

**Amendments to California Cemetery Law:
Technical Corrections and Alienability of Family Plots
(SB 542 (Ortiz))**

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May 8, 2001**

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A. EXECUTIVE SUMMARY

The Capital Center for Government Law & Policy was contacted in the Spring of 2000 by a family service representative from East Lawn, located in Sacramento, who described a potential problem with California's existing cemetery law which makes family plots inalienable in circumstances where the proscription against alienability may create serious hardships upon the owner of the plots. The Capital Center assigned two students to research the problem and propose a statutory solution. As part of that examination, we discovered certain other technical errors in the cemetery law, many of which relate to definitions found at Health & Safety Code §§ 7000 to 7025. Additional students were assigned to the project in the Fall of 2000 and Spring of 2001. This report contains the results of our study, and the appendix contains our proposed amendments to the cemetery law.

Our proposed amendments fall into two categories: First, the amendments propose a number of non-substantive, technical changes. Some of these technical amendments remove archaic and outdated language; other technical amendments cure logical errors, some of which were introduced into the definitions in 1993 when the statutes were amended with respect to the regulation of cremation (1993 Cal. Stats., ch. 1232); the remaining technical amendments consolidate certain sections and definitions for clarity and ease of use.

Second, the amendments propose to allow for the alienability of unoccupied graves in family plots. In California, pursuant to Health & Safety Code § 8650, the unoccupied graves in a family plot become inalienable automatically if any portion of the plot is occupied and the owner dies without making a specific disposition of the plot. The

proposed amendments ensure that the unoccupied portion of a plot does not become inalienable solely by operation of law without any expression of actual intent by the owner. The bill is drafted to take effect retroactively so that the current owners of family plots can decide for themselves whether to retain the family plot exclusively for the use of family members or to sell unoccupied portions of the plot.

B. TECHNICAL CHANGES

Cemetery law has remained largely unchanged for the last century. A strict reading of the current definitions at times leads the reader through a circular maze of language. The proposed amendments make technical changes to the definitions in cemetery law in an effort to clarify the meaning of the definitions, to remove archaic language, and to improve ease of use. Some of the errors date back to 1939 when the cemetery law was re-codified in its present form. Other errors were introduced in 1993 when the cemetery law was amended for the purpose of imposing additional regulations on funeral directors and cemeteries with respect to cremation. 1993 Cal. Stats., Ch. 1232.

1. CIRCULAR DEFINITIONS

Several definitions are essentially circular. For example, Section 7013 defines “burial” as the placement of human remains in a *grave*. “Grave” is then defined in Section 7014 as a space of ground in a *burial* park, used, or intended to be used, for *burial*. Another example of circularity is found in Section 7025 which defines “disposition” as “the *interment* of human remains within California, or the shipment outside of California, for lawful interment or scattering elsewhere, including release of remains pursuant to Section 103060.” However, Section 7009 then defines “interment” as “the *disposition* of human remains by entombment and other means.” We propose correcting circular definitions found in Sections 7002 (“cremated remains”), 7014 (“grave”), 7021 (“governing body”), and 7025 (“disposition”).

2. UNCLEAR DEFINITIONS

Several definitions in the cemetery law are unclear either because they were unclear when initially drafted or because amendments over the years introduced potential ambiguity.

First, the word “cemetery” is actually defined in two different sections, once in Section 7003 and again in Section 8100. The definition in Section 8100 dates from the original “Political Code” in the 19th century and declares a cemetery to be “a place where six or more human bodies are buried.” Health & Safety Code § 8100. Section 7003, which was added in the 20th century, follows a more functional approach, defining a cemetery in general terms as a burial park, mausoleum, or crematory that is used or intended to be used and is dedicated for cemetery purposes. Health & Safety Code § 7003. We propose

consolidating the *de facto* cemetery definition in Section 8100 with the definition in Section 7003 so that, at a minimum, a reader will be sure to see *both* definitions. In addition, the Legislature should consider whether the *de facto* cemetery definition serves any continuing purpose and, if not, the definition should be repealed. We also propose amendments to clarify the existing definition of cemetery in Section 7003.

Second, we propose amending the definition of “human remains” to clarify its meaning. As drafted now, human remains is defined to mean “the body of a deceased person, and includes the body in any stage of decomposition and cremated remains.” Health & Safety Code § 7001. The use of the word “includes” in a definition often signals an attempt to extend the definition to encompass more than the natural meaning of the definition would otherwise suggest, and its use is to be discouraged when possible because it may lead to ambiguity about the true reach of the definition. We propose removing the word “includes” and changing the structure of the definition so that “human remains” is defined to mean “the body of a deceased person, regardless of its stage of decomposition, and cremated remains.” No substantive change results from this redrafting, and the definition is clearer.

