

# TITLE 8 CEMETERIES

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## CHAPTER 1. DEFINITIONS

### §1. Definitions

As used in this Title the following words and phrases, unless the context otherwise clearly indicates, shall have the meaning hereinafter ascribed to each:

- (1) "Board" means the Louisiana Cemetery Board.
- (2) "Burial" means the placement of human remains in a grave.
- (3) "Burial vault" means a casket container placed in a grave for the purpose of burying human remains.
- (4) "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.
- (5) "Care", "endowed care" or "perpetual care" means the maintenance, repair and care of all places where interments have been or are to be made, including the improvements thereon, in keeping with a well maintained cemetery, and general overhead expense necessary for such purposes.
- (6) "Care funds", as distinguished from receipts from annual charges or gifts for current or annual care, means any cash or cash equivalent impressed with a trust by the terms of any gift, grant, contribution, payment, devise, or bequest, or pursuant to contract, accepted by any cemetery authority owning, operating, controlling, or managing a privately operated cemetery, or by any trustee or licensee, agent

or custodian for the same, under R.S. 8:454(B), and the amounts set aside under R.S. 8:454(A) and R.S. 8:454.1(C), and any income accumulated therefrom, where legally so directed by the terms of the transaction by which the principal is established. The term "care funds" includes both general and special care funds.

(7) "Cemetery" means a place used or intended to be used for the interment of the human dead. It includes a burial park, for earth interments; or a mausoleum, for vault or crypt interments; or a columbarium, or scattering garden, for cinerary interments; or a combination of one or more of these.

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(9) "Cemetery authority" means any person, firm, corporation, limited liability company, trustee, partnership, association or municipality owning, operating, controlling or managing a cemetery or holding lands within this state for interment purposes.

(10) "Cemetery business" and "cemetery purposes" mean any and all business and purposes requisite to, necessary for, or incident to establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of a cemetery.

(11) "Cemetery sales organization" means any legal entity contracting as an independent contractor with a cemetery authority to conduct sales of one or more cemetery spaces, whether by deed, servitude, grant of right to use or otherwise, and/or cemetery products. It does not mean individual salesmen or sales managers employed by and contracting directly with cemetery authorities operating under this law, nor does it mean funeral establishments or funeral directors operating under licenses authorized by R.S. 37:831, et seq., when dealing directly with a cemetery authority, with members of the family of a deceased person or other persons authorized by law to arrange for the funeral and/or interment of such deceased human being, or with an individual negotiating the sale of cemetery property as a part of his or her pre-need arrangements under Chapter 6 hereof.

(12) "Cemetery space" means a grave, crypt, vault, niche, tomb, lawn crypt, or any other property used or intended to be used for the interment of human remains.

(13) "Cemetery management organization" means a legal entity contracting as an independent contractor with a cemetery authority to manage a cemetery, but does not mean individual managers employed by or contracting directly with cemetery authorities operating under this title.

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

(14) "Community cemetery" means a cemetery owned, operated, controlled or managed by any association or organization, in which the sale of lots, graves, crypts, vaults, or niches is restricted principally to individuals within a community.

(14.1) "Corporation" means any corporation or limited liability company now or hereafter organized, which is or may be authorized by its articles or operating agreement to conduct any one or more of the businesses of a cemetery.

(15) "Cremated remains" means human remains after cremation in a crematory.

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

(17) "Crematory" means a building or structure containing one or more retorts for the reduction of bodies of deceased persons to cremated remains.

(18) "Crematory and columbarium" means a building or structure containing both a crematory and columbarium.

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

(20) "Directors" means the board of directors, board of trustees or other governing body of a cemetery authority, cemetery sales organization or cemetery management organization.

