

## LEGISLATIVE BILL 257

Approved by the Governor March 11, 2024

Introduced by Lowe, 37.

A BILL FOR AN ACT relating to cemeteries; to amend sections 12-701, 12-702, and 17-938, Reissue Revised Statutes of Nebraska; to define a term; to change provisions relating to abandonment and reversion of cemetery lots; to authorize investment of funds from the sale of cemetery lots as prescribed; to harmonize provisions; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. Section 12-701, Reissue Revised Statutes of Nebraska, is amended to read:

12-701 (1) For purposes of this section, lot owner means the purchaser of a cemetery lot or such purchaser's heirs, administrators, trustees, legatees, devisees, or assigns.

(2) Whenever a county, city, or village has acquired real estate for the purpose of maintaining a cemetery or has acquired a cemetery from a cemetery association pursuant to section 12-530, or a city or village is the owner of a cemetery pursuant to section 15-239, 16-241, or 17-926, and such county, city, or village or its predecessor in title has conveyed any platted lot or other designated piece of ground within the area of such cemetery, all rights to such conveyed platted lot or other designated piece of ground, other than ground in which dead human remains are actually buried and all ground within two feet of such human remains, may be revested in the county, city, or village in the following manner and subject to the following conditions:

(a) No interment shall have been made in the lot or other designated piece of ground for a period of at least thirty years prior to the commencement of any proceedings to revest such lot or other designated piece of ground pursuant to this section;

(b) If a lot owner is a resident of the county where the cemetery is located, the governing body of the county, city, or village shall cause to be served upon such lot owner a notice that proceedings have been initiated to revest all rights in such lot in the county, city, or village and that such lot owner may, within the time provided by the notice, file with the county clerk, city clerk, or village clerk a statement in writing explaining how rights in the lot were acquired and that such person desires to assert interment rights in the lot. The notice shall be served in the manner provided for service of summons in a civil case and shall provide a period of not less than thirty days in which such statement can be filed. If the governing body ascertains that the statement filed by the lot owner is a valid claim asserting the rights of the lot owner in the lot, all further proceedings by the governing body to revest title of the lot in the county, city, or village shall be terminated by the governing body as to the lot identified in the statement;

(c) If it is determined that the lot owner is not a resident of the county and cannot be found in the county, the governing body may cause the notice required by subdivision (b) of this subsection to be published once each week for two consecutive weeks in a newspaper of general circulation within the county, city, or village where such lot is located. Such notice shall contain a general description of the title reversion proceedings to be undertaken by the governing body pursuant to this section, the relevant lot number and description, and name of the lot owner. In addition, the notice shall notify the lot owner that such lot owner may, within the time provided by the notice, file with the county clerk, city clerk, or village clerk a statement setting forth how such lot owner acquired rights in the lot and that such lot owner desires to assert such rights. If the governing body ascertains that the statement filed by the lot owner is a valid claim asserting the rights of the lot owner in the lot, all further proceedings by the governing body to revest all interests in the lot in the county, city, or village shall be terminated by the governing body as to the lot identified in the statement;

(d) All notices, including proof of service, and all rules and regulations, ordinances, or resolutions adopted by the governing body relative to reversion proceedings under this section shall be made a part of the public records of such governing body;

(e) Any lot owner who fails to timely file a statement asserting a right in a lot in accordance with subdivisions (b) and (c) of this subsection shall be deemed to have abandoned such right in such lot. The appropriate governing body may then bring an action in the district court of the county in which the cemetery is located against all lot owners in default, joining as many parties so in default as it may desire in one action, to have the rights of the parties in such lots or parcels terminated and the property restored to the governing body of such cemetery free of any right, title, or interest of all such defaulting parties or their heirs, administrators, trustees, legatees, devisees, or assigns. Such action in all other respects shall be brought and determined in the same manner as other actions to determine title to real estate;

(f) In all cases brought under this section, the fact that the lot owner

has not, for a term of more than thirty successive years, had occasion to make an interment in the lot and did not, upon notification provided pursuant to this section, assert a claim in such lot, shall be considered prima facie evidence that the lot owner has abandoned any rights such lot owner may have had in such lot;

(g) A certified copy of the judgments in such actions quieting title may be filed in the office of the register of deeds in and for the county in which the cemetery is situated; and

(h) All notices and all proceedings pursuant to this section shall distinctly describe the portion of such lot unused for burial purposes and the county, city, or village shall leave sufficient ingress to, and egress from, any grave upon the lot, either by duly dedicated streets or alleys in the cemetery, or by leaving sufficient amounts of the unused portions of the cemetery for such purposes.

(3) This section shall not apply to any lot in any cemetery association where a perpetual care contract has been entered into between such cemetery or the county, city, or village and the owner of such lot.

(4) Compliance with the terms of this section shall fully revest the county, city, or village with, and divest the lot owner of record of, title to such lot or portions of such lot unused for burial purposes as though the lot had never been conveyed to any person, and such county, city, or village shall have, hold, and enjoy such unclaimed portions of such lot for its own uses and purposes, subject to the laws of this state, to the charter of such cemetery, and to the rules and regulations, ordinances, or resolutions of such governing county, city, or village.