Third, Section 7010.5 defines “residue” for purposes of statutes regulating the use of cremation chambers. After defining “residue,” the final sentence in Section 7010.5 provides that “Material left in the cremation chamber, after the completion of a cremation, that can be reasonably removed shall be considered to be in excess of ‘residue.’” While the phrase “shall be considered to be in excess of ‘residue.’” strongly suggests that material which can be reasonably removed is *not* residue, the phrase does not clearly communicate that meaning. We propose amending the sentence to simply read that such material “shall not be considered ‘residue.’”

Fourth, several definitions refer to the “placement” of human remains somewhere. *See* Health & Safety Code § 7012 (“Entombment” means the placement of human remains in a crypt or vault”); Health & Safety Code § 7013 (“Burial” means the placement of human remains in a grave”). However, amendments in 1993 actually added a special definition for “placement” in Section 7011.2 as meaning “the placing of a container holding cremated remains in a crypt, vault, or niche.” This special definition of “placement” is inconsistent with the use of the word “placement” in Sections 7012 and 7013. In order to avoid possible confusion, we propose amending Sections 7012 and 7013 by replacing the word “placement of” with “process of placing.”

Fifth, we propose several minor changes to the definition of “cremation” in Section 7010 to improve its readability and to add a useful cross-reference to the definition of “processing” in Section 7010.3.

2. REMOVAL OF ARCHAIC LANGUAGE AND SURPLUSAGE

Given the age of the cemetery law (some of which dates to 1876), it is not surprising to find some archaic language and surplusage. We propose to remove archaic usages and surplusage from the definitions and from a few additional sections.

First, several sections identify division numbers with the Health & Safety Code using roman numerals, and the cross-references do not identify the starting section number with the division, part or chapter being cross-referenced. Current drafting practices are to use arabic numerals and to identify starting section numbers using a parenthetical (e.g., “Part 5 (commencing with Section 9501)”). We propose amending Sections 7000, 7005, and 7007 to conform to current drafting conventions.

Second, Section 7017 defines a “temporary receiving vault,” but that phrase no longer appears anywhere in the California Codes. We propose its repeal.

Third, Section 7054.5 provides that “Notwithstanding the provisions of Section 7054, cremated remains may be buried at sea as provided in Section 7117 of this code.” However, Section 7054(b) expressly provides that cremated remains may be buried at sea pursuant to Section 7117, making Section 7054.5 surplusage. We propose its repeal.

Fourth, Section 7104.1 refers to “interment or inurnment” even though the definition of “interment” in Section 7009 already encompasses “inurnment.” We propose to amend Section 7104.1 to remove “or inurnment” as surplusage.

Fifth, Section 7200 specifies that, in cases where remains are to be interred at public expense, a local official must send a notice to the State “by telegraph collect” within twenty-four hours. We propose to amend section 7200 to remove the archaic reference which will permit notice to be made by any means.

3. SCOPE OF DEFINITIONS

Division 7 of the Health and Safety Code contains statutes dealing generally with the disposition of dead bodies, and Division 8 of the Health and Safety Code regulates cemeteries. However, the definitions found in Division 7 actually apply to Division 8 per §7000, which provides that “The definitions in this chapter apply to this division and to divisions VIII and IX of this code.” This is the only language indicating that the definitions in Division 7 apply to Division 8. There is nothing at the beginning of Division 8 informing the reader that the definitions for that division are found in Division 7. To avoid the possibility of confusion, we propose amending Section 8100 (which is the first section in Division 8) so that it directs the reader to the definitions in Division 7. Conforming changes to replace cross-references to Section 8100 are proposed for Sections 7054.6 and 7116.

Section 8113.2, which was added in 1992 (1992 Cal. Stats., ch. 828), provides that

“The definitions set forth in Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 shall be applicable to this chapter.” Technically, this section was surplusage when added in 1992 since Section 7000 already provided that the definitions in that chapter were applicable to Division 8. Section 8113.2 was probably added, even though it was surplusage, because the drafters of the 1992 legislation wanted to make it clear that the definitions in Division 7 applied to Division 8. In light of the proposed amendment to Section 8100, we recommend repealing Section 8113.2 since its continued presence is unnecessary and might actually lead a casual reader incorrectly to conclude that the definitions in Division 7 apply *only* to the chapter in which Section 8113.2 appears.

