

ORS Chapter 97 — Rights and Duties Relating to Cemeteries, Human Bodies and Anatomical Gifts

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CEMETERIES, HUMAN BODIES AND ANATOMICAL GIFTS

PROPERTY RIGHTS AND TRANSACTIONS

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97.010 Definitions. [emphasis added] As used in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920, 97.923 to 97.949, 97.990 and 97.994:

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GENERAL PROVISIONS

97.010 Definitions. As used in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920, 97.923 to 97.949, 97.990 and 97.994:

- (1) **“Burial”** [emphasis added] means the placement of human remains in a grave or lawn crypt.
- (2) **“Burial park”** means a tract of land for the burial of human remains, used, or intended to be used, and dedicated for cemetery purposes.
- (3) **“Burial right”** means the right to use a grave, mausoleum, columbarium, ossuary or scattering garden for the interment or other disposition of human remains.
- (4) **“Cemetery”** [emphasis added] means a place:
 - (a) Dedicated to and used, or intended to be used, for a permanent memorial or the permanent interment of human remains; and
 - (b) That may contain a mausoleum, crypt or vault interment, a columbarium, an ossuary, a cenotaph, a scattering garden, any other structure or place used or intended to be used for the interment or disposition of human remains or any combination of these structures or places.
- (5) **“Cemetery association”** [emphasis added] means a corporation or association authorized by its articles of incorporation to conduct the business of a cemetery, but does not include a corporation sole or a charitable, eleemosynary association or corporation.
- (6) **“Cemetery authority”** [emphasis added] means a person who owns or controls cemetery lands or property, including but not limited to a cemetery corporation, association or corporation sole.
- (7) **“Cemetery business”** and **“cemetery purpose”** are used interchangeably and mean any business or purpose requisite or incident to, or necessary for establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of cemetery property.
- (8) **“Cemetery merchandise”** means personal property offered for sale or sold for use in connection with the final disposition, memorialization or interment of human remains. **“Cemetery merchandise”** includes, but is not limited to, an outer burial container and a memorial.
- (9) **“Cemetery services”** means services provided by a cemetery authority for interment or scattering, and installation of cemetery merchandise.
- (10) **“Cenotaph”** means a place, the primary purpose of which is to provide an area where a person may pay to establish a memorial to honor a person whose remains may be interred elsewhere or whose remains cannot be recovered.
- (11) **“Columbarium”** means a structure or room containing receptacles for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.
- (12) **“Cremated remains”** means the remains of a cremated human body after completion of the cremation process.
- (13) **“Cremation”** means the technical process, using direct flame and heat, that reduces human remains to bone fragments.
- (14) **“Crematory”** means a structure containing a retort for the reduction of bodies of deceased persons to cremated remains.
- (15) **“Crypt”** or **“vault”** means a space in a mausoleum of sufficient size used, or intended to be used, to entomb uncremated human remains.
- (16) **“Directors”** or **“governing body”** means the board of directors, board of trustees or other governing body of a cemetery association.

(17) “Endowment care” means the general care and maintenance of developed portions of a cemetery and memorials erected thereon financed from the income of a trust fund.

(18) “Entombment” means the placement of human remains in a crypt or vault.

(19) “Funeral merchandise” means personal property offered for sale or sold for use in connection with funeral services. “Funeral merchandise” includes, but is not limited to, acknowledgment cards, alternative containers, caskets, clothing, cremation containers, cremation interment containers, flowers, memory folders, monuments, outer burial containers, prayer cards, register books and urns.

(20) “Funeral services” means services customarily provided by a funeral service practitioner including, but not limited to, care and preparation of human remains for final disposition, professional services relating to a funeral or an alternative to a funeral, transportation of human remains, limousine services, use of facilities or equipment for viewing human remains, visitation, memorial services or services that are used in connection with a funeral or alternative to a funeral, coordinating or conducting funeral rites or ceremonies, and other services provided in connection with a funeral, alternative to a funeral or final disposition of human remains.

(21) “**Grave**” [emphasis added] means a space of ground in a burial park used, or intended to be used, for burial of the remains of one person.

(22) “**Human remains**” or “**remains**” [emphasis added] means the body of a deceased person in any stage of decomposition or after cremation.

(23) “Interment” means the disposition of human remains by inurnment, entombment or burial.

