

# DRAFT

November 11, 2015

An act to add Chapter 5.5 (commencing with Section 9069.10) to Part 4 of Division 8 of the Health and Safety Code, relating to public cemetery districts.

## PUBLIC CEMETERY DISTRICTS: USE AND CONTROL OF INTERMENT RIGHTS

Existing law contains provisions relating to the establishment of public cemetery districts, including the formation of a district, the selection of a district governing board, and the powers and duties of the board.

Existing law authorizes a public cemetery district to sell interment rights to specified individuals.

Existing statutory law provides explicit direction regarding those persons who have the right to control the disposition of remains of the deceased.

However, there is no statutory provision in existing law ("The Public Cemetery District Law", Health and Safety Code §§9000, et.seq.) providing for the succession of the ownership, use and control of interment rights if other directions have not been given by a deceased owner.

Currently, interment rights are property which is rarely included in any testamentary device, thus leaving cemetery authorities the task of determining who owns and controls those rights, or requiring the judicially inefficient and expensive process of reopening a probate or trust.

This bill would require that all future owners of interment rights designate a successor owner(s) and provides that if the owner of interment rights purchased from a public cemetery dies without having designated a successor owner(s), such rights shall be transferred to a successor(s) in the order specified in Section 9061.14 below.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Division 7, Part 1, Chapter 1 of the Health and Safety Code is amended as follows:

AMEND: 7023 to read: "Plot owner," "owner," or "lot proprietor," means any person in whose name an interment ~~plot~~ right stands of record as owner, in the office of a cemetery authority.

ADD: 7026. "Interment Right" shall mean the rights held by the Owner to determine the number and identity of any person or persons to be interred in the plot, niche, crypt or other space for the interment of human remains within a cemetery in conformance with all applicable regulations adopted by the cemetery authority. Inherent in such Interment Right is the right to control the placement, design, wording, and removal of memorial markers in compliance with all applicable regulations adopted by the cemetery authority.

SECTION 2. Chapter 5.5 (commencing with Section 9069.10) is added to Part 4 of Division 8 of the Health and Safety Code, to read:

## CHAPTER 5.5 INTERMENT RIGHTS

9069.10. The Legislature finds and declares all of the following:

- (a) The Legislature authorizes public cemetery districts to sell interment rights in its cemeteries, columbaria, and mausoleums, subject to the limitations of this part.
- (b) Interment rights in a public district cemetery, a form of personal property, shall be governed by this Chapter 5.5.
- (c) This chapter shall establish who has the right to use or control the use of interment rights purchased from a public cemetery district
- (d) An Interment Right shall not include the right for disinterment of human remains except on consent of the cemetery authority and the written consent of one of the following in the order named:
  - 1) The surviving spouse.
  - 2) The surviving children.
  - 3) The surviving parents.
  - 4) The surviving brothers or sisters.

This article 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 a cemetery authority by order of court or coroner.

Nor upon written order of the health department having jurisdiction, or of the superior court of the county in which the cemetery is located. A duplicate copy of the order shall be maintained as part of the records of the cemetery. The person, mortuary or cemetery whom makes the removal of remains from any cemetery shall keep and maintain a true and correct record showing:

- 1) The date such remains were removed.
- 2) The name and age of the person removed, when these particulars can be conveniently obtained and the place to which the remains were removed.
- 3) The cemetery and the plot therein which such remains were buried.

If the remains are disposed of other than by interment, a record shall be made and kept of such disposition. The person making the removal shall deliver to the cemetery authority operating the cemetery from which the remains were removed, a true, full and complete copy of such record.

(e) In enacting this chapter, it is the intent of the Legislature that it shall be construed to complement Chapter 3 (commencing with Section 7100) of Part 1 of Division 7, which governs the right to control the disposition of remains, by establishing the succession of interment rights that are purchased from public cemetery districts.

9069.11. Interment Rights are presumed to be the sole and separate property of the person listed as the owner in the records of the cemetery authority, subject to any

written declaration to the contrary signed by the owner and deposited with the cemetery authority, or pursuant to valid trust, or as directed by a Superior Court of competent jurisdiction in a probate proceeding.

(a) The owner of record of such rights may designate in writing the person or persons, if other than the owner thereof, who may be interred in the plot, niche or mausoleum in which the owner holds such rights.

(b) The owner shall, at the time of purchase, designate successor owner(s) of the interment rights in a signed writing deposited with the district so long as such successor owner(s) are qualified by this part to own such interment rights in the district.

(c) Any use of the interment rights transferred from the owner to a successor owner(s) by any method must meet the requirements set forth in the California Health and Safety Code and any requirements or policy set by the district governing body.

9069.12. If the owner dies without making disposition of the interment right in a valid testamentary device, or by a written declaration filed and recorded in the office of the district, the interment right shall pass according to the provision of this chapter or as directed by a Superior Court of competent jurisdiction in a probate proceeding.

9069.13. If the owner of interment rights dies without designating a successor owner(s), the rights shall transfer as follows, in the following order of priority:

(a) To the spouse or registered domestic partner of the owner, if any, at the time of the owner's death.

(b) To the sole surviving competent adult child of the owner, or if there is more than one competent adult child of the owner, the majority of the surviving competent adult children. However, less than the majority of the surviving competent adult children shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving competent adult children of their instructions and are not aware of any opposition to those instructions by any surviving competent adult children.

(c) To the surviving competent parent or parents of the owner. If one surviving competent parent is absent, the remaining competent parent shall be vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving competent parent.

