

1 AN ACT in relation to property.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Cemetery Protection Act is amended by
5 changing Section 16 and by adding Section 14.5 as follows:

6 (765 ILCS 835/14.5 new)

7 Sec. 14.5. Correction of encroachment on interment,
8 entombment, or inurnment rights.

9 (a) Whenever a cemetery becomes aware that there is an
10 encroachment on or in the lawful interment, inurnment, or
11 entombment rights of another, and when the cemetery buried or
12 placed or permitted the burial or placement of the encroaching
13 item in or on these rights, the cemetery may correct the
14 encroachment in accordance with this Section. This Section
15 shall not apply to, or be utilized in connection with, any
16 eminent domain, quick-take, or other condemnation proceeding
17 that is designed to relocate a cemetery or portion thereof to
18 another location.

19 (b) When the encroaching item is a marker, monument or
20 memorial that should be placed on or in another interment,
21 inurnment, or entombment right located within the cemetery, or
22 when the item is the foundation or base for any of the
23 foregoing, the cemetery may with reasonable promptness, and
24 without being required to obtain any permit, relocate the item
25 to its proper place. Notice of the corrective action shall be
26 given no later than 30 days following the correction in
27 accordance with subsection (d) of this Section.

28 (c) When the encroaching item is a vault, casket, urn,
29 outer burial container, or human remains that should be placed
30 in or on another interment, inurnment, or entombment right
31 located within the cemetery, the cemetery may with reasonable
32 promptness, and without being required to obtain any permit,

1 relocate the item to its proper place. Except as otherwise
2 provided in this subsection, notice of the corrective action
3 shall be given no later than 30 days prior to the correction in
4 accordance with subsection (d) of this Section. When the
5 involved encroachment would, if uncorrected within 30 days,
6 interfere with a scheduled interment, inurnment, or
7 entombment, then the notice shall be given in accordance with
8 subsection (d) of this Section with as much advance notice as
9 reasonably possible or, if advance notice is not reasonably
10 possible, no later than 30 days following the correction. In
11 the event the correction is to occur in a religious cemetery
12 that, for religious reasons, maintains rules that preclude
13 advance notice of corrections, the notice shall occur no later
14 than 30 days following the correction.

15 (d) Notice under this Section shall be by certified mail or
16 other delivery method that has a confirmation procedure, in
17 12-point type, to the owner of any affected interment,
18 inurnment, or entombment right or, when the owner is deceased,
19 to the surviving spouse of the deceased, or if none, any
20 surviving children of the deceased, or if no surviving spouse
21 or children, a parent, brother, or sister of the deceased, or,
22 if failing all of the above, any other listed heir of the
23 deceased in the cemetery records. In providing notice, the
24 cemetery authority shall exercise due diligence to engage in a
25 reasonable search of available funeral home of record or
26 cemetery records to obtain the current address of the party to
27 be notified. The notice shall provide a clear statement of the
28 correction taken or to be taken, together with the reasons for
29 the correction, and shall outline a simple process for the
30 notified person to obtain additional information regarding the
31 correction from the cemetery. When advance notice is required,
32 the notice shall inform the notified party of his or her right
33 to be present for any reinterment, reinurnment, or
34 reentombment, as well as his or her option to object by
35 obtaining an injunction enjoining the contemplated correction.
36 The cemetery shall maintain for no less than 5 years a record

1 of any notice provided under this Section.

2 (e) Nothing in this Section shall make a cemetery
3 financially responsible for the correction of encroachments
4 that are directly or indirectly caused by the owner of an
5 interment, inurnment, or entombment right or by his or her
6 heirs or by an act of God, war, or vandalism. The cemetery
7 shall be financially responsible for the correction of all
8 other encroachments covered by this Section.

9 (f) Nothing in this Section shall be construed to limit the
10 liability of any party.