(24) “Inurnment” means the placement of cremated remains in a receptacle and the deposit of the receptacle in a niche.

(25) “**Lot,**” “**plot**” or “**burial space**” [emphasis added] means space in a cemetery owned by one or more individuals, an association or fraternal or other organization and used, or intended to be used, for the permanent interment therein of the remains of one or more deceased persons. Such terms include and apply with like effect to one, or more than one, adjoining grave, crypt, vault or niche.

(26) “Mausoleum” means a structure substantially exposed above ground for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.

(27) “**Memorial**” [emphasis added] means a product, other than a mausoleum or columbarium, used for identifying an interment space or for commemoration of the life, deeds or career of a decedent including, but not limited to, an ossuary, monument, marker, niche plate, urn garden plaque, crypt plate, cenotaph, marker bench or vase.

(28) “Niche” means a recess usually in a columbarium used, or intended to be used, for the inurnment of the cremated remains of one or more persons.

(29) “Ossuary” means a receptacle used for the communal placement of cremated remains without benefit of an urn or any other container in which cremated remains may be commingled with other cremated remains and are nonrecoverable.

(30) “**Plot owner**” or “**owner**” [emphasis added] means any person identified in the records of the cemetery authority as owner of the burial rights to a burial plot, or who holds a certificate of ownership conveyed from the cemetery authority of the burial rights in a particular lot, plot or space.

(31) “Scattering” means the lawful dispersion of cremated remains that need not be associated with an interment right or issuance of a deed, that may be recorded only as a service that has taken place and may not be recorded on the permanent records of the cemetery authority.

(32) “Scattering garden” means a location set aside within a cemetery that is used for the spreading or broadcasting of cremated remains that have been removed from their container and can be mixed with or placed on top of the soil or ground cover or buried in an underground receptacle on a commingled basis and that are nonrecoverable.

(33) “Special care” means any care in excess of endowed care in accordance with the specific directions of a donor of funds. [Amended by 1955 c.545 §1; 1965 c.396 §1; 2007 c.661 §1; 2009 c.709 §10]

DISPOSITION OF HUMAN BODIES

ORS 97.220 Disinterment. (1) The remains of a deceased person interred in a plot in a cemetery may be removed from the plot with the consent of the cemetery authority and written consent of:

(a) The person under ORS 97.130 (2)(a), (b) or (c) who has the authority to direct disposition of the remains of the deceased person; or

(b) If the remains are cremated remains, the person who had possession of the cremated remains and authorized the interment of the cremated remains.

(2) If the consent of a person described in subsection (1) of this section or of the cemetery authority cannot be obtained, permission by the county court of the county where the cemetery is situated is sufficient. Notice of application to the court for such permission must be given at least 60 days prior thereto, personally or by mail, to the cemetery authority, to the person not consenting and to every other person or authority on whom service of notice is required by the county court.

(3) If the payment for the purchase of an interment space is past due for a period of 90 days or more, this section does not apply to or prohibit the removal of any remains from one plot to another in the same cemetery or the removal of remains by the cemetery authority from a plot to some other suitable place.

(4) This section does not apply to the disinterment of remains upon order of court or if ordered under the provisions of ORS 146.045 (3)(e). [Amended by 1977 c.582 §3; 2007 c.661 §2; 2011 c.164 §3]

INDIAN GRAVES AND PROTECTED OBJECTS

ORS 97.740 Definitions for ORS 97.740 to 97.760. For the purposes of ORS 97.740 to 97.760:

(1) “Burial” has the meaning given that term in ORS 358.905.

(2) “Funerary object” has the meaning given that term in ORS 358.905.

(3) “Human remains” has the meaning given that term in ORS 358.905.

(4) “Indian tribe” means any tribe of Indians recognized by the Secretary of the Interior or listed in the Klamath Termination Act, 25 U.S.C. 3564 et seq., or listed in the Western Oregon Indian Termination Act, 25 U.S.C. 3691 et seq., if the traditional cultural area of the tribe includes Oregon lands.

(5) “Object of cultural patrimony” has the meaning given that term in ORS 358.905.

(6) “Professional archaeologist” means a person who has extensive formal training and experience in systematic, scientific archaeology.

