

Subject: **TRANSACTIONS INVOLVING CEMETERIES**

BACKGROUND

The ownership and establishment of cemeteries are regulated pursuant to the provisions of the Cemeteries Act and the Cemetery Companies Act. (1) The Minister of Service Alberta is charged with the administration of the Acts (2) and the Director of Cemeteries ("Director") as appointed by the Minister (3) is responsible for the regulation of all cemeteries in Alberta.

By virtue of the Cemeteries Act, only a religious auxiliary, religious denomination or municipality may establish a new cemetery. (4) The Cemetery Companies Act also makes provision for the ownership of a cemetery by a company incorporated pursuant to that Act. (5) In practice however, there are currently approximately 253 companies incorporated under the provisions of the Act with no new companies being incorporated. Ownership of cemeteries is generally held by religious organizations registered pursuant to the Religious Societies' Land Act (6) or by municipalities.

Except in the case of a cemetery company, any land used for a cemetery, columbarium or mausoleum may only be transferred, sold, mortgaged, pledged, hypothecated, charged or encumbered with the consent of the Director. Any transaction made in contravention thereof after April, 1974 is void. (7) A cemetery company may only dispose of a cemetery with the approval in writing of the Minister. (8)

The real property of a cemetery company that is used as a cemetery and the individual plots when conveyed to the individual proprietors for burial sites are exempt from seizure and are not liable to be passed to the assignee under any bankruptcy or insolvency law. (9) The conveyance of an individual plot or lot is not affected by the Land Titles Act nor does any judgment, mortgage or encumbrance subsist on a lot or plot conveyed or transferred. (10) The real estate of a cemetery company or trustees holding it on behalf of a cemetery company and the lots or plots when conveyed by a company or trustees to individual proprietors for burial sites are exempt from taxation of any kind and are not liable to be seized or sold under execution. (11)

REGISTRATION PROCEDURE

1. **Approved Owners of a Cemetery** - Land used for a cemetery may be owned by:
 - a) a cemetery company incorporated pursuant to the Cemetery Companies Act (12)
 - b) a company incorporated pursuant to the Religious Societies' Land Act (13) (The provisions of B. 2. of the procedure on Religious Societies REL-1 must be complied with when such a company acquires or disposes of real property.)
 - c) a religious organization established pursuant to any other provincial or federal statute

- d) trustees appointed pursuant to the Cemetery Companies Act (14)
- e) trustees appointed pursuant to the Religious Societies' Land Act (15) (The provisions of A. of the procedure on Religious Societies REL-1 apply to the holding of property except as otherwise indicated.)

2. **Title** - In the case of 1(a) and (b) above, title is to be issued to the company in the proper corporate name. In the case of 1(d) and (e) above, title is to be issued to the trustees with a designation of their trust (i.e., section 47 of the Land Titles Act concerning trusts does not apply). An example of the latter is:

“JOHN SMITH AND JOAN BROWN, TRUSTEES FOR THE
EDMONTON REFORM CHURCH”

3. **Registration of a Transfer by a Trustee** - A conveyance or transfer to a trustee is void unless it is registered at the Land Titles Office within twelve months of its execution. (16)

4. **Successor Trustees** - The appointment of successor trustees under the Cemetery Companies Act is to be in accordance with sections 6 and 7 of the Cemetery Companies Act. The appointment of successor trustees under the Religious Societies' Land Act is to be in accordance with the procedure on Religious Societies REL-1.

5. **Consent** - All transfers, mortgages, pledges, hypothecations, charges and encumbrances by the owner or any person having an interest in a cemetery must have the consent of the Director endorsed on them to be registrable. (17) Either

- a) an attached document stamped and signed by an official of the Ministry of Service Alberta approving the transaction
- b) a letter (or a photocopy of a letter) under letterhead of the Ministry of Service Alberta, Consumer and Registry Services Division approving the transaction and attached to the document is acceptable as signifying approval by the Director. The consent of the Director to a transfer by a cemetery company is sufficient evidence of compliance with the requirements of the Act (18) as the consent of the Director will not be granted unless the consent of the Minister has been obtained.

The consent of the Director is not required when successor trustees are appointed.

6. **Endorsement Re: Use Restriction** - If the instrument presented for registration or a notice from the Ministry of Service Alberta, Consumer and Registry Services Division indicates that the land is to be used or is being used for cemetery purposes the following endorsement under the registration number of the instrument or notice is endorsed on the certificate of title:

“USE RESTRICTED TO CEMETERY PURPOSES”.

Do not add the restricting wording if the notice indicates the land has a burial site.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Habendum Clause

The code used for registration at Land Titles is: HABC

STATUTE AND CASE REFERENCES

Statute references are to the Cemeteries Act, R.S.A. 2000, c. C-3, unless otherwise indicated.

1. R.S.A. 2000, Cemetery Companies Act, c. C-4
2. s. 1(h)
3. s. 1(d.1)
4. s. 3
5. s. 2, Cemetery Companies Act
6. R.S.A. 2000, Religious Societies Land Act, c. R-15
7. s. 74
8. s. 22, Cemetery Companies Act
Minister is defined as the member of the Executive Council charged with the administration of the Companies Act.
Minister under s. 21 of the Interpretation Act R.S.A. 2000, c. I-8 also includes the deputy of the Minister or a person appointed as acting deputy.
9. s. 14
10. s. 15
11. s. 23, Cemetery Companies Act
12. s. 2, Cemetery Companies Act
13. s. 12, Religious Societies' Land Act
14. s. 6(1), Cemetery Companies Act
15. s. 3, Religious Societies' Land Act
16. s. 8, Cemetery Companies Act; s. 4, Religious Societies' Land Act
17. s. 74
18. s. 22, Cemetery Companies Act
Minister is defined as the member of the Executive Council charged with the administration of the Companies Act.
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