

## Municipal Expropriation of a Neglected and Abandoned Cemetery

**1. Introduction** - This is an Information Bulletin for use by Municipal Administrators which summarizes the required steps for the expropriation of an abandoned cemetery as provided for in *The Cemeteries Act, 1999* and *The Municipal Expropriation Act*.

Note: While this publication outlines the current position of the Consumer Protection Division, the original Acts and Regulations should be consulted for all purposes of interpretation and application of the law. The summaries do not always contain the actual language provided in the statute, as such, should not be relied on for legal effect.

*The Cemeteries Act, 1999*, *The Municipal Expropriation Act* and a document published by Ministry of Municipal Affairs, entitled the *Municipal Expropriation Guide* should be consulted. Legislation can be found at <http://www.gp.gov.sk.ca/>, the Guide at <https://www.saskatchewan.ca/government/municipal-administration/tools-guides-and-resources/municipal-expropriation-guide>

**2. Authority to Expropriate** - Section 55(1)(b) of *The Cemeteries Act, 1999* provides the authority for a Municipality to expropriate a cemetery if it is not being properly maintained **and** has been abandoned.

55(1) Where a cemetery is not being properly maintained and has been abandoned within the meaning of the regulations, the municipality in which the cemetery is located may, by bylaw and with prior written approval of the registrar:

- (a) provide for the maintenance of the cemetery, and in that case the municipality is, for the purposes of this Act, deemed to be the owner of the cemetery; or
- (b) expropriate the cemetery in accordance with *The Municipal Expropriation Act*.

One important point to note is the specific definition of the term “abandoned” found in section 45 of *The Cemeteries Regulations, 2001*. That definition provides that a cemetery is abandoned where the owner of the cemetery is not known or cannot be found, or in the case of a cemetery owned by a religious organization, there have been no interments for 10 years.

**Regulation 45** For the purposes of section 55 of the Act, a cemetery is abandoned where:

- (a) the owner of the cemetery is not known or cannot be found; or
- (b) in the case of a cemetery owned by a religious organization, there have been no interments for 10 years.

## 3. Expropriation, Deemed Ownership and Municipal Orders - Options for the Care and Maintenance of Neglected Cemeteries.

**3A. Expropriation:** Expropriation is an option under section 55 of *The Cemeteries Act, 1999* but only if a cemetery is not being properly maintained **and** has been abandoned. A cemetery is abandoned where the owner of the cemetery is not known or cannot be found, or in the case of a cemetery owned by a religious organization, there have been no interments for 10 years. A Municipal expropriation bylaw and the Registrar of Cemeteries’ approval are required. A summary of the process for expropriation is outlined later in this document.

If there is an existing care and maintenance fund, section 55(3) of *The Cemeteries Act, 1999* provides that when a municipality expropriates a cemetery, any care and maintenance fund associated with that cemetery is to be transferred to the municipality. Under Section 41 of *The Cemeteries Regulations, 2001* a care and maintenance fund is not required where the number of plots is 12 or fewer.

Once expropriated the Municipality becomes the cemetery owner. Among other responsibilities, owners are responsible for safety, care and maintenance, and must provide reasonable access to the public for visitation.

#### Duties of owner

53(1) An owner shall maintain the cemetery, including all lots, structures and memorials, in a manner that:

- (a) ensures the safety of the public; and
- (b) is compatible with community standards.

(2) An owner shall provide reasonable access to the public for visitation to any lot in the cemetery.

**3B. Deemed Ownership Without Having To Expropriate.** Deemed ownership is also an available option under section 55 of *The Cemeteries Act, 1999* if a cemetery is not being properly maintained and has been abandoned. In this case, a Municipal bylaw and the Registrar of Cemeteries' approval are required.

55(1) Where a cemetery is not being properly maintained and has been abandoned within meaning of the regulations, the municipality in which the cemetery is located may, by bylaw and with prior written approval of the registrar:

a) provide for the maintenance of the cemetery, and in that case the municipality is, for the purposes of this Act, deemed to be the owner of the cemetery;

Among other responsibilities, deemed owners are responsible for safety, care and maintenance, and must provide reasonable access to the public for visitation.

#### **3C. Care And Maintenance Orders Where A Cemetery Is Not Being Properly Maintained And The Cemetery Is Not Abandoned.**

If the cemetery is not abandoned but is not being properly maintained, the Municipality may:

- (a) order the owner to maintain the cemetery; and
- (b) if the owner does not begin work to maintain the cemetery within 15 business days after receiving the order, undertake basic maintenance of the cemetery and recover the cost from the owner.

The cost incurred pursuant to clause (b) above is a debt due and owing to the municipality and, if it remains unpaid at the end of the year in which the work is performed, may be added to and form part of any taxes on the cemetery.

#### **3D. Related Issues:**

Section 48 of *The Cemeteries Act, 1999* requires the Registrar's consent before a cemetery can be sold, transferred or pledged as security.

**48(1)** Unless the registrar consents in writing, a cemetery or land used for a columbarium or mausoleum shall not be transferred, sold, mortgaged, pledged, charged or encumbered by the owner or any person having an interest in that cemetery or land.

Section 46 of *The Cemeteries Regulations, 2001* outlines several requirements if an owner plans to close a cemetery.

**46(1)** This section applies to closure of a cemetery or part of a cemetery.

(2) An owner who wishes to close a cemetery shall apply to the registrar and provide to the registrar information satisfactory to the registrar of the owner's plan for closure including, if requested by the registrar, information respecting:

- (a) the removal of memorials and installation of them in another location within the cemetery;
- (b) if applicable, the manner in which the owner intends to provide for interment rights for human remains of any person holding interment rights previously sold;
- (c) the continuing care and maintenance of the cemetery; and
- (d) continued access to and preservation of records of interment.