4. MISCELLANEOUS

Section 7109 provides that in an action against a person who has the legal duty of interment, “The court shall allow costs and reasonable attorney’s fees against all defendants, other than the coroner.” As drafted, this arguably means that costs and attorney’s fees would have to be awarded even against a defendant who was improperly sued by the plaintiffs. We propose amending Section 7109 to better express its true intent of allowing “reasonable attorney’s fees *to a prevailing plaintiff* against all defendants, other than the coroner.”

The powers of a cemetery board are currently set forth in ten sections, most of which contain only one listed power. *See, e.g.*, Health & Safety Code § 8301 (“It may restrict and limit the use of all property within its cemetery”). To improve readability and ease of use, we propose consolidating these separately codified powers into Section 8300, and repealing Sections 8301, 8302, 8303, 8304, 8305, 8306, 8307, and 8308.

C. ALIENABILITY OF FAMILY PLOTS

Current law permits a person to purchase single or multiple, adjacent plots within a cemetery. Health & Safety Code § 8570 (sale of plots) & 7022 (defining plot to include “one or more than one adjoining graves”). Section 8680 authorizes a cemetery authority “to take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable and interments shall be restricted to the persons designated in the conveyance or devise.” Thus, pursuant to Section 8680, the owner of a plot consisting of multiple, adjoining graves could expressly create an inalienable, family plot for use only by persons designated in the conveyance. However, if the owner fails to make an express disposition of the plot before his or her death (either by a specific devise or by a conveyance), unoccupied portions of a plot become inalienable *as a matter of law* if any portion of the plot is occupied. Health & Safety Code § 8650.

Although Section 8650 may have been intended to further the decedent’s presumed, yet unexpressed, intent by converting adjoining graves into an inalienable family plot, this can result in serious hardship on the subsequent owner who will be legally unable to sell the

plot even though no future use of the plot is contemplated (e.g., because other family members have moved across the country or because the family has split apart by divorce or other falling out or because other dispositions are planned for family members). The Capital Center was informed by a family service representative from East Lawn in Sacramento, Mr. Bob Trevan, that he has clients who are in desperate need of money but who are unable under current law to sell unoccupied family plots to raise cash.

When Section 8650 was enacted over 60 years ago, the stability of the family and the relative difficulty of moving across country may have suggested to the Legislature that the decedent's intent would ordinarily have been to preserve the family plot for the benefit of surviving family members. However, in today's world, family breakups through divorce are more common, and in light of the likelihood of employment relocation and the relative ease of travel, families are no longer remaining in the same geographic area for generations. In light of these changed conditions, it may no longer be reasonable to assume, absent a genuine expression of intent, that the decedent intended unoccupied portions of a family plot to become inalienable.

We therefore propose to amend Section 8650 so that unoccupied portions of a family plot remain alienable. In addition, to ensure that an owner has a clear opportunity to create an inalienable family plot, we propose amending Section 8571, which deals with the conveyance of plots, so that the purchaser of a plot can, at the time of purchase, declare the plot to be a family plot which shall thereby become inalienable. We believe these proposed amendments strike a better balance between the interest of a purchaser and owner in creating a permanent resting place for family members, and the interests of a surviving owner of a plot in situations where the original purchaser expressed no intent regarding alienability of unoccupied portions of a series of adjacent plots.

There is no opposition to changing Section 8650's rule of automatic inalienability on a prospective basis. However, as currently drafted and passed out by the Senate Business & Professions Committee, the amendments apply retroactively so that those persons who currently own unused graves may sell them to raise needed cash. The proposal to make these changes effective retroactively was opposed at the Senate Business and Professions Committee hearing by three industry groups: the California Funeral Directors Association, SCI California Funeral Services, and the Interment Association of California.

SCI California Funeral Services contends that making these changes effective retroactively would frustrate the decedent's likely intent and would violate the State Constitution's contracts clause. The California Funeral Directors Association and the Interment Association of California similarly contend that the decedent's intent would be frustrated by making a retroactive change in the alienability of unused family plots.

The oppositions' focus on the original owner's intent is misleading because it assumes that the intent is discernible. In fact, however, the rule in Section 8650 applies

only when the owner has *not* expressly indicated his or her intent by making a specific devise or conveyance of the plot. As a result, no one can say with certainty what the decedent's intent was with respect to the alienability of unused graves in a family plot.