- (21) "Entombment" means the placement of human remains in a mausoleum.
- (22) "Family burial ground" means a cemetery in which no lots are sold to the public and in which interments are restricted to a group of persons related to each other by blood or marriage.
- (22.1) "Force majeure" means any of the following circumstances:
- (a) A major storm, major flood, or other similar natural disaster.
  - (b) A major accident beyond the cemetery authority's control and not ultimately found to be the fault of the cemetery authority.
  - (c) The delay by the federal government or any of its agencies, or the state or any of its agencies or political subdivisions in granting necessary permits.
  - (d) A valid order of any federal or state court of competent jurisdiction that prevents the timely completion of a project.
- (23) "Fraternal cemetery" means a cemetery owned, operated, controlled or managed by any fraternal organization or auxiliary organization thereof, in which the sale of lots, graves, crypts, vaults or niches is restricted principally to its members.
- (24) "Grave" means a space of ground in a cemetery, used or intended to be used, for burial.
- (25) "Human remains" means the body of a deceased person and includes the body in any stage of decomposition, as well as cremated remains.
- (26) "Interment" means the disposition of human remains by inurnment, scattering, entombment, or burial in a place used or intended to be used, and dedicated, for cemetery purposes.
- (27) "Inurnment" means placing cremated remains in an urn or other suitable container and placing it in a niche, crypt or vault in a place used or intended to be used, and dedicated, for cemetery purposes.
- (28) "Lawn crypts" means space for interment in preplaced chambers, or burial vaults, either side by side or multiple depth, covered by earth and/or sod and known also as below-ground crypts, westministers or turf top crypts.
- (29) "Lot" or "plot" means land in a cemetery used or intended to be used for the interment of human remains within a grave, mausoleum or lawn crypt or columbarium.
- (30) "Mausoleum" or "tomb" means a structure or building for the entombment of human remains in crypts or vaults in a place used or intended to be used, and dedicated, for cemetery purposes.
- (31) "Municipal cemetery" means a cemetery owned, operated, controlled or managed by a municipality or other political subdivision of the state, or instrumentality thereof authorized by law to own, operate or manage a cemetery.
- (32) "Niche" means a space in a columbarium used or intended to be used for inurnment of cremated human remains.
- (33) "Owner" means a person to whom the cemetery authority has transferred full title to or the right of use of and/or interment in any cemetery space and who appears as the title holder in the official records of the cemetery authority.
- (34) "Perpetual care cemetery" or "endowed care cemetery" means a cemetery wherein lots and other interment spaces are sold or transferred under the representation that the cemetery will receive perpetual or endowed care.
- (35) "Person" means an individual, corporation, limited liability company, partnership, joint venture, association, trust or any other legal entity.
- (36) "Privately owned cemetery" means any cemetery except a fraternal, municipal, or religious cemetery or a family burial ground.
- (36.1) "Rearrangement" or "reuse" means the act of removing and disposing of a previously interred casket and the gathering and placing of human remains in an alternative container within the same cemetery space in order to accommodate additional interments.
- (37) "Religious cemetery" means a cemetery that is owned, operated, controlled or managed by a recognized church, religious society, association or denomination, or by a cemetery authority or a

corporation administering or through which is administered the temporalities of any recognized church, religious society, association or denomination.

(38) "Sale" means the sale of the full title to any cemetery space or the sale of the right of use of and/or interment in any cemetery space.

(39) "Temporary receiving vault" means a cemetery space used or intended to be used for the temporary placement of human remains.

(40) "Trustee" means the separate legal entity designated as trustee of a cemetery care fund.

Acts 1974, No. 417, §1. Amended by Acts 1980, No. 428, §1; Acts 1997, No. 921, §1; Acts 1999, No. 1199, §1; Acts 2001, No. 468, §1; Acts 2003, No. 1243, §1; Acts 2006, No. 609, §1; Acts 2010, No. 63, §1.

### **§306. Removal of dedication; procedure**

A. Legislative intent. The following is the intent of the legislature:

(1) That the protection of unmarked human burial sites has been entrusted to the Louisiana Division of Archaeology and the attorney general.

(2) Notice of a judicial proceeding shall be given to the Louisiana Division of Archaeology and the attorney general in an action to cause the cemetery's dedication protection to be removed.

B. 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 judgment of the district court of the parish in which the property is situated in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing to the board, and by publication as hereinafter provided, and proof satisfactory to the court: (1) That no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed; and (2) That the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

C. When a petition is filed in court pursuant to Subsection B of this Section, a copy of the petition shall be served upon the Louisiana Division of Archaeology and the attorney general.

D. (1) The board or Louisiana Division of Archaeology shall have the right to intervene in any action filed pursuant to Subsection B of this Section.

(2) The attorney general may represent the board or the Louisiana Division of Archaeology in any action filed pursuant to Subsection B of this Section.

Acts 1974, No. 417, §1; Acts 2010, No. 79, §1.

## **CHAPTER 10. HUMAN REMAINS**

### **§651. Interring or cremating**

Except in cases of lawful dissection or where a dead body shall rightfully be carried through or removed from the state for the purposes of interment or cremation elsewhere, every dead body of a human being lying within this state, and the remains of any dissected body, after dissection, shall be decently interred or cremated within a reasonable time after death.

Acts 1974, No. 417, §1.

### **§652. Unlawful disposal of remains**

A. Except in the case of cremated remains or as otherwise provided by law, it shall be unlawful for any person to dispose of any human remains, except fetal remains, without first obtaining certification of the cause of death by the treating physician, parish coroner, or the authorized representative of the parish coroner. Disposal of such remains shall not be in any place other than a cemetery or a building dedicated exclusively for such purposes, and the remains shall be decently interred within a reasonable time after death.

B. Whoever violates this Section shall be punished by imprisonment for not more than three years, with or without hard labor, or by a fine of not more than one thousand dollars, or both. Acts 1991, No. 195, §1.

#### **§655. Right of disposing of remains**

A. The right to control interment, as defined in R.S. 8:1(26), of the remains of a deceased person, unless other specific directions have been given by the decedent in the form of a written and notarized declaration, vests in and devolves upon the following in the order named:

- (1) The surviving spouse, if no petition for divorce has been filed by either spouse prior to the death of the decedent spouse.
- (2) A majority of the surviving adult children of the decedent, not including grandchildren or other more remote descendants.
- (3) The surviving parents of the decedent.
- (4) A majority of the surviving adult brothers and sisters of the decedent.
- (5) A majority of the adult persons respectively in the next degrees of kindred as established in Civil Code Article 880 et seq.