(5) Any transfer by a lot owner of the interment right to a lot shall be subject to any rules and regulations, ordinances, or resolutions adopted and promulgated by the county, city, or village.

~~(1) The ownership of or right in or to an unoccupied cemetery lot or part of a lot in any cemetery in the state shall, upon abandonment, revert to the city, village, township, or cemetery association having the ownership and charge of the cemetery containing such lot or part of a lot. The continued failure to maintain or care for a cemetery lot or part of a lot for a period of ten years shall create and establish a presumption that the same has been abandoned. Abandonment shall not be deemed complete unless, after such period of ten years, there shall be given by the reversionary owner to the owner of record or, if he or she be deceased or his or her whereabouts unknown, to the heirs of such deceased person, as far as they are known or can be ascertained with the exercise of reasonable diligence, or to one or more of the near relatives of such owner of record, whose whereabouts are unknown, notice declaring the lot or part of a lot to be abandoned. This notice shall be served as provided by subsection (2) of this section.~~

~~(2) The notice, referred to in subsection (1) of this section, may be served personally upon the owner or his or her heirs or near relatives or may be served by the mailing of the notice by either registered or certified mail to the owner or to his or her heirs or near relatives, as the case may be, to his, her, or their last-known addresses. In the event that the addresses of the owner and his or her heirs and near relatives are unknown or cannot be found with reasonable diligence, the notice of such abandonment shall be given by publishing the same one time in a legal newspaper published in and of general circulation in the county or, if none is published in the county, in a legal newspaper of general circulation in the county in which the cemetery is located.~~

Sec. 2. Section 12-702, Reissue Revised Statutes of Nebraska, is amended to read:

12-702 A county, city, or village that is the reversionary owner of a lot, part of a lot, lots, or parts of lots pursuant to section 12-701 may sell the same and convey title to such lots or parts of lots. If within one year from the time of serving or publishing the notice referred to in section 12-701, the record owner or his heirs or near relatives shall give the reversionary owner, referred to in subsection (1) of such section, notice in writing that in fact there has been no such abandonment and shall pay the cost of service or publication of the notice of abandonment, then a presumption of abandonment shall no longer exist. In case abandonment has been complete as hereinbefore provided, the reversionary owner of the abandoned lot, part of lot, lots, or parts of lots may sell the same and convey title thereto. Any funds realized from the sale of such lot, part of lot, lots, or parts of lots shall constitute a fund to be used solely for the care and upkeep of the used portion of such lot, part of lot, lots, or parts of lots and for the general maintenance of such cemetery. Such funds may be invested as long as such investor acts as a fiduciary and complies with the prudent investor rule set forth in sections 30-3883 to 30-3889.

Sec. 3. Section 17-938, Reissue Revised Statutes of Nebraska, is amended to read:

17-938 (1) The mayor and city council or the village board of trustees of a city of the second class or village are hereby empowered to levy a tax not to exceed five and two-tenths cents on each one hundred dollars upon the taxable value of all taxable property in such city or village for any one year for improving, adorning, protecting, and caring for a cemetery as provided in section 17-926.

(2) Except as provided in subsection (3) of this section, all certificates to any lot or lots upon which no interments have been made and which have been sold for burial purposes under the provisions of section 17-941 may be declared

forfeited and subject to resale if, for more than three consecutive years, all charges and liens as provided under sections 17-926 to 17-947 or by any of the rules, regulations, or bylaws of the association are not promptly paid by the holders of such certificates. All certificates to any lot or lots sold shall contain a forfeiture clause to the effect that if no interment has been made on the lot or lots and all liens and charges have not been paid as provided in this subsection, by ordinance, or in the bylaws of the association, such certificate and the rights under the same may, at the option of the cemetery board, with the approval of the mayor and city council or of the chairperson and village board of trustees, be declared null and void and the lot or lots shall be subject to resale as in the first instance.

(3)(a) Except as provided in subdivision (b) of this subsection, when (3) when any lot has been transferred by warranty deed or by a deed conveying a fee simple title, but there has been no burial in any such lot or subdivision thereof and no payment of annual assessments for a period of three years, the cemetery board, with the approval of the mayor and city council or of the chairperson and village board of trustees, may reclaim the unused portion of such lot or subdivision after notifying the record owner or his or her heirs or assigns, if known, by certified mail and publishing notice of its intention to do so. Such notice shall be published once each week for four weeks in a legal newspaper in or of general circulation throughout the county in which the cemetery is located, shall describe the lot or subdivision proposed to be reclaimed, and shall be addressed to the person in whose name such portion stands of record or, if there is no owner of record, to all persons claiming any interest in such lot or subdivision. If no person appears to claim such lot or subdivision and pay all delinquent assessments with interest within fifteen days after the last date of such publication, the cemetery board may by resolution reclaim such lot or subdivision. Such reclamation shall be complete upon a filing of a verified copy of such resolution, together with proof of publication, in the office of the register of deeds.

(b) A city of the second class or village that has not levied a tax pursuant to subsection (1) of this section within the preceding five calendar years of a proposed forfeiture, shall, for purposes of forfeiture, reclamation, or reinvestment of a cemetery lot, be governed by section 12-701.

Sec. 4. Original sections 12-701, 12-702, and 17-938, Reissue Revised Statutes of Nebraska, are repealed.