At the hearing before the Senate Business & Professions Committee, the representative for SCI California Funeral Services asserted that the purchase of multiple adjoining plots and payment of endowment care funds for those plots constitutes an expression of intent that the plots ultimately become inalienable. However, this is not necessarily true. It is just as likely that a purchaser may simply have intended by the purchase of multiple graves to save his or her heirs future burial expenses without having any intention of preventing heirs from selling off unoccupied graves if that becomes economically prudent. Thus, the intent may have been essentially in the nature of a gift to the family. Indeed, if a purchaser had intended to create an inalienable family plot, he or she could have made the plot inalienable during his or her life by conveying it to the cemetery authority or making a specific devise pursuant to Section 8680. The fact that a purchaser *failed* to make such a conveyance or specific devise leaves it entirely uncertain whether the purchaser wanted the unoccupied graves held inalienable or treated as an asset for the benefit of his or her heirs which could be sold if necessary.

The simple fact is that the existing rule of inalienability undoubtedly defeats the intentions of some decedents (i.e., those who intended to leave heirs with flexibility in managing the unoccupied graves), and, similarly, applying SB 542 retroactively will also defeat the intentions of some decedents (i.e., those who intended the unoccupied graves to become inalienable notwithstanding their failure to make that intention known). Thus, *either approach* is likely to defeat the intentions of a certain number of decedents.

In these circumstances of uncertainty, a better analytic approach is to change the focus away from the decedent's unknown and unknowable intent to the question of *who should decide what the decedent's intentions were?* Should an assessment of the decedent's intentions be made by the cold, inflexible hand of archaic law, or should that assessment be made by living heirs (such as the decedent's spouse) who knew the decedent and can exercise an informed judgment about the appropriateness and necessity of selling the unoccupied graves?

We think living heirs should make this decision, and we therefore recommend that SB 542 be applied retroactively to promote the economically productive use of unoccupied and unused graves and to benefit those living owners of unoccupied graves who need to sell those graves to raise desperately needed cash. It does not dishonor the memory or the rights of those who have passed before us to ensure that their heirs have the ability to provide for their own sustenance by being given the power of disposition over unused interment spaces when the original owner did not express any intention regarding the disposition of those spaces.

Finally, the constitutional argument raised by one of the opponents is unconvincing. Nothing in the contract of sale to the original owner makes the plots inalienable, and nothing in that contract of sale gives anyone a vested right of interment by virtue of Section 8650. Thus, there is no contract right arising out of the initial contract between the record owner and the cemetery authority which AB 542 could possibly impair. Moreover, the *only* vested rights of interment are created by statute in favor of the spouse of an owner (Section 8601) and in favor of a joint tenant (Section 8625). The amendment to Section 8650 proposed by SB 542 does *not* affect these vested rights. Whether the plot is inalienable or not, those vested rights cannot be defeated by a sale of the unused portion of the plots. As a practical matter, the surviving spouse or joint tenant should become the owner of the plot upon the death of the original record owner, so any issue regarding the vested rights of a spouse or joint tenant is moot.

With respect to other family members, Section 8651 creates priorities for interment in a family plot based upon the “order of death” of certain identified family members, but the language in Section 8651 does not create vested rights for burial in a family plot. Instead, Section 8651 provides only that these other family members “may” be interred in empty spaces “without the consent of any person claiming any interest in the plot.” No one individual has a vested right because the rights are contingent upon, among other things, the order of death, the number of spaces available in the plot and whether any family member has waived his or her priority. There is, accordingly, no vested right of interment in any of these family members, and the amendment to Section 8650 proposed by SB 542 does not impair any vested rights. Absent impairment of a contract or vested right, there is no violation of the contracts or due process clauses of the California or United States Constitutions.

Appendix Proposed Amendments to Cemetery Law

§ 7000. Scope [amended]

7000. The definitions in this chapter apply to this division and to ~~divisions VIII and IX~~ division 8 (commencing with Section 8100) of this code.

Comment: This section is amended to replace the archaic roman numeral designations with arabic numbers to reflect current drafting practices and to remove the cross-reference to division 9, which was repealed in 1995. 1995 Cal. Stats., ch. 415.

The definitions in Chapter 1 are not in alphabetical order. Good drafting practices suggest that definitions within a chapter should be in alphabetical order. However, we are not at this time recommending a reordering of the definitions in Chapter 1.

