

## TOWNSHIP CEMETERY RIGHTS OF REENTRY

By Timothy C. Long

Ohio township cemeteries, unlike other types of Ohio cemeteries, are empowered with a statutory “right of reentry” pursuant to Ohio Revised Code Section 517.07. Such right of reentry entitles township cemeteries to reclaim sold, but unused interment rights under certain circumstances. For township cemeteries which are running low on their supply of interment rights to sell, the right of reentry may prove to provide a solution superior to expanding cemetery space through purchase or appropriation and, therefore, deserves careful study.

The statute provides two separate types of reentry mechanisms, both of which require that specific language shall have been included in the “deed” pursuant to which the subject interment rights were conveyed to the customer after July 24, 1986. The first, created by inclusion of “notification” language in the deed, becomes exercisable when the owner of the interment right or such owner’s heirs fail to provide certain notices to the cemetery. The second, created by inclusion of “termination” language in the deed, is exercisable simply after the passage of time.

Ohio Revised Code Section 517.07 provides the following straight forward language with regard to creating and utilizing a “notification” right of reentry:

(A) The grantee shall provide to the board of township trustees, in writing, **a list of the names and addresses of the persons** to whom the grantee's property would pass by **intestate succession**.

(B) The **grantee shall notify** the board in writing of any subsequent **changes in the name or address** of any persons to whom property would descend.

(C) Any person **who receives** a township cemetery lot by gift, inheritance, or any other **means other than the original conveyance** shall, **within one year** after receiving such interest, give **written notice of the person’s name and address to the board** having control of the cemetery, and shall **notify** the board of any **subsequent changes** in the person’s name or address.

The terms of sale and **any deed** for any lots **executed in compliance** with the notification requirements set forth in divisions (A), (B), and (C) of this section **shall state** that the board of **township trustees shall have right of reentry to the cemetery lot if the notification requirements** are

**not met.** At least **ninety days before establishing reentry,** the board shall send a **notice** by **certified mail** to the last known owner at the owner's last known address to inform the owner that the owner's interest in the lot will cease unless the notification requirements are met. If the owner's **address is unknown** and cannot reasonably be obtained, it is sufficient to **publish the notice** once in a **newspaper** of general circulation in the county. **In order to establish reentry,** the **board shall pass a resolution** stating that the conditions of the sale or of the deed have not been fulfilled, and that the board reclaims its interest in the lot (emphasis added).

The same statute provides the following language regarding creating and using a "termination" right of reentry:

The board **may limit the terms of sale or the deed for a cemetery lot** by specifying that the owner, a member of the owner's family, or an owner's descendant must use the lot, or at least one burial place within the lot, **within a specified time period.** The board **may specify** this time period to be **at least twenty but not more than fifty years, with right of renewal provided at no cost.** At least **ninety days prior** to the **termination** date for use of the cemetery lot, the board shall send a **notice** to the owner to inform the owner that the owner's interest in the lot will cease on the termination date unless the owner contracts for renewal by that date. The board shall send the notice by **certified mail** to the owner if the owner is a resident of the township or is a nonresident whose address is known. If the owner's **address is unknown** and cannot reasonably be obtained, it is sufficient to **publish** the notice once in a **newspaper** of general circulation in the county.

The terms of sale and **any deed** for lots conveyed **with a termination date shall state** that the board shall have **right of reentry** to the lot at the end of the specified time period **if the lot is not used** within this time period **or renewed** for an extended period. In order to **establish reentry,** the **board** shall pass a **resolution** stating that the conditions of the sale or of the deed have not been fulfilled, and that the board reclaims its interest in the lot. The **board shall compensate owners** of unused lots who do not renew the terms of sale or the deed by paying the **owner eighty per cent** of the purchase price. **The board may repurchase any cemetery lot from its owner at any time at a price that is mutually agreed upon by the board and the owner** (emphasis added).

It should be noted that the “notification” and “termination” rights of reentry are not listed as alternatives in the statute and, as such, could both be added to a single deed. Additionally, one should recognize that the last sentence emphasized above empowering the board to “repurchase any cemetery lot from its owner at any time” at an agreed price, seems misplaced in the statute. Specifically, such power and authority has nothing to do with rights of reentry, is not conditioned on having reentry or any specific language in the owner’s Deed and quite clearly stands alone.

Further, as the statute makes clear, the foregoing rights of reentry became effective on July 24, 1986. Prior to that date, township cemeteries had no statutory authority to include any reentry language in their deeds. As townships are a creature of statute and only enjoy the powers statutorily granted to them, one could likely search to no avail for examples of exercised rights of reentry prior to July 24, 1986.

However, after the passage of the statute, the issue was raised as to whether township cemeteries could apply Ohio Revised Code Section 517.07 retroactively. In 2009 Opinion of the Attorney General No. 006, the Ohio Attorney General opined negatively by holding:

- i. A board of township trustees may not reclaim its interest in sold but unused cemetery lots under a theory that the burial easement has been extinguished by abandonment on the basis of nonuse alone, and it is highly unlikely that the board will be able to establish intent to abandon a sold but unused cemetery lot.
- ii. RC 517.07 **does not allow any retroactive application** to deeds executed on or before July 24, 1986.
- iii. **Existing Ohio law provides no clear and direct legal means by which a township may reclaim** and resell cemetery lots that were **sold on or before July 24, 1986**, and remain unused (emphasis added).

A careful review of the entirety of 2009 OAG 006, however, leaves the door at least ajar regarding the possibility of retroactive application of ORC 517.07. The Attorney General mentioned legislative action, court action and the scenario where the township merely does so even though it lacks the approval of the Attorney General. Obviously, the advantages and disadvantages of each of these alternatives should be fully explored with by the township considering any of the same due to a sever lack of remaining interment rights.

All other township cemeteries should review their form of Deed to insure the language required to create one or both forms of the statutory right of reentry are included and revise their Deeds accordingly. While the rights may never need to be

exercised, they can't be added later and may provide the best solution to space concerns which will likely occur over time.

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