

## **CHAPTER 23-21 DISINTERMENT AND REMOVAL OF BODIES IN CEMETERIES**

### **23-21-01. Definitions.**

In this chapter, unless the context otherwise requires, the term:

1. "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.
2. "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:
  - a. A burial park, for earth interments.
  - b. A mausoleum, for crypt or vault interments.
  - c. A crematory, or a crematory and columbarium, for cinerary interments.
3. "Cemetery authority" includes a cemetery corporation, limited liability company, association, or other person owning or controlling cemetery lands or property.
4. "Cemetery business, cemetery businesses" and "cemetery purposes" are used interchangeably and 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 cemetery property, including but not limited to, any activity or business designed for the benefit, service, convenience, education, or spiritual uplift of property owners or persons visiting the cemetery.
5. "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition or cremated remains.

### **23-21-02. Municipal ordinance for disinterment.**

The governing body of any municipality may, by ordinance and under such rules and regulations as it may adopt, provide for the disinterring and removal of all human remains from any cemetery which is within the municipality, or owned and controlled by the municipality and located without its boundaries, whenever the governing body finds that the further maintenance of all or any part of the cemetery as a burial place for the human dead threatens or endangers the health, safety, comfort, or welfare of the public.

### **23-21-03. County order for disinterment.**

The board of county commissioners of any county may, by resolution and under such rules and regulations as it may adopt, order the disinterring and removal of all human remains from any cemetery which is within the county and outside the boundaries of any municipality, whenever the board finds that the further maintenance of all or any part of the cemetery as a burial place for the human dead threatens or endangers the health, safety, comfort, or welfare of the public.

### **23-21-04. Declaration of intent.**

The cemetery authority of any cemetery from which human remains are ordered removed by a municipal ordinance or county resolution adopted in accordance with this chapter, shall declare its intention and purpose to disinter and remove the remains in accordance with such movement orders, and to reinter the remains in another cemetery or cemeteries outside the limits of the municipality or county or to deposit the remains in a mausoleum or columbarium.

### **23-21-05. Contents of declaration.**

Any resolution or declaration of intention to disinter and remove human remains pursuant to this chapter adopted or declared by any cemetery authority must specify and declare that at any time after the expiration of six months from and after the first publication of the notice of the resolution or declaration, the human remains then remaining in all or any part of the cemetery will be removed by the cemetery authority.

**23-21-06. Publication.**

Notice of a declaration of intention to remove the human remains from all or any part of any cemetery must be given by publication in a newspaper of general circulation published in the municipality or county in which the cemetery or the portion from which removals are to be made is situated. Publication must be at least once each week for eight successive weeks.

**23-21-07. Heading and contents.**

The notice must be entitled "Notice of Declaration of Intention to Remove Human Remains from \_\_\_\_\_ (insert name of cemetery) in accordance with the provisions of \_\_\_\_\_ (insert authority such as ordinance, resolution, or statute) of the \_\_\_\_\_ (insert name of municipality or county)" and must specify a date not less than six months after the first publication when the cemetery authority causing the notice to be published will proceed to remove the remains then remaining in such cemetery or the portion from which removals are to be made.

**23-21-08. Posting of copies.**

Copies of the notice must, within ten days after the first publication, be posted in at least three conspicuous places in the cemetery or the portion from which removals are to be made.

**23-21-09. Mailing to plot owners.**

A copy of the notice must be mailed to every person who owns, holds, or has the right of interment in any plot in the cemetery or part affected, whose name appears upon the records of the cemetery. The notice must be addressed to the last-known post-office address of the plot owner as it appears from the records of the cemetery, and if that person's address does not appear or is not known, then to that person at the city, or city and county, in which the cemetery land is situated. If such persons who own, hold, or have a right of interment in any plot of the cemetery or part affected are unknown or cannot be located, the publication of the notice of declaration of intent to disinter provided for in section 23-21-06 must be deemed to be proper and sufficient notice to such persons.

**23-21-10. Mailing to heirs of persons interred.**

The notice must also be mailed to each known living heir at law of any person whose remains are interred in the cemetery, if the person's address is known. If the heirs of any person whose remains are interred in the cemetery are unknown or cannot be found, the publication of the notice of the declaration of intent to disinter provided for in section 23-21-06 must be sufficient and proper notice to such persons.

**23-21-11. Notice of desire to be present during disinterment and reinterment.**

At any time before the date fixed for the removal of remains by the cemetery authority, any relative or friend of any person whose remains are interred in the cemetery from which removals are to be made may give the cemetery authority written notice that the person desires to be present when the remains are disinterred or are reinterred.