B. In the event that the decedent has made multiple declarations of interment, the last declaration shall control.

Acts 1991, No. 912, §1; Acts 2001, No. 557, §1.

### **§656. Effect of authorization**

Any person signing any authorization for the interment of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred, and his authority to order the interment. Such person shall be personally liable for all damage occasioned by or resulting from breach of such warranty.

Acts 1974, No. 417, §1; Acts 2003, No. 1243, §1.

### **§657. Right to rely on such authorization**

The cemetery authority may inter any remains upon the receipt of a written authorization of a person representing himself to be the person who has the prior right to control the disposition of the remains in accordance with R.S. 8:655. A cemetery authority shall not be liable for interring pursuant to such authorization, unless it has actual notice that such representation is untrue.

Acts 1974, No. 417, §1; Acts 2003, No. 1243, §1.

### **§658. Liability for damages; limitation**

No action shall lie against any cemetery authority relating to the remains of any person which have been left in its possession for a period of sixty days, unless a written contract has been entered into with the cemetery authority for the care of such remains.

Acts 1974, No. 417, §1; Acts 2003, No. 1243, §1.

### **§659. Permission to move remains**

A. The remains of a deceased person may be moved from a cemetery space to another cemetery space in the same cemetery or to another cemetery with the consent of the cemetery authority and the written consent of one of the following, in the order named, unless other directions in writing have been given by the decedent:

- (1) The surviving spouse, if no petition for divorce has been filed by either spouse prior to the death of the decedent spouse.
- (2) The surviving adult children of the decedent, not including grandchildren or other more remote descendants.
- (3) The surviving parents of the decedent.
- (4) The surviving adult brothers and sisters of the decedent.

B. If the required consent cannot be obtained, a final judgment of the district court of the parish where the cemetery is situated shall be required.

Acts 1990, No. 939, §1; Acts 1999, No. 1199, §1; Acts 2006, No. 609, §1.

### **§660. Exceptions**

The foregoing Sections shall not apply to or prohibit the following:

- (1) The rearrangement of remains within the same cemetery space by or with the consent of the cemetery authority for the purpose of rearrangement or reuse in cemeteries which allow for rearrangement or reuse as defined in R.S. 8:1(36.1).
- (2) The removal of remains by a cemetery authority from a cemetery space for which the purchase price or any other legitimate indebtedness to the cemetery authority is past due and unpaid, to some other suitable place.
- (3) The disinterment of remains pursuant to an order of a court of competent jurisdiction or of a coroner of the parish in which the cemetery is located.
- (4) The removal and transfer of remains to correct an error as provided in R.S. 8:813 provided that written notice shall be sent to the immediate family prior to the removal and transfer.

Acts 1990, No. 939, §1; Acts 1999, No. 1199, §1.

### **§661. Undisposed remains; rules and regulations**

Whenever any human remains have been in the lawful possession of any cemetery authority for a period of sixty days or more, and the relatives of or persons interested in the deceased person

fail, neglect, or refuse for such periods of time, respectively, to direct the disposition to be made of the body, the body may be disposed of by the cemetery authority having lawful possession thereof, under and in accordance with such rules and regulations, if any, as may be made and promulgated by the governmental authority or authorities having jurisdiction over the matter.

Acts 1974, No. 417, §1; Acts 2003, No. 1243, §1.

#### **§662. Record of remains to be kept**

The cemetery authority in charge of any premises on which interments are made shall keep a record of all remains interred on the premises under its charge, in each case stating the name of each deceased person, date of interment, location of interment, and name of the funeral director or funeral home.

Acts 1974, No. 417, §1; Acts 2001, No. 468, §1; Acts 2003, No. 1243, §1.

### **CHAPTER 10-A. LOUISIANA UNMARKED HUMAN BURIAL SITES PRESERVATION ACT**

#### **§673. Definitions**

As used in this Chapter, unless the context clearly indicates otherwise, the following terms shall have the meanings indicated:

- (1) "Burial artifact" means any item of human manufacture or use that is in an unmarked burial site.
- (2) "Disturb" includes excavating, removing, exposing, defacing, mutilating, destroying, molesting, or desecrating in any way any unmarked burial sites or any human skeletal remains, burial artifacts, or burial markers on or in an unmarked burial site without a permit.
- (3) "Human skeletal remains" means any part of the body of a deceased human being in any stage of decomposition.
- (4) "Secretary" means the secretary of the Department of Culture, Recreation and Tourism or the person designated by the secretary to administer the provisions of this Chapter.
- (5) "Unmarked burial site" means the immediate area where one or more human skeletal remains are found in the ground that is not in a recognized and maintained municipal, fraternal, religious, or family cemetery, or a cemetery authorized by the Louisiana Cemetery Board.

Acts 1991, No. 704, §1, eff. Jan. 1, 1992; Acts 2009, No. 438, §6A.