§ 7001. Human remains; remains [amended]

7001. “Human remains” or “remains” means the body of a deceased person, ~~and includes the body in any~~ regardless of its stage of decomposition ~~and~~ , and cremated remains.

Comment: Section 7001 is amended to remove the use of the word “includes” and the definitional structure associated with its use which, as a general matter of drafting, often creates more confusion than clarity. The use of “includes” often signals an attempt to extend a definition to encompass more than the natural meaning of the definition would otherwise suggest. That appears to be true with Section 7001 which, as presently drafted, uses the language of “includes” to sweep “cremated remains” within the definitional phrase “the body of a deceased person.” However, this is not a natural meaning of the phrase “the body of a deceased person,” as is made clear by the necessity to define “cremated remains” in another section (*see* Section 7002). The confusion is exacerbated by the fact that Section 7002 then defines “cremated remains” as meaning “human remains after cremation in a crematory,” a definition which approaches circularity.

§ 7002. Cremated remains [amended]

7002. “Cremated remains” means ~~human remains~~ the material which is left after cremation in a crematory of a body or a part of a body of a deceased person.

Comment: Section 7002 is amended to remove the somewhat circular definition of “cremated remains” in terms of “human remains” (which, as can be seen in Section 7001 above, is itself defined to mean, among other things, “cremated remains”).

§ 7003. Cemetery [amended]

7003. A “Cemetery” means both

(a) ~~any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated for cemetery purposes; , and is limited to any one , or a combination of more than one, of the following:~~

~~(a) (1) a burial park, for earth interments.~~

~~(b) (2) a mausoleum, for crypt or vault interments.~~

~~(c) (3) a crematory, or a crematory and columbarium, for cinerary interments ;~~

and,

(b) a place where six or more human bodies are buried.

Comment: Section 7003 is amended to improve its clarity and to incorporate the *de facto* cemetery definition from Section 8100. The *de facto* cemetery definition is derived from Section 3106 of the Political Code and thus dates to the late 1800's. The Legislature should consider whether the *de facto* cemetery definition serves any continuing purpose and, if not, the definition should be repealed.

§ 7005. Mausoleum [amended]

7005. Except in Part 5 (commencing with Section 9501) of Division ~~VIII~~ 8 of this code, "mausoleum" means a structure or building for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated, for cemetery purposes.

Comment: Section 7005 is amended to replace the archaic roman numeral designation with an arabic designation.

§ 7007. Columbarium [amended]

7007. Except in Part 5 (commencing with Section 9501) of Division ~~VIII~~ 8 of this code, "columbarium" means a structure, room, or other space in a building or structure containing niches for inurnment of cremated human remains in a place used, or intended to be used, and dedicated, for cemetery purposes.

Comment: Section 7007 is amended to replace the archaic roman numeral designation with an arabic designation.

§ 7010. Cremation [amended]

7010. “Cremation” means the process by which the following three steps are taken ~~combination of all of the following:~~

(a) The reduction of the body of a deceased human to its essential elements by incineration.

(b) The repositioning or ~~movement~~ moving of the body or remains during incineration to facilitate the process.

(c) The processing of the remains after removal from the cremation chamber pursuant to § 7010.3.

Comment: Section 7010 is amended to improve its clarity.

§ 7010.5. Residue [amended]

7010.5. "Residue" means human ashes, bone fragments, prostheses, and disintegrated material from the chamber itself, imbedded in cracks and uneven spaces of a cremation chamber, that cannot be removed through reasonable manual contact with sweeping or scraping equipment. Material left in the cremation chamber, after the completion of a cremation, that can be reasonably removed shall not be considered ~~to be in excess of~~ "residue."

Comment: Section 7010.5 is amended to improve its clarity by removing the ambiguous phrase "in excess of" residue.

§ 7010.7. Scattering [amended]

7010.7. "Scattering" means the authorized dispersal of cremated remains at sea, in other areas of the state, or commingling in a defined area within a dedicated cemetery, in accordance with this ~~chapter~~ part.

Comment: Section 7010.7 is amended to correct an erroneous reference to "chapter." This chapter (i.e., Chapter 1) only contains definitions. Dispersal of cremated remains at sea is governed by provisions in Chapters 2 and 3. *See, e.g.,* §§ 7054.7 & 7117.

§ 7012. Entombment [amended]

7012. "Entombment" means the ~~placement of~~ process of placing human remains in a crypt or vault.

Comment: Section 7012 is amended to remove the word "placement" which, by virtue of amendments in 1993 dealing with cremation, is now defined in Section 7011.2 as meaning "the placing of a container holding cremated remains in a crypt, vault, or niche."

