

***CEMETERY “DEEDS” AND
TOWNSHIP CEMETERY RIGHTS OF
REENTRY***

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I. The Misnomer of Cemetery “Deeds”.

A. Ohio Revised Code Section 517.07 provides, in part:

Upon application, the board of township trustees shall sell at a reasonable price the number of lots as public wants demand for burial purposes. Purchasers of lots, upon complying with the terms of sale, may receive **deeds** for the lots which the board shall execute and which shall be recorded by the township fiscal officer in a book for that purpose. The expense of recording shall be paid by the person receiving the **deed**. Upon the application of a head of a family living in the township, the board shall, without charge, make and deliver to the applicant a **deed** for a suitable lot for the burial of the applicant’s family, if, in the opinion of the board and by reason of the circumstances of the family, the payment would be oppressive (emphasis added).

B. Use of “Deed” is imprecise, dated language.

1. Doesn’t carry legal import as used elsewhere in the ORC.
2. Statutory forms of conveyance do not include “deeds” to cemetery rights.
3. Interment right is burial easement, not fee simple transfer.
4. No formal execution requirements or form contained in ORC 517.07

C. Avoid statutory form of deed requirements.

1. Notary.
2. Witnesses.
3. Recordation risk.

D. Other key terms to avoid.

1. “all right, title and interest”.
2. “to hold forever”.
3. “or assignees”.
4. Warranty covenants: “with general (limited) warranty covenants”.

E. Key terms to include.

1. Right of Reentry language.
2. Reference/incorporation of Rules and Regulations.

F. “Conveyance Certificate”.

II. Township Cemetery Rights of Reentry.

A. Ohio Revised Code Section 517.07 provides two mechanisms for reentry.

1. Transfers including “notification” requirements (“Notification Deeds”).
 - i. (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.

ii. 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).

iii. Redraft Certificate now.

2. Transfers including "termination" dates ("Termination Deeds").

i. 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.

ii. 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).

iii. Redraft Certificate now.

B. The Problem with Retroactive Application of ORC 517.07 Rights of Reentry.

1. 2009 OAG 006.

- 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).

2. Opinion leaves several doors open.

- i. Legislative solution.
- ii. Court action.
- iii. Do it anyway?
 - a. Damages?
 - b. Identify and reserve replacement space.
 - c. Escrow funds for repurchase.
 - d. Include special terms in new purchaser's "Deed".
- iv. Request new Opinion of Attorney General based on your Township's facts and Rules.

3. Alternatives to rights of reentry.

- i. Purchase lots that will never be used from living owners.
- ii. Limit number of lots one is allowed to purchase (Rules).
- iii. Appropriation rights.
- iv. Purchase land for expansion.