11 (765 ILCS 835/16)

12 Sec. 16. When a multiple interment right owner becomes
13 deceased, the ownership of any unused rights of interment shall
14 pass in accordance with the specific bequest in the decedent's
15 will. If there is no will or specific bequest then the
16 ownership and use of the unused rights of interment shall be
17 determined by a cemetery authority in accordance with the
18 information set out on a standard affidavit for cemetery
19 interment rights use form if such a form has been prepared. The
20 unused right of interment shall be used for the interment of
21 the first deceased heir listed on the standard affidavit and
22 continue in sequence until all listed heirs are deceased. In
23 the event that an interment right is not used, the interment
24 right shall pass to the heirs of the heirs of the deceased
25 interment right owner in perpetuity. This shall not preclude
26 the ability of the heirs to sell said interment rights, in the
27 event that all listed living heirs are in agreement. If the
28 standard affidavit for cemetery interment rights use, showing
29 heirship of decedent interment right owner's living heirs is
30 provided to and followed by a cemetery authority, the cemetery
31 authority shall be released of any liability in relying on that
32 affidavit.

33 The following is the form of the standard affidavit:

34 STATE OF ILLINOIS

)

1) SS
2 COUNTY OF

3 AFFIDAVIT FOR CEMETERY INTERMENT RIGHTS USE

4 I,, being first duly sworn on oath depose and
5 say that:

6 1. A. My place of residence is

7 B. My post office address is

8 C. I understand that I am providing the information
9 contained in this affidavit to the
10 ("Cemetery") and the Cemetery shall, in the absence of
11 directions to the contrary in my will, rely on this
12 information to allow the listed individuals to be interred
13 in any unused interment rights in the order of their death.

14 D. I understand that, if I am an out-of-state resident,
15 I submit myself to the jurisdiction of Illinois courts for
16 all matters related to the preparation and use of this
17 affidavit. My agent for service of process in Illinois is:

18 Name Address

19 City Telephone

20 Items 2 through 6 must be completed by the executor of the
21 decedent's estate, a personal representative, owner's
22 surviving spouse, or surviving heir.

23 2. The decedent's name is

24 3. The date of decedent's death was

25 4. The decedent's place of residence immediately before his
26 or her death was

27 5. My relationship to the decedent is
28 and I am authorized to sign and file this affidavit.

29 6. At the time of death, the decedent (had no) (had a)
30 surviving spouse. The name of the surviving spouse, if any, is
31, and he or she (has) (has not) remarried.

32 7. The following is a list of the cemetery interment rights
33 that may be used by the heirs if the owner is deceased:

34

1

2 8. The following persons have an ownership interest in and
3 the a right to use the cemetery interment rights in the order
4 of their death:

5 Address

6 Address

7 Address

8 Address

9 Address

10 Address

11 Address

12 9. This affidavit is made for the purpose of obtaining the
13 consent of the undersigned to transfer the right of interment
14 at the above mentioned cemetery property to the listed heirs.
15 Affiants agree that they will save, hold harmless, and
16 indemnify Cemetery, its heirs, successors, employees, and
17 assigns, from all claims, loss, or damage whatsoever that may
18 result from relying on this affidavit to record said transfer
19 in its records and allow interments on the basis of the
20 information contained in this affidavit.

21 WHEREFORE affiant requests Cemetery to recognize the above
22 named heirs-at-law as those rightfully entitled to the
23 ownership of and use of said interment (spaces) (space).

24 THE FOREGOING STATEMENT IS MADE UNDER THE PENALTIES OF PERJURY.
25 (A FRAUDULENT STATEMENT MADE UNDER THE PENALTIES OF PERJURY IS
26 PERJURY AS DEFINED IN THE CRIMINAL CODE OF 1961.)

27 Dated this day of,

28 (Seal) (To be signed by the owner or
29 the individual who completes items 2 through 6 above.)

30 Subscribed and sworn to before me, a Notary Public in and for
31 the County and State of aforesaid this
32 day of,

1 Notary Public.

2 (Source: P.A. 92-419, eff. 1-1-02.)