§ 7013. Burial [amended]

7013. "Burial" means the ~~placement of~~ process of placing human remains in a grave.

Comment: Section 7013 is amended to remove the word "placement" which, by virtue of amendments in 1993 dealing with cremation, is now defined in Section 7011.2 as meaning "the placing of a container holding cremated remains in a crypt, vault, or niche."

§ 7014. Grave [amended]

7014. "Grave" means a space of ground earth in a burial park, used, or intended to be used, for the disposition of human remains ~~burial~~.

Comment: Section 7014 is amended to ensure that a grave is in the earth and to remove the circularity of defining "burial" in terms of "grave" and defining "grave" in terms of "burial."

§ 7016. Niche [amended]

7016. "Niche" means a space in a columbarium used, or intended to be used, for ~~inurnment~~ the placement of cremated human remains.

Comment: Section 7016 is amended to improve its precision. The definition of "inurnment" in Section 7011 was expanded by amendments in 1993 to encompass more than placing cremated remains in an urn and placing the urn in a niche. In light of that expansion, Section 7016 should have amended to refer more specifically to "placement" as defined in Section 7011.2.

§ 7017. Temporary receiving vault [repealed]

~~7017. "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.~~

Comment: Section 7017 is repealed because it defines a phrase that is no longer used in the California Codes.

§ 7021. Directors; governing body [amended]

7021. "Directors" or "governing body" means the board of directors, board of trustees, or other ~~governing~~ policy-making body of a cemetery association.

Comment: Section 7021 is amended to eliminate the circular definition of "governing body."

§ 7025. Disposition [amended]

"Disposition" means the ~~interment~~ of final arrangements made for human remains within California, or the shipment outside of California, for lawful ~~interment~~ final arrangements or scattering elsewhere, including release of remains pursuant to Section 103060.

Comment: Section 7025 is amended to remove the circular reference to "interment" which is defined in Section 7009 as the "disposition" of human remains by entombment and other means.

§ 7054.5. Burial of cremated remains at sea [repealed]

~~7054.5. Notwithstanding the provisions of Section 7054, cremated remains may be buried at sea as provided in Section 7117 of this code.~~

Comment. Section 7054(b) already provides for the burial of cremated remains at sea, and this section is therefore surplusage.

§ 7054.6. Cremated remains; removal from place of cremation or interment [amended]

7054.6. (a) Cremated remains may be removed in a durable container from the place of cremation or interment and kept in the dwelling owned or occupied by the person having the right to control disposition of the remains under Section 7100, or the durable container holding the cremated remains may be kept in a church or religious shrine, if written permission of the church or religious shrine is obtained and there is no conflict with local

use permit requirements or zoning laws, if the removal is under the authority of a permit for disposition granted under Section 103060. The placement, in any place, of six or more cremated remains under this section does not constitute the place a cemetery, as defined in Section ~~8100~~ 7003.

(b) Prior to disposition of cremated remains, every licensee or registrant pursuant to Chapter 12 (commencing with Section 7600) or Chapter 19 (commencing with Section 9600) of Division 3 of the Business and Professions Code, and the agents and employees of the licensee or registrant, shall do all of the following:

(1) Remove the cremated remains from the place of cremation in a durable container.

(2) Keep the cremated remains in a durable container.

(3) Store the cremated remains in a place free from exposure to the elements.

(4) Responsibly maintain the cremated remains.

Comment. The definition in Section 8100 has been consolidated into the definition in Section 7003, and the cross-reference to Section 8100 is thus obsolete.

§ 7104.1. Interment of remains by coroner; recovery of expenses [amended]

7104.1. If, within 30 days after the coroner notifies or diligently attempts to notify the person responsible for the interment ~~or inurnment~~ of a decedent's remains which are in the possession of the coroner, the person fails, refuses, or neglects to inter the remains, the coroner may inter the remains. The coroner may recover any expenses of the interment from the responsible person.

Comment. Section 7104.1 is amended to remove surplusage since interment already encompasses inurnment as defined in Sections 7009 and 7011.

§ 7109. Costs and attorney's fees [amended]

7109. The court shall allow costs and reasonable attorney's fees to a prevailing plaintiff against all defendants, other than the coroner.

Comment: Section 7109 is amended to clarify that the award of attorney's fees to the plaintiff should be made only if the plaintiff is the prevailing party.