(7) “Sacred object” has the meaning given that term in ORS 358.905. [1977 c.647 §1; 1981 c.442 §3; 1985 c.198 §2; 1993 c.459 §9; 1997 c.249 §34]

OREGON COMMISSION ON HISTORIC CEMETERIES

97.772 Definition of “historic cemetery.” For purposes of ORS 97.772 to 97.784, “historic cemetery” means any burial place that contains the remains of one or more persons who died before February 14, 1909. [emphasis added] [1999 c.731 §1; 2003 c.173 §1]

Note: 97.772 to 97.784 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 97 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

97.773 [1995 c.457 §3; repealed by 1999 c.731 §14]

97.774 Oregon Commission on Historic Cemeteries; terms. (1) There is established within the State Parks and Recreation Department the Oregon Commission on Historic Cemeteries consisting of seven members appointed by the State Parks and Recreation Director.

(2) The term of office of each member is four years, but a member serves at the pleasure of the director. Before the expiration of the term of a member, the director shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the director shall make an appointment to become immediately effective for the unexpired term.

(3) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495. [1999 c.731 §2; 2003 c.173 §2]

Note: See note under 97.772.

97.775 [1995 c.457 §4; repealed by 1999 c.731 §14]

97.776 Commission members; nominations. The members of the Oregon Commission on Historic Cemeteries must be citizens of this state who are well informed on the restoration and maintenance of historic cemeteries. The State Parks and Recreation Director shall select members from nominations made by organizations of local historic cemeteries, organizations of nonprofit cemeteries, the State Mortuary and Cemetery Board and statewide cemetery associations. The director shall try to appoint individuals to the commission who represent or are knowledgeable concerning Native American burial places, rural cemeteries, family burial places and metropolitan cemeteries. [1999 c.731 §4; 2003 c.173 §3]

Note: See note under 97.772.

97.777 [1995 c.457 §5; repealed by 1999 c.731 §14]

97.778 Chairperson; quorum; meetings. (1) The Oregon Commission on Historic Cemeteries shall select one of its members as chairperson and another as vice chairperson for such terms and with duties and powers necessary for the performance of the functions of such offices as the commission determines.

(2) A majority of the members of the commission constitutes a quorum for the transaction of business.

(3) The commission shall meet at least once every three months at a place, day and hour determined by the commission. The commission also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the commission. [1999 c.731 §5; 2003 c.173 §4]

Note: See note under 97.772.

97.779 [1995 c.457 §6; repealed by 1999 c.731 §14]

97.780 Duties. The Oregon Commission on Historic Cemeteries shall:

(1) Maintain a listing of all historic cemeteries in this state. [emphasis added]

(2) Assist in coordination of restoration, renovation and maintenance of Oregon's historic cemeteries.

(3) Make recommendations to the State Parks and Recreation Director for projects and funding to help maintain and improve Oregon's historic cemeteries.

(4) Obtain grant funding and seek legislative appropriations for individual historic cemeteries and groups of historic cemeteries.

(5) Make recommendations to the Legislative Assembly for changes in law that will help protect historic cemeteries as part of Oregon's heritage.

(6) Assist the director in locating and listing historic cemeteries. [emphasis added]

(7) Assist cemeteries listed as historic cemeteries with the commission to rehabilitate and maintain those cemeteries and to promote public education relating to historic cemeteries.

(8) Establish a process to obtain advice from authorities on the subject of the care of old grave markers and graveyards as part of any restoration process. [1999 c.731 §6; 2003 c.173 §5]

Note: See note under 97.772.

97.782 Listing of historic cemeteries; form. A historic cemetery that is not an operating cemetery, as defined in ORS 692.010, shall be listed with the Oregon Commission on Historic Cemeteries. **An owner or any other person or association of individuals that maintains such a historic cemetery shall list the historic cemetery with the Oregon Commission on Historic Cemeteries on a form provided by the commission.** [emphasis added] No fee shall be required from a historic cemetery for listing. [1999 c.731 §7; 2003 c.173 §6]

Note: See note under 97.772.

97.784 Executive secretary; support services. The State Parks and Recreation Department shall provide support services to the Oregon Commission on Historic Cemeteries. One staff person of

the department shall be the executive secretary of the commission. [1999 c.731 §8; 2003 c.173 §7]

Note: See note under 97.772.

Other sections of ORS 97 applicable?

Grave markers are protected under abuse of a memorial to the dead, even if not historic. ORS 166. Human remains are protected ORS 97 and ORS 166.

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