(3) The registrar, if satisfied that it is in the public interest, may approve closure of a cemetery, subject to any terms the registrar may impose.

(4) Where a cemetery is closed, no further interments may take place except with the approval of the registrar.

#### **4. Expropriation Process for Municipal Administrators**

*Users should refer to The Municipal Expropriation Act and Municipal Expropriation Guide (<https://www.saskatchewan.ca/government/municipal-administration/tools-guides-and-resources/municipal-expropriation-guide>).*

##### **4A. Obtain Written Approval from the Registrar of Cemeteries (*The Cemeteries Act, 1999 – s. 55(1)*)**

*The Cemeteries Act, 1999* requires that the municipality, in which the cemetery is located, to obtain written approval of the Registrar of Cemeteries prior to expropriating a cemetery.

##### **4B. Prepare Expropriation Bylaw (*The Municipal Expropriation Act – s. 3*)**

Council of a Municipality must pass a by-law to expropriate the cemetery. The bylaw shall specify the location of the land and state the purpose for which it is required. A sample bylaw template is found in the Expropriation Guide

##### **4C. Deposit Plan (*The Municipal Expropriation Act – s. 4*)**

See the flow chart on Page 17 of the [Expropriation Guide](#)

##### **4D. To Convey the Cemetery to another Person - Obtain Approval of the Registrar of Cemeteries**

Once the municipal expropriation is complete, if the Municipality wants to transfer the cemetery to any other person they must obtain written approval of the Registrar of Cemeteries (**Section 55(2) of *The Cemeteries Act, 1999***)

## **5. Legislation:**

Relevant extracts from *The Cemeteries Act, 1999*, S.S. 1999, c. C-4.01 (as amended) and regulations are:

### **Interpretation**

2(w) “**registrar**” means the registrar of cemeteries appointed pursuant to section 82 and includes any deputy registrar appointed pursuant to that section;

**48(1)** Unless the registrar consents in writing, a cemetery or land used for a columbarium or mausoleum shall not be transferred, sold, mortgaged, pledged, charged or encumbered by the owner or any person having an interest in that cemetery or land.

(2) On receipt of an application for consent pursuant to subsection (1) and on receipt of any additional information that the registrar may require, the registrar may:

(a) give written consent;

(b) give written consent subject to any terms the registrar considers appropriate; or

(c) refuse the application if the registrar is, for any reason, of the opinion that the application should be refused.

### **Duties of owner**

53(1) An owner shall maintain the cemetery, including all lots, structures and memorials, in a manner that:

(a) ensures the safety of the public; and

(b) is compatible with community standards.

(2) An owner shall provide reasonable access to the public for visitation to any lot in the cemetery.

### **Bylaws re non-commercial cemetery**

54(1) An owner of a cemetery that is not a commercial cemetery may make bylaws for the operation of the cemetery.

(2) Where an owner makes bylaws for the operation of the cemetery, the owner shall ensure that those bylaws are available to the public.

(3) The bylaws mentioned in subsection (1) are not required to be filed with the registrar, but the owner shall forward the bylaws to the registrar on the registrar’s request.

### **Abandoned or neglected cemeteries**

55(1) Where a cemetery is not being properly maintained and has been abandoned within the meaning of the regulations, the municipality in which the cemetery is located may, by bylaw and with the prior written approval of the registrar:

(a) provide for the maintenance of the cemetery, and in that case the municipality is, for the purposes of this Act, deemed to be the owner of the cemetery; or

(b) expropriate the cemetery in accordance with The Municipal Expropriation Act.

(2) Where a municipality has expropriated a cemetery pursuant to subsection (1), the municipality may, with the prior written approval of the registrar, convey the cemetery to any person on any terms the municipality considers appropriate.

(3) Where a municipality expropriates a cemetery pursuant to subsection (1), any care and maintenance fund or assurance fund associated with that cemetery is to be transferred to the municipality.

(4) Where a cemetery is not being properly maintained and the cemetery is not abandoned within the meaning of the regulations, the municipality may:

(a) order the owner to maintain the cemetery; and

(b) if the owner does not begin work to maintain the cemetery within 15 business days after receiving the order, undertake basic maintenance of the cemetery and recover the cost from the owner.

(5) The cost to the municipality incurred pursuant to clause (4)(b) is a debt due and owing to the municipality and, if it remains unpaid at the end of the year in which the work is performed, may be added to and form part of any taxes on the cemetery.

## **Regulations**

### **Abandoned Cemeteries**

**45** For the purposes of section 55 of the Act, a cemetery is abandoned where:

(a) the owner of the cemetery is not known or cannot be found; or

(b) in the case of a cemetery owned by a religious organization, there have been no interments for 10 years.

### **Closure of a cemetery**

**46(1)** This section applies to closure of a cemetery or part of a cemetery.

(2) An owner who wishes to close a cemetery shall apply to the registrar and provide to the registrar information satisfactory to the registrar of the owner's plan for closure including, if requested by the registrar, information respecting:

(a) the removal of memorials and installation of them in another location within the cemetery;

(b) if applicable, the manner in which the owner intends to provide for interment rights for human remains of any person holding interment rights previously sold;

(c) the continuing care and maintenance of the cemetery; and

(d) continued access to and preservation of records of interment.

(3) The registrar, if satisfied that it is in the public interest, may approve closure of a cemetery, subject to any terms the registrar may impose.

(4) Where a cemetery is closed, no further interments may take place except with the approval of the registrar.

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