§ 7116. Placement or scattering of cremated remains; location [amended]

7116. Cremated remains may be scattered or placed in areas where no local prohibition exists, provided that the cremated remains are not distinguishable to the public, are not in a container, and that the person who has control over disposition of the cremated remains has obtained written permission of the property owner or governing agency to scatter on the property. A state or local agency may adopt an ordinance, regulation, or policy, as appropriate, authorizing, consistent with this section, or specifically prohibiting, the scattering of cremated human remains on lands under the agency's jurisdiction. The placement or scattering of the cremated remains of more than one person in one location

pursuant to this section shall not create a cemetery pursuant to Section 7003 ~~, Section 8100,~~ or any other provision of law.

Comment. The definition in Section 8100 has been consolidated into the definition in Section 7003, and the cross-reference to Section 8100 is thus obsolete.

§ 7200. Notice to relatives or state department [amended]

7200. Every head of a public institution, city or county undertaker, or State, county, or city officer having charge or control of remains to be interred at public expense, shall use due diligence to notify the relatives of the decedent. In the absence of any known relative of decedent desiring to direct the disposition of the remains in a manner other than in this chapter provided, and upon written request of the State department that such notices are required for a definite period specified in the request, such officer shall notify the State department ~~by telegraph collect,~~ immediately after the lapse of twenty- four hours after death, stating, whenever possible the name, age, sex, and cause of death of the decedent.

Comment: Section 7200 is amended to remove an archaic reference to the telegraph system.

Chapter 1 of Part 1 of Division 8 and the Health and Safety Code (“CEMETERY DEFINED”) is amended to read:

Chapter 1

~~CEMETERY DEFINED~~ DEFINITIONS

§ 8100. ~~Six or more bodies buried at one place~~ Applicable definitions [amended]

8100. ~~Six or more human bodies being buried at one place constitute the place a cemetery~~ The definitions set forth in Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 shall be applicable to this division.

Comment: Section 8100 is consolidated with the definition of cemetery in Section 7003 so as to avoid confusion in the definition of “cemetery.”

According to Section 7000, the definitions in Division 7 are applicable to Division 8. It is organizationally confusing to have definitions in one division made applicable to another division since someone reading Division 8 would have no particular reason to examine Chapter 1 in Division 7 to see if its definitions applied to Division 8. There are two remedies for the confusion. First, Divisions 7 and 8 could be consolidated into *one* division. However, this is a major restructuring that should not be undertaken without further study. Second, a provision can be added to Division 8 which expressly identifies Division 7 as the source of applicable definitions. This was the approach taken in 1992 amendments which added a new Chapter 3.5 to Division 8. *See* Section 8113.2 (“The definitions set forth in Chapter 1

(commencing with Section 7000) of Part 1 of Division 7 shall be applicable to this chapter”). Section 8100 is therefore amended to implement this second solution.

§ 8113.2. Applicable definitions [repealed]

~~8113.2. The definitions set forth in Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 shall be applicable to this chapter.~~

Comment: In light of Section 7000, Section 8113.2 was technically surplusage when added in 1992 as part of amendments to add a new Chapter 3.5 to Division 8, but it was added to clarify where the definitions for the chapter were located. In light of the recommended amendment to Section 8100, which performs the same function for all of Division 8, Section 8113.2 can be repealed. Its continued presence may incorrectly suggest to a casual reader, by way of negative inference, that the definitions in Division 7 apply *only* to Chapter 3.5.

§ 8300. Powers of cemetery authority [amended]

8300. A cemetery authority may make, adopt, amend, add to, revise, or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery and for the other purposes specified in this article.

The cemetery authority’s power includes, but is not limited to, the following::

- (a) Restricting and limiting the use of all property within its cemetery,
- (b) Regulating the uniformity, class, and kind of all markers, monuments, and other structures within the cemetery and its subdivisions, but shall not require, as a condition to the erection of a marker, monument, or other structure within the cemetery, that the marker, monument, or other structure be purchased from or through the cemetery authority,
- (c) Prohibiting the erection of monuments, markers, or other structures in or upon any portion of the cemetery,
- (d) Regulating or prohibiting monuments, effigies, and structures within any portion of the cemetery and provide for their removal,
- (e) Regulating or preventing the introduction or care of plants or shrubs within the cemetery,
- (f) Preventing interment in any part of the cemetery of human remains not entitled to interment and preventing the use of interment plots for purposes violative of its restrictions or rules and regulations,
- (g) Regulating the conduct of persons and preventing improper assemblages in the cemetery, and
- (h) Making and enforcing rules and regulations for all other purposes deemed necessary by the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of any plot or the right of interment, and the protection and safe-guarding of the premises, and the principles, plans, and ideals on which the cemetery is conducted.

