours of the cemetery authority.

(2) A record shall be kept of the ownership of all plots in the cemetery which have been conveyed by the cemetery authority and of all transfers of plots in the cemetery.

97.730 Gifts and bequests in trust for cemeteries. Gifts, grants and bequests of personal property in trust for the purpose of providing perpetual care and maintenance, improvement or embellishment of private burial lots in or outside of cemeteries and of the walks, fences, monuments, structures or tombs thereon, are permitted and shall be deemed to be for perpetual and benevolent uses. They are not invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instrument creating the trust; nor are they invalid as violating any existing laws against perpetuities or suspension of the power of alienation of title to property. But nothing in this section affects any existing authority or cause to pass upon the reasonableness of the amount of such gift, grant or bequest. Any cemetery association may act as trustee of and execute any such trust with respect to lots, walks, fences, monuments, structures or tombs, both within or outside its own cemetery limits, but within the county where such cemetery association has its principal office and place of business, whether such power is otherwise included in its corporate powers or not.

97.740 to 97.800 [Reserved for expansion]

CEMETERY CARE

97.810 Endowment care and nonendowed care cemeteries. (1) An endowment care cemetery is one which after July 5, 1955, deposits in its endowment care fund not less than the following amounts for plots sold after that date:

(a) Fifteen percent of the gross sales price with a minimum of $5 for each grave; or, when the gross sales price is paid in instalments, 15 percent of each instalment until at least 15 percent of the gross sales price has been deposited, with a minimum of $5 for each grave.

(b) Five dollars for each niche.

(c) Fifteen dollars for each crypt.

The cemetery authority shall deposit in its endowment care fund any payment received by it and required by this subsection to be paid into such fund, within 30 days from the receipt of such payment.

(2) No cemetery shall operate after July 5, 1955, as an endowment care, permanent maintenance or free care cemetery until the provisions of this section are complied with. There shall be printed or stamped at the head of all contracts and certificates of ownership or deeds referring to plots in an endowment care cemetery, the following statement: "This cemetery is an endowment care cemetery," in lettering equivalent to at least 10-point No. 2 black type, and there shall be printed in the body of or stamped upon the above described instruments the following statement: "Endowment care means the general care and maintenance of all developed portions of the cemetery and memorials erected thereon."

(3) A cemetery which otherwise complies with subsections (1) and (2) of this section may be designated an endowment care cemetery even though it contains a small area which may be sold without endowed care, if it is separately set off from the remainder of the cemetery. There shall be printed or stamped at the head of all contracts and certificates of ownership or deeds referring to plots in this area the phrase "nonendowed care" in lettering equivalent to at least 10-point No. 2 black type.

(4) A nonendowed care cemetery is one that does not deposit in an endowment care fund the minimum specified in subsection (1) of this section. [Amended by 1955 c.545 §2]

97.820 Placing cemetery under endowed care; deposit and withdrawal; commingling endowment and special care funds. (1) Every cemetery authority which operates a cemetery may place its cemetery under endowed care and establish, maintain and operate an endowment care fund. All endowed care funds shall be held in the name of the trustees appointed by the cemetery authority. All new investments of money deposited in the endowment care fund after July 5, 1947, shall be in securities approved by the State Bond Commission. All endowed care fund securities shall be deposited with a bank or trust company authorized by law to

do business in this state or some other depository approved by the State Insurance Commissioner, upon the condition that such securities may not be withdrawn without the approval of the commissioner. Before the commissioner approves any proposed withdrawal from any depository, the cemetery authority shall satisfy him that the security will be reinvested and redeposited or otherwise used in accordance with the provisions of this chapter.

(2) Endowment care and special care funds may be commingled for investment and the income therefrom shall be divided between the endowment care and special care funds in the proportion that each fund contributed to the principal sum invested.

(3) The funds may be held in the name of the cemetery authority, its directors or the trustees appointed by the cemetery authority.

(4) In lieu of the appointment of a board of trustees of its endowment care fund, any cemetery authority may appoint as sole trustee thereof any bank or trust company qualified to engage in the trust business. Such bank or trust company shall be authorized to receive and accept the fund, including any accumulated endowment care fund in existence at the time of its appointment. [Amended by 1955 c.545 §3]

97.825 Suit to take charge of endowment care fund or to compel expenditures from endowment care fund. Should the cemetery authority fail to remit to the trustee or trustees in accordance with the law, the funds herein provided for endowment and special care, or fail to expend all such funds and generally care for and maintain any portion of a cemetery entitled to endowment care, any three lot owners whose lots are entitled to endowment care, or any one lot owner whose lot is entitled to special care, or the next of kin, heirs at law or personal representatives of such lot owners, shall have the right, or the district attorney of any county wherein is situated such lots, shall have the power, by suit for mandatory injunction or for appointment of a receiver, to sue for, to take charge of, and to expend such net income. Such suit may be filed in the circuit court of the county in which said cemetery is located, to compel the expenditure either by the cemetery authority or by any receiver so appointed by the court, of the net income from such endowment care fund for the purposes set out in this chapter. [1955 c.545 §5]