The notice to the cemetery authority must specify:

1. The name of the person whose remains are to be disinterred.
2. As accurately as possible, the plot where the remains are interred.
3. The date of interment.
4. An address at which the required notices may be given by the cemetery authority.

The notice may be delivered, or forwarded by registered or certified mail, to the office or principal place of business of the cemetery authority proposing to make removals.

After receipt of such notice before the date fixed for the removal of the remains by the cemetery authority, it shall give written notice to the person requesting it of the time when the remains shall be disinterred and of the time when and the place where they will be reinterred. This notice must be given by delivery, or by mail, to the person requesting it at least ten days prior to the date specified for the disinterment of the remains.

Whenever a request of notice is given by a relative or friend, the cemetery authority may not disinter the remains referred to until the notice of the time of disinterment is given the relative or friend, as provided in this section.

**23-21-12. Voluntary removal.**

At any time prior to the removal by a cemetery authority of the remains of any person, any relative or friend of the decedent may voluntarily remove and dispose of the remains. The person desiring to cause the removal shall, prior to removal, deliver to the cemetery authority an affidavit stating the name of the decedent whose remains it is desired to remove and, so far as is known to affiant, the date of burial and the names and places of residence of the heirs at law of the decedent. If the person desiring to cause the removal is not an heir at law of the person whose remains the person desires to remove, the removal may not be made by that person until that person has delivered to the cemetery authority the written consent of a majority of the known heirs at law of the decedent who are residents of this state. The statements in the affidavit are sufficient evidence of the number, names, and residences of the heirs at law for all of the purposes of this chapter, and the written consent of the majority of the heirs at law named in the affidavit is sufficient authority for the cemetery authority to permit the removal of the remains.

**23-21-13. Removal by purchaser or owner of plot or right of interment.**

Removal of all remains in a plot without the filing of an affidavit of consent may be caused by any of the following:

1. The purchaser or owner of the plot.
2. The purchaser or owner of the right of interment in the plot.
3. Any one of joint purchasers or owners of the plot or of the right of interment in the plot.

**23-21-14. Removal by heirs of grantee of plot or right of interment - Affidavit.**

If the right, title, or interest of any grantee of any plot or of the right of interment therein has passed by succession to the heir or heirs at law of the grantee without distribution by order of court, the heir or heirs at law may remove the remains of persons interred in the plot. The affidavit of any heir at law setting out the facts of heirship must be accepted by the cemetery authority as sufficient evidence of the fact of the transfer.

**23-21-15. Removal of appurtenances to interment space.**

Whenever remains are removed by a relative or friend of a decedent, under the provisions of this chapter, the person causing the removal is entitled to remove any vault, monument, headstone, coping, or other improvement appurtenant to the interment space from which the remains have been removed. The affidavit or written consent given under the provisions of this chapter is sufficient authority for the cemetery authority to permit the removal of any such appurtenance. If such appurtenances remain on the plot for more than ninety days after the removal of the last human remains, they may be removed and disposed of by the cemetery authority, and thereafter no person claiming any interest in the plot, or any such appurtenance, may maintain in any court any action in relation to any such appurtenance.

**23-21-16. Removal and reinterment by cemetery authority.**

After the completion of notice, and after the expiration of the period of six months specified in the notice, any cemetery authority may cause the removal of all human remains interred in the cemetery or portion from which the remains have been ordered removed, and may reinter such remains in any other place in this state where interments are permitted, without further notice to any person claiming any interest in the cemetery, or portion affected, or in the remains interred therein. Whenever any remains are removed from any cemetery or portion of a cemetery pursuant to this chapter by a cemetery authority, such remains must be reinterred as near as possible to the cemetery from which such remains were taken. The remains of each person reinterred must be placed in a separate and suitable receptacle and decently and

respectfully interred under rules and regulations adopted by the cemetery authority making the removal and the department of health and human services.

**23-21-17. Disposal of lands.**

Whenever human remains have been ordered removed under this chapter, and the cemetery authority has made and published notice of intention to remove such remains, the portions of the cemetery in which no interments have been made, and those portions from which all human remains have been removed, may be sold, mortgaged, or otherwise encumbered as security for any loan or loans made to the cemetery authority. No order of any court is required prior to the making of any such sale, mortgage, or other encumbrance of such lands; but any sale of such cemetery lands made by any cemetery corporation, limited liability company, or association controlled by a governing body must be fairly conducted and the price paid must be fair and reasonable and all such sales must be confirmed, as to the fairness and reasonableness of the price paid, by the district court of the county in which the lands are situated.

**23-21-18. Recordation of removal of human remains - Acknowledgment.**

After the removal of all human remains interred in any part or the whole of the cemetery lands, the cemetery authority shall file for record in the office of the county recorder of the county or municipality in which the lands are situated a written declaration reciting that all human remains have been removed from the lands described in the declaration.