Comment: Sections 8300 through 8308, excluding 8301.5, have been

consolidated for clarity.

§ 8301. Use of property [repealed]

~~8301. It may restrict and limit the use of all property within its cemetery.~~

Comment: Sections 8300 through 8308, excluding 8301.5, have been consolidated for efficiency and clarity.

§ 8302. Uniformity, class and kind of markers and structures; purchase requirement [repealed]

~~8302. (a) It may regulate the uniformity, class, and kind of all markers, monuments, and other structures within the cemetery and its subdivisions.~~

~~(b) However, no cemetery authority shall require, as a condition to the erection of a marker, monument, or other structure within the cemetery, that the marker, monument, or other structure be purchased from or through the cemetery authority.~~

Comment: Sections 8300 through 8308, excluding 8301.5, have been consolidated for efficiency and clarity.

§ 8303. Prohibition of markers and other structures [repealed]

~~8303. It may prohibit the erection of monuments, markers, or other structures in or upon any portion of the cemetery.~~

Comment: Sections 8300 through 8308, excluding 8301.5, have been consolidated for efficiency and clarity.

§ 8304. Regulation, prohibition, and removal of structures [repealed]

~~8304. It may regulate or prohibit monuments, effigies, and structures within any portion of the cemetery and provide for their removal.~~

Comment: Sections 8300 through 8308, excluding 8301.5, have been consolidated for efficiency and clarity.

§ 8305. Plants and shrubs [repealed]

~~8305. It may regulate or prevent the introduction or care of plants or shrubs within the cemetery.~~

Comment: Sections 8300 through 8308, excluding 8301.5, have been consolidated for efficiency and clarity.

§ 8306. Interments; improper use of plots [repealed]

~~8306. It may prevent interment in any part of the cemetery of human remains not entitled to interment and prevent the use of interment plots for purposes violative of its restrictions or rules and regulations.~~

Comment: Sections 8300 through 8308, excluding 8301.5, have been consolidated for efficiency and clarity.

§ 8307. Conduct of persons [repealed]

~~8307. It may regulate the conduct of persons and prevent improper assemblages in~~

the cemetery.

Comment: Sections 8300 through 8308, excluding 8301.5, have been consolidated for efficiency and clarity.

§ 8308. Other purposes [repealed]

~~8308. It may make and enforce rules and regulations for all other purposes deemed necessary by the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of any plot or the right of interment, and the protection and safe-guarding of the premises, and the principles, plans, and ideals on which the cemetery is conducted.~~

Comment: Sections 8300 through 8308, excluding 8301.5, have been consolidated for efficiency and clarity.

§ 8571. Plots conveyed [amended]

8571. (a) All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the cemetery authority, or as provided by law.

(b) A plot, the use of which has been conveyed by deed or certificate of ownership as a family plot, thereby becomes inalienable and shall be held as the family plot of the owner.

Comment: Section 8571 is amended to create at the time of original conveyance of the use of a plot an option to purchase a “family plot” which shall be inalienable. Section 8650 is amended below to remove language that automatically transformed a plot into an inalienable family plot if someone had been buried in the plot and the owner died without making any disposition of the plot before his or her death. The amendments to Sections 8571 and 8650 ensure that a plot will not become inalienable solely by operation of law pursuant to Section 8650 without any expression of actual intention by the owner.

§ 8650. Death of owner without disposition of plot; family plot [amended]

8650. (a) Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner and the owner dies without making disposition of the plot either in his will by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, ~~the plot~~ any grave, crypt, vault or niche in which remains have been interred thereby becomes inalienable and shall be held as the family plot of the owner.

(b) As of the effective date of this act, an unoccupied grave, crypt, vault or niche which, solely by virtue of this section, was inalienable shall become alienable.

Comment: Section 8650 is amended to narrow its application so that the rule of inalienability applies only to that portion of a plot which actually contains human remains. Under current law, unoccupied portions of a plot become inalienable as a matter of law if any portion of the plot is occupied and the owner dies without making a specific disposition of the plot. This can

result in hardship to an heir who owns the plot but, by virtue of this section, is unable to sell the plot even though no future use of the plot is planned.

Section 8571 is amended so that a plot may be sold originally as a “family plot,” which then becomes subject to the other provisions in this article (Sections 8650 through 8653).