

## Chapter 97

### 1999 EDITION

#### Rights and Duties Relating to Cemeteries, Human Bodies and Anatomical Gifts

##### GENERAL PROVISIONS

- 97.010 Definitions
- 97.020 Exemption of certain organizations and cemeteries from certain sections of chapter
- 97.030 Vested rights not acquired
- 97.040 Private family burial grounds

##### DISPOSITION OF HUMAN BODIES

- 97.110 Human remains not to be attached
- 97.120 Human remains to be deposited in accordance with ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990
- 97.130 Right to control disposition of remains; delegation
- 97.145 Liability for failure to conform to written instrument directing control of remains
- 97.150 Disposition of cremated remains; procedures; notice; actions against cemetery or funeral service providers
- 97.153 Diagnostic or therapeutic radioisotopes in body
- 97.160 Duty of hospital or sanitarium to notify before sending remains to undertaker; procedures
- 97.170 Disposition of body of indigent or child in custody of State Office for Services to Children and Families
- 97.180 Period within which indigent's body may not be used
- 97.190 Post-mortem examination of indigent's body
- 97.200 Disposition of indigent's remains after educational use thereof
- 97.210 Exceptions to application of ORS 97.170 to 97.200
- 97.220 Disinterment

##### DEDICATION TO CEMETERY PURPOSES; PLATTINGS

- 97.310 Survey and subdivision of land; map or plat of mausoleum or columbarium; access easement
- 97.320 Filing map or plat and declaration of dedication of land to cemetery purposes
- 97.330 When dedication is complete

- 97.340 Effect of dedication
- 97.350 Dedication to cemetery purposes not invalid
- 97.360 Resurvey and alteration in shape or size; vacation of streets, walks, driveways and parks and replatting into lots
- 97.370 Fixing date of hearing; notice
- 97.380 Hearing; order allowing replatting
- 97.390 Assessment of benefits and damages
- 97.400 Disposal of newly created lots; disposition and use of proceeds from sale; failure of owner to perform duties
- 97.410 Right of adjacent lot owner upon vacation of way
- 97.420 Effect of failure to object
- 97.430 Declaration of exercise of police power and right of eminent domain
- 97.440 Removal of dedication
- 97.445 Vacating county interest in cemetery real property
- 97.450 Discontinuance of cemetery and removal of remains and markers
- 97.460 Approval required prior to establishment of cemetery or burial park

#### SALES AND RIGHTS IN RESPECT OF CEMETERY PLOTS

- 97.510 Sale and conveyance of plots by cemetery authority
- 97.520 Sale or offer to sell cemetery plot upon promise of resale at financial profit
- 97.530 Commission, bonus or rebate for sale of plot or services
- 97.540 Commission, bonus or rebate for recommendation of cemetery
- 97.550 Plots are indivisible
- 97.560 Presumption of sole ownership in grantee of plot
- 97.570 Spouse has vested right of interment
- 97.580 Divestiture of spouse's right of interment
- 97