The declaration must be acknowledged in the same manner as acknowledgments of deeds to real property by the president and secretary, or other corresponding officers of the cemetery authority, or by the person owning or controlling the cemetery lands, and thereafter any deed, mortgage, or other conveyance of any part of such lands is conclusive evidence in favor of any grantee or mortgagee named therein, and that person's successor or assigns, of the fact of the complete removal of all human remains therefrom.

**23-21-19. Proceeds of sale of land - Use.**

Money payable or to become payable as the purchase price or on account of the purchase price of unused cemetery lands, or lands from which all remains have been removed is not subject to garnishment, attachment, or execution, but must be used exclusively for any or all of the following purposes:

1. Acquisition of lands and improvements for cemetery purposes.
2. Disinterment, removal, and reinterment of bodies, pursuant to this chapter.
3. Endowment care of graves, markers, and cemetery embellishments.
4. The payment of expenses incidental to the disinterment, removal, and reinterment.
5. Any other purpose consistent with the objects for which the cemetery authority owning the cemetery is created or organized.

**23-21-20. Use of funds to pay expense of removal.**

Whenever any cemetery corporation, limited liability company, or association has declared for removal and has published notice of its intention to make removals under this chapter, it may employ any money in its treasury to defray the expense of removal, including:

1. The expense of purchasing or otherwise providing a suitable place for the interment of remains in any other cemetery.
2. The expenses of disinterment, transportation, and reinterment.
3. The expenses of removal and disposal of vaults, monuments, headstones, copings, or other improvements.
4. All necessary expenses incident to the sale or mortgaging of any land from which removals have been made.
5. All other expenses necessarily incurred in carrying out the removal, and reinterment, or disposing of remains so removed.
6. All expenses incident to any of the above purposes.

**23-21-21. Endowment care fund for cemetery of reinterment.**

From the money remaining in the treasury of the cemetery corporation, limited liability company, or association after completing the removal and reinterment of the remains from its cemetery lands and the payment of all incidental expenses, the cemetery corporation, limited liability company, or association shall set aside an adequate endowment care fund for the maintenance and care of the cemetery in which the remains have been interred. After making provisions for an endowment care fund to provide for maintenance and care, the governing body of the cemetery corporation, limited liability company, or association may use such portion of the funds then remaining as it may determine to be just and fair in reimbursing those who voluntarily and at their own cost and expense removed the remains of friends or relatives from the cemetery lands from which the remains were ordered removed. Such reimbursement may not be greater in amount than the average cost to the cemetery corporation, limited liability company, or association for removals directly made by it. Any balance remaining in the fund may be used for such other purposes as the cemetery corporation, limited liability corporation, or association may lawfully declare.

**23-21-22. Use of funds for perpetual or other care or improvement of cemetery of reinterment.**

Whenever any cemetery corporation, limited liability company, or association having a governing body has caused the removal of remains from all or any portion of its cemetery and has funds in its treasury which are not required for other purposes, it may set aside, invest, use, and apply from such unexpended funds such sum as, in the judgment of the governing body, it is necessary or expedient to provide for the perpetual or other care or improvement of any cemetery in which the disinterred remains may be reinterred. In lieu of itself investing, using or applying the funds for care or improvement, the cemetery corporation, limited liability company, or association may transfer the funds to any other corporation under such conditions and regulations as in the judgment of the governing body will ensure their application to the purposes of care or improvement. Before any such transfer of funds is made, the cemetery corporation, limited liability company, or association shall obtain an order authorizing the transfer from the district court of the county where the cemetery or portion from which the remains were removed is situated. The order must be obtained upon petition of the cemetery corporation, limited liability company, or association, after such notice by publication as the court may direct, and any member or former plot owner may support or oppose the granting of the order by affidavit or otherwise. Before making the order, proof must be made to the satisfaction of the court that notice has been given and that it is for the best interest of the cemetery corporation, limited liability company, or association that the transfer be made.

**23-21-23. Interment of decedent in religious cemetery - Compliance with religious requirements in removing remains.**

The heirs, relatives, or friends of any decedent whose remains have been interred in any cemetery owned, governed, or controlled by any religious corporation or by any church or religious society of any denomination or by any corporation sole administering temporalities of any religious denomination, society, or church, or owned, governed, or controlled by any person or persons as trustee or trustees for any religious denomination, society, or church may not disinter, remove, reinter, or dispose of any such remains except in accordance with the rules, regulations, and discipline of such religious denomination, society, or church.

The officers, representatives, or agents of the church or religious society must be the sole judge of the requirements of the rules, regulations, and discipline of such religious denomination, society, or church.