97.830 Investment and reinvestment of principal of endowed care funds; use and application of income. (1) The principal of all funds for endowed care shall be invested, from time to time reinvested and kept invested. The principal of such funds shall never be voluntarily reduced, but shall be maintained separate and distinct by the trustee or trustees from all other funds except it shall be proper to commingle endowment care funds with special care funds. Any bank or trust company qualified to engage in the trust business shall be governed by the provisions of ORS 128.020 and shall not be required to secure the approval of the State Bond Commission as to the types of investment and the manner of holding such trust funds. The net income earned shall be used solely for the general care and maintenance of the property entitled to endowment care in a cemetery for which such fund is established, and shall be applied to such general care and maintenance in such manner as the cemetery authority may from time to time determine to be for the best interests of such endowed property. Such net income shall never be used for the improvement or embellishment of undeveloped property offered for sale.

(2) Endowment care funds shall not be used for any purpose other than to provide through income only for the care stipulated in the resolution, bylaw or other action or instrument by which the fund was established. [Amended by 1955 c.545 §4]

97.835 Limitation of duties and liability of trustee. The trustee shall have no duty whatsoever to operate, maintain or to supervise the general maintenance of any endowment fund cemetery, and the trustee shall have no duty whatsoever to enforce collection of any of the trust funds either from the purchasers of lots, or from the cemetery authority, and the trustee shall have no duty whatsoever to see to the application of the net income after payment of the net income to the cemetery authority. The trustee shall be entitled to rely without liability upon the affidavit of the cemetery authority showing the amount payable to the trustee as endowment care funds. [1955 c.545 §6]

97.840 Cemetery authority authorized to receive and hold gifts of property. A cemetery authority which has established an endowment care fund may take, receive and hold as a part of or incident to the fund any property, real, personal or mixed, bequeathed, devised, granted, given or otherwise contributed to it for its endowment care fund.

97.850 Endowment and special care funds are charitable. The endowment and special care funds and all payments or contributions to them are expressly permitted as and for charitable and eleemosynary purposes. Endowment care is a provision for the discharge of a duty from the persons contributing to the persons interred and to be interred in the cemetery and a provision for the benefit and protection of the public by preserving and keeping cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are situated.

97.860 Agreements for care. (1) Upon payment of the purchase price, including the amount fixed as a proportionate contribution for endowed care, there may be included in the deed of conveyance, or by separate instrument, an agreement to care, in accordance with the plan adopted, for the cemetery and its appurtenances to the proportionate extent the income received by the cemetery authority from the contribution permits.

(2) Upon the application of an owner of any plot, and upon the payment by him of the amount fixed as a reasonable and proportionate contribution for endowed care, a cemetery authority may enter into an agreement with him for the care of his plot and its appurtenances.

97.870 Unused and unimproved portions of cemetery declared common nuisances. In all cases where an incorporated association, company, religious society, lodge, municipality or other organized society or its successor in interest, or both, have owned a site for a cemetery for more than 40 years and have during that period sold lots, subdivisions of lots, pieces or parcels of the cemetery for burial purposes and have, not less than 25 years prior to June 14, 1939, adopted a rule, by its members or governing board, requiring all deeds conveying lots or parcels thereof subsequent to the adoption of such rule to contain a condition that such lots or parcels shall be kept free and clear of weeds and brush by the grantees, their heirs and assigns and have adopted and are complying with a rule that all lots, parcels, streets and alleys, the title to which is vested in such proprietor shall be kept free and clear of weeds and brush by such proprietor and have, prior to 1915, conveyed cemetery lots, subdivisions of lots, pieces or parcels of the cemetery by deeds of conveyance, without restrictions contained therein and without any provision for permanent upkeep thereof, and the grantee or party claiming through him has not used portions of such lots, subdivisions of lots, pieces or parcels of the cemetery for purposes of burial and has not kept them free of weeds or brush, but has allowed them to remain entirely unimproved and unused for more than 20 years prior to the adoption of the resolution provided for in ORS 97.880, and such lots, subdivisions of lots, pieces and parcels of the cemetery are adjacent to improved parts thereof, and by reason of their unimproved condition detract from the appearance of the cemetery and interfere with the harmonious improvement thereof, and furnish a place for the propagation of weeds and brush, thereby becoming a menace to adjacent property, such lots, subdivisions of lots, pieces and parcels of such cemetery, which are unused and unimproved as aforesaid, hereby are declared to be a common nuisance and contrary to public policy.

97.880 Resolution declaring a nuisance. The governing board of such incorporated association, company, religious society, lodge, municipality or other organized society described in ORS 97.870 may adopt a resolution declaring such unused and unimproved portion of its cemetery as is described in ORS 97.870 a common nuisance and an abandoned and unused portion of such cemetery, and may direct its officers to file the complaint described in ORS 97.890.

97.890 Complaint. (1) Upon the adoption of the resolution described in ORS 97.880 the officers of the cemetery association may file a complaint in the circuit court for the county in which the cemetery is located against the owners, holders or parties interested in such abandoned portion of its cemetery demanding that the court require such owners, holders or interested parties to keep the premises clear of weeds and brush and in condition in harmony with other lots and, if the owners, holders, or in-

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terested parties fail to appear in court and comply with the order of the court, demanding that the court make a decree declaring such portions of the cemetery a common nuisance, directing the governing board to abate the nuisance by clearing the premises and keeping them clear of weeds and brush, creating a lien upon such lots and parcels in favor of the cemetery association or other proprietor, decreeing that the lien be foreclosed and the lots and parcels be sold in the same manner as other sales upon execution are made and authorizing the governing board to become a purchaser thereof on behalf of the association or the proprietor.

(2) In such suit any number of owners of different lots, subdivisions of lots, pieces or parcels of the cemetery may be included in the one suit.

(3) It is a sufficient designation of the property so abandoned and unimproved to give the lot number or portion thereof, or a description of the piece or parcel having no lot number, together with the name of the owner thereof, as appears on the record of the cemetery association.

(4) In addition to the names of the persons that appear on the records of the cemetery association as the record owners of such unused and unimproved portions of the cemetery, the plaintiff shall include as a defendant in his complaint the following: "Also all other persons unknown claiming any right, title, estate, lien or interest in the unused and unimproved portions of the cemetery described in the complaint."

97.900 Summons. (1) Summons shall be served upon all owners or holders who are residents of this state in like manner as in service of summons in a civil action if such owners and holders are known to the sheriff in the county in which the cemetery is located. If the defendants are not known to the sheriff, it is sufficient to serve the owners and holders whose names appear on the tax rolls of the county for the year previous to that in which the suit is started. The plaintiff is not required to mail a copy of the summons or complaint to nonresident defendants.

(2) All owners and holders of such unimproved lots whose names do not appear on the tax rolls as aforesaid as shown by the return of the sheriff may be served by publication in any legal newspaper published in the county in which the cemetery is located for four consecutive weeks upon return of the sheriff that such owners and holders are not known and cannot be served in his jurisdiction.

(3) The published summons shall contain the names of the record owners, as shown by the records of the cemetery association, and "also all other persons unknown claiming any right, title, estate, lien or interest in the unused and unimproved portions of the cemetery described in the complaint," together with a brief description of the lot, or subdivisions of lots, pieces or parcels of the cemetery and a statement setting forth the order and decree described in subsection (1) of ORS 97.890 for which the plaintiff has applied to the court in the complaint. Such summons shall require all parties defendant to appear and show cause why an order should not be made declaring the unused and unimproved portions of the cemeteries to be a common nuisance, directing the cemetery association or other proprietor to abate the nuisance, creating a lien thereon, decreeing that it be foreclosed and directing that the unused and unimproved portion of the cemetery be sold within four weeks from and after the date of the first publication thereof.

97.910 Disuse as prima facie evidence of abandonment of portion. In all cases arising under ORS 97.870 to 97.900, the fact that the owner, holder or interested party, of the unused and unimproved portion of the cemetery has not, for a term of 20 years or more, used the plot and has failed to keep it clear of weeds or brush is prima facie evidence that the owner, holder or interested party has abandoned it.

97.920 Decree declaring nuisance, authorizing abatement and creating and foreclosing lien. Upon the failure of the owner of the premises to comply with the order of the court requiring proper care of the premises or upon the failure of any of the defendants to appear and answer the complaint or upon the trial of the cause, if the court finds that the allegations of the complaint are supported by the evidence and that the summons has been served as provided in ORS 97.900, the court may enter a decree in accordance with the allegations of the complaint and the provisions of subsection (1) of ORS 97.890.

97.930 to 97.980 [Reserved for expansion]

PENALTIES

97.990 Penalties. (1) Violation of ORS 97.160 is a misdemeanor and upon conviction is punishable by a fine not exceeding $100.

(2) Every officer, agent or employe of this state or of any county, city or any other municipal subdivision thereof who wilfully neglects to notify the Demonstrator of Anatomy of the existence of a body as required by ORS 97.170 to 97.210 or who refuses to deliver possession of such body according to the provisions of ORS 97.170 to 97.210 or who mutilates or permits any such body to be mutilated so that it is not valuable for anatomical purposes or who refuses or neglects to perform any of the duties enjoined upon him by ORS 97.170 to 97.210, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $50 for each offense.

(3) Violation of ORS 97.520, 97.530 or 97.540 is a misdemeanor.

(4) Any person, association or corporation who operates a cemetery, mausoleum or columbarium contrary to the provisions of ORS 97.020 to 97.040, 97.110 to 97.150, 97.220, 97.310 to subsection (1) of 97.360, ORS 97.440, 97.510 to 97.560, 97.710, 97.720, 97.810, 97.820, 97.830 and 97.840 to 97.860 is guilty of maintaining a nuisance and, upon conviction, is punishable by a fine not exceeding $500 or by imprisonment in the county jail for not more than six months, or both.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 2, 1957.

Sam R. Haley
Legislative Counsel