(d) To the sole surviving competent adult sibling of the owner, or if there is more than one surviving competent adult sibling, then to the majority of the surviving competent adult siblings. However, less than the majority of competent adult siblings of the owner shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving competent adult siblings of their instructions and are not aware of any opposition to those instructions by any surviving competent adult sibling(s).

(e) If no spouse, child, parent or sibling survives, the interment right may be used in the order of death first, to the spouse of any child of the record owner and second, in the order of death to the next heirs at law of the owner or the spouse of any heir at law.

(f) For the purpose of this section, the following terms have the following meanings:

- (1) "Adult" means an individual who has attained 18 years of age.
- (2) "Child" means a natural or adopted child of the owner.
- (3) "Competent" means an individual who has not been declared incompetent by a court of law or who has been declared competent by a court of law following a declaration of incompetence.

(g) In all cases, any person(s) purporting to be the successor owner(s) of interment rights as set forth above shall execute a statement, declaring under penalty of perjury under the laws of the State of California, that:

- (1) He or she or they are the true, legal and rightful owner(s) of such interment rights,
- (2) He or she or they are the sole surviving spouse, child, parent, sibling or next in order pursuant to subsection (e) above,
- (3) He or she or they have exerted all reasonable efforts to find others who may have a higher or equal claim to the interment rights, and
- (4) He or she or they are unaware, to the best of their knowledge, that there is no opposition to the declarant's ownership or use of the interment right.

9069.14. When a public cemetery district acts to transfer ownership rights or make an interment on the basis of the declaration, given under penalty of perjury as set forth in Section 9069.13, no district, district employee or district Trustee shall be liable for any claims, losses or damages asserted in any action unless the district had actual knowledge that the facts stated in writing are false.

9069.16. At the time of purchase, the district shall notify the purchaser of any interment rights, in writing, of the law governing the succession of ownership as set forth in this chapter, and the district's duly adopted policies, rules and regulations governing the use, sale or transfer of those rights.



## Succession of Burial Rights – Fact Sheet (SB 1179)

- Public Cemetery Districts are the backbone of family history for California. For many families they have been burying their family members in public cemeteries for generations and for many, public cemeteries are the glue that keeps community history available for future generations.
- Communities small and large depend on public cemeteries to keep families together, burial lots are purchased and they are passed down from generation to generation. It has been found that our public cemetery districts need a tool to ensure that the future use of ancestral lots is fair and equitable.
- For Public Cemetery Districts, burial rights are used to define ownership of a lot and thus determine who has the right to say who will be buried in a lot. Each lot has a burial right purchased by an individual and only they can say who they wish to have buried in the lot location they acquired.
- Many lots are not used by the purchaser for a burial and cemetery information is passed down via word of mouth and may never be included in a will or probate. In these cases Public Cemeteries must determine ownership of a lot often as a burial is being planned; giving the cemetery very little time to make sure who has the right to use a lot.
- Currently there is no provision under Public Cemetery District Law for determining the successor owner of interment rights for an unused burial space when the owner dies without making a designation.
- SB 1179 adds, in straight forward language, a prescribed order of succession which is similar to Health & Safety code statutes which govern the right to control the disposition of remains for private cemeteries and the laws of intestate succession as set forth in the Probate Code.
- SB 1179 will establish the right to control the use of a lot for burial by establishing the succession of burial rights. This will give all Public Cemetery Districts continuity to determine successor owner or owners if the owner passes without making a disposition of the interment right in a valid testamentary device, or by written declaration.
- In an effort to further clarify the intent of the lot purchaser. At the time a lot is purchased with a contract, SB 1179 will also allow for a designation of the qualified successor person or persons who may be interred in the lot.

# SB 1179

## Frequently Asked Questions

- What is this bill trying to do? SB 1179 is creating language that will help guide public cemeteries when a vested owner of an Interment Right has passed and the family needs to know who successively has disposition of the Interment Rights. This bill is not changing any of the rights to ownership for private cemeteries and it does not change the language in Health and Safety Code §8601 and §8602 in dealing with 'vested rights of interment'. We are trying to add additional detail to §8603 which currently requires families to go to probate court to determine 'heirs of law' before they can use a plot.
- Will SB 1179 impact a districts ability to reclaim graves under §9069? No, under §9069 Public Cemeteries may reclaim abandoned graves by filing a petition with the superior court of their principle county. This bill does not change or impede that process. The intent of this legislation is to give succession on ownership of a grave if the original owner has passed and has not designated a successor by will, trust or in writing to the district.
- Does the change making Interment Rights personal property give additional rights to the owner? First, let's remember we are talking about a change to personal property here. The Civil Code §802 already creates a real property right to burial interests for land one does not own. The personal property distinction helps to clarify and manage Interment Rights for a cemetery.
- Will we have to change our lot at need purchase and contracts to show a successor? Yes, successor information will be needed on your at need and preneed purchases. In the current draft, this is seen under §9069.20 (c) where the owner will designate successor or successors.
- Is the District liable if a family member feels that a change in an Interment Right was done in error or the ownership should belong to someone else? Not if the district has done their due diligence, under §6069.35 the transfer of ownership is acted upon by the basis of the declaration under penalty of perjury by the person who is next in line. Any employee or trustee of the district shall not be held liable for claims, losses or damages unless the district had prior knowledge that the facts stated are false.
- How will this affect our current ownership policies? You may need to consider changing your current policies if they are in conflict with this change. This bill is a starting point for districts and is to be used as a tool to help with families. A district can have additional policies for succession of Interment Rights; they just cannot be in conflict with the law.