

Georgia Legislative Documents

Search

Help

Content of Act/Resolution

ACTS AND RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE STATE OF GEORGIA 1977

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1977 Vol. 1 -- Page: 1249

Sequential Number: 339

Short Title: CEMETERIES -- PROCEDURES FOR RECLAMATION OF ABANDONED CEMETERY LOTS.

Intent: Code Ch. 85-4 Amended.

Law Number: No. 727

Origin: (Senate Bill No. 87).

Full Title: An Act to amend Code Chapter 85-4, relating to the prescriptive rights in property, as amended, so as to provide for the reclamation and subsequent sale of abandoned cemetery lots; to provide a definition; to provide for proceedings in the superior court; to provide for contents of a petition; to provide for a hearing and for notice thereof; to provide for court orders and for notice thereof; to provide for all other matters relative to the foregoing; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. Code Chapter 85-4, relating to the prescriptive rights in property, as amended, is hereby amended by adding a new section at the end thereof, to be designated Code section 85-420, to read as follows.

"85-420. Abandoned cemetery lots; proceedings for reclamation and subsequent sale. (a) As used in this section, 'lot' means any lot, or portion of a lot, in a cemetery owned by a county, municipality, or consolidated government which has not been used for the

interment of human remains and for which no provision for perpetual care was made at the time the lot was sold or at any time subsequent to the time the lot was sold.

(b) The owner, governing board, or other officials having control over a cemetery may maintain in the superior court in the county within which the cemetery is located a proceeding for the termination and forfeiture of the rights and interests of an owner of any lot or lots in said cemetery whenever the present owner of the lot is unknown to the owner, governing board, or other officials and a period of at least 75 years has passed since any portion of the lot has been used for interment purposes.

Page: 1250

(c) (1) The proceeding shall be commenced by the filing of a verified petition with the clerk of the superior court.

(2) The petition shall:

- (A) Identify the lot or lots.
- (B) State that that portion of the lot to be reclaimed has not been used for the interment of human remains, and that a core or sound test has been conducted to determine that that portion contains no remains.
- (C) State that the present owner of the lot is unknown to the owner, governing board, or other officials.
- (D) State that a period of at least 75 years has passed since any portion of the lot was used for interment purposes.
- (E) Request that the court issue an order declaring the lot abandoned and further declaring all of the rights and interests of such owner therein terminated and forfeited.

(3) The petition shall be accompanied by an affidavit by the owner, governing board, or other officials that a diligent search to locate the present owner of the lot has been made but that such owner has not been located.

(d) Upon the filing of the petition and affidavit, the clerk of the superior court shall fix a time for a hearing on the petition not less than 30 days nor more than 90 days after the date of the filing.

(e) (1) Notice of the hearing shall be given by the owner, governing board, or other officials by posting copies of the notice in 3 conspicuous places in the cemetery which is owned or operated by the owner, governing board, or other officials and by mailing a copy of the notice by registered mail to the last known owner of the lot, and a notice of the hearing shall be published once each week for 3 successive weeks in some newspaper of general circulation in said county, the first publication being made not less than 30 days before the date of hearing.

Page: 1251

(2) The notice shall identify the lot and shall state:

- (A) The name and address of the last known owner of the lot.
- (B) That a hearing will be held to determine whether or not the present owner of the lot shall have his right and interest therein terminated, and forfeited by a declaration of abandonment of the lot.
- (C) The time and place of the hearing.

(f) In the event that upon the hearing the court determines from the evidence presented that the present owner of the lot is unknown, that the board, or other officials, has made a diligent search to locate the present owner, that a period of 75 years or more has passed since any portion of the lot has been used for human interment, and that a core or sound test has been conducted to determine that the lot contains no remains, then a decree shall be entered adjudicating such lot, lots or parts thereof, to have been abandoned, and further ordering the subsequent termination and forfeiture of all rights and interests of such owner therein.

(g) The court shall dismiss the proceeding if it determines any of the following from the evidence which is presented:

- (1) That any of the material facts stated in the petition are not true.
- (2) The identity of the present owner of the lot is known.
- (3) That the owner, governing board, or other official has not made a diligent search to locate the present owner.

(h) (1) Upon order of the court declaring the lot to be abandoned, the full title to such lot shall revert to the cemetery.

(2) The order of the court shall not become final until one year after the date on which it is entered. During that time, any person may petition the court to reopen the proceeding and the court, after notice to the board, or other officials, may reopen the proceeding and may hear and consider any additional evidence

Page: 1252

regarding the ownership of the lot, and may modify or amend the order which it made or, if the court makes any of the determinations mentioned by subsection (g), it shall dismiss the proceeding.

(i) (1) The cemetery owner, governing board, or other officials shall, within 30 days after the date on which the court order is entered, publish notice of the order once in a newspaper of general circulation in the county in which the cemetery is located and by mailing a copy of the order by registered mail to the last known owner of the lot, or to the last known owner of the right of interment in the lot.

(2) The notice which is mailed and published shall identify the lot which is covered by the order and shall state:

- (A) The name and address of the last known owner of the lot.
- (B) That the court has ordered that the lot is to be declared abandoned and that the court has further ordered that the rights and interests of such owner therein are to be subsequently terminated and forfeited.
- (C) The date upon which the order of the court will become final.

(j) The lot shall be deemed abandoned and the rights and interest of the present owner therein shall be terminated and forfeited as of the date upon which the order of the court becomes final. Thereafter, the cemetery shall be the owner of the lot and may resell or otherwise recover it.

(k) The proceeds derived from any sale of a lot ownership of which is obtained as provided in this section shall be used as follows:

- (1) First, to reimburse the petitioner for the costs of suit and necessary expenses, including attorney's fees, incurred by the petitioner in the proceeding.

- (2) Then, of the remainder of the proceeds:
 - (A) Not less than 75% shall be held in trust and shall be used only for expenses of administration, maintenance, restoration, preservation, and other improvements of the cemetery; and
 - (B) Any amounts remaining thereafter shall be used for immediate improvements and maintenance of the cemetery.

(1) In no event shall any existing monument, retaining wall, fence, bench or other ornamentation be altered or removed by petitioner, or his agent or employee, or by any subsequent owner of a lot reclaimed and sold as provided herein."

Section 2. All laws and parts of laws in conflict with this Act are hereby repealed.

Approval Date: Approved April 6, 1977.