

WHAT LOT OWNERS SHOULD KNOW ABOUT CEMETERY LAW

Much confusion exists in the minds of lot owners and their families concerning their legal rights relating to cemetery lots. The information listed below was acquired from the Minnesota Association of Cemetery Officials and Office of the MN State Auditor. (The statements made apply only to Minnesota Cemeteries, since the law differs widely in other states.)

What the Purchaser Buys:

Cemeteries are allowed to grant to lot purchases **only the right to burial**, and that is the only title which a lot owner acquires when the lot is conveyed to him, no matter what form or deed is used. (MN Statutes 306.09)

Burials Restricted:

- The law expressly forbids the burial of anyone on a lot who was not at the time of death, the owner of the lot, or a relative of the owner by blood or marriage, except by written consent of the cemetery. (MN Statute 306.29)

Taxes, Mortgages, Etc.

- Lot owners cannot mortgage their lots; neither does the law tax them, nor allow them to be taken away from the owner to pay his debts. (MN Statute 306.29)

Limitations in Deeds:

- Cemeteries are permitted by law to adopt rules and regulations governing, amongst other things, planting or landscaping, monumental work, burials, removals, conduct of visitors, speed of vehicles, etc. Lot owners are subject to all such rules and regulations. (MN Statute 306.09)

May I sell or dispose of a cemetery lot?

Yes, but only under certain conditions. A cemetery lot, entombment or inurnment space, once sold or conveyed to a purchaser for burial purposes is inalienable (not able to be surrendered or transferred) **except** in one of the following four circumstances:

- The **original** purchaser may sell or convey any part of the space to the cemetery that is not occupied by human remains;
- A person who inherits the space may sell or convey any part of it to the cemetery that is not occupied by human remains;
- The owner may convey the space to some other person to be used solely as a family burial place; or
- A cemetery may use its funds to repurchase the space and hold it or offer it for resale.

When there is a conveyance or sale, a copy of an agreement of sale signed and acknowledged by the original owner (and spouse, if any) and the proposed purchaser must be filed with the cemetery. This agreement transfers title to the cemetery and requests that the cemetery issue

a new conveyance of the lot or space directly to the purchaser. The price paid to the owner must not be more than the cemetery would charge for the sale of a similar lot or space.

The cemetery may apply a reasonable transfer or service charge no greater than \$15 to file the agreement and issue a new conveyance to the designated purchaser.

Can I transfer my lot by a will?

Yes, a lot owner is protected under Minnesota law when he or she desires to transfer ownership of a lot using a will. A cemetery lot owner may transfer a lot by will to a surviving relative, or to a cemetery association or private cemetery in trust, for the use and benefit of any person designated in the will. **The lot MUST be specifically mentioned in the will and its use must be limited to one person.** (As per MN Statute 306.29 quoted below)

306.29 DISPOSAL OF LOTS BY OWNERS

An owner of a cemetery lot may dispose of the lot by will to a relative who may be a survivor, or to the cemetery association or private cemetery, as the case may be, in trust for the use and benefit of any person or persons designated in the will. However, no lot may be affected by a testamentary devise unless the lot is specifically mentioned in the will and limited by it to one particular person. An owner of a cemetery lot may, while living, convey the lot to the cemetery association or the private cemetery in trust for the use and benefit of a person named in the trust conveyance. The conveyance may contain conditions, provisions, and covenants as the parties agree upon. No interment shall be made in any lot, except by written consent of the cemetery association or private cemetery, as the case may be, of a person who was not at the time of death, the owner of the lot or a relative of the owner by blood or marriage. Every conveyance or alienation or attempt at conveyance or alienation of any right, title, or interest in or to the lot contrary to the conditions and reservations of this section is void. Every cemetery association, or private cemetery, as the case may be, shall keep a record of all deeds, conveyances, judgments, decrees, or other documents affecting the title to lots in the cemetery. Certified copies of any of these documents shall be received in evidence by the courts. The cemetery association or private cemetery may, instead of deeding the fee title to this lot, grant only the exclusive right of interment in the lot.

History: (7582) RLS2949; 1915 c233s2; 1927 c295s2; 1986 c444; 1988 c469 art 5 s 1
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Unless the will is drawn in conformity with the terms of the statute above quoted, it is ineffective and in that case the rule of descent as provided by Minnesota Statutes, section 525.14 applies.

Of course, a will is ineffectual to pass title to a cemetery lot unless duly admitted to probate. After it has been probated, a certified copy of the final decree should be filed with the cemetery in order to establish the title of the new owner.

What other transfers are allowed?

A lot owner may, while living, transfer the lot to a cemetery association or private cemetery in trust for the use and benefit of a person named in the trust conveyance. The conveyance may contain conditions, provisions and covenants as the parties agree upon.

No interment can be made in a lot of a person who is not at the time of death the lot owner or a relative of the owner by blood or marriage without the written consent of the cemetery association or private cemetery.

What happens to my lot or space if I don't have a will?

Unless a lot or burial space is disposed of through a will, it will transfer upon the death of the owner as provided by Minnesota Statutes, Section 525.14. The order of descent is generally as follows:

- First, to the decedent's surviving spouse;
- Second, if there is no surviving spouse, to the decedent's eldest surviving child;
- Third, if there is no surviving child, to the decedent's youngest surviving sibling;
- If there is no surviving spouse, child or sibling of the decedent, then, if not sold during the administration of the decedent's estate, to the cemetery association or private cemetery in trust as a burial lot for the decedent and the decedent's relatives as the governing body determines.

Also, any grave marker, monument, memorial or structure lawfully installed on a cemetery lot or burial plot are part of the lot or plot and must transfer along with it.

524.14 DESCENT OF CEMETERY LOT.

Subject to the right of interment of the decedent therein, a cemetery lot or burial plot, unless disposed of as provided in section 306.29, shall descend free of all debts as follows:

- (1) to the decedent's surviving spouse, a life estate with right of interment of the spouse therein, and remainder over to the person who would be entitled to the fee if there were no spouse, provided, however, if no person entitled to the remainder of the fee survives, then the entire fee to the surviving spouse with right of interment therein;
- (2) if there is no surviving spouse, then to the decedent's eldest surviving child;
- (3) if there is no surviving child, then to the decedent's youngest surviving sibling;
- (4) if there is no surviving spouse, child or sibling of the decedent, then, if not sold during administration of decedent's estate, to the cemetery association or private cemetery in trust as a burial lot for the decedent and such of the decedent's relatives as the governing body thereof shall deem proper.

The cemetery association or private cemetery, or, with its consent, any person to whom the lot shall descend may grant and convey the lot to any of the decedent's parents, siblings or descendants.

A crypt or group of crypts or burial vaults owned by one person in a public or community mausoleum shall be deemed a cemetery lot.

Grave markers, monuments, memorials and all structures lawfully installed or erected on any cemetery lot or burial plot shall be deemed to be a part of and shall descend with the lot or plot.

History: (8992-26) 1935 c 72 s 26; 1969 c 852 s 1; 1981 c 25 s 1

Status of Adopted Children

If the child was legally adopted, he or she shall be treated equally with ones own children in determining descent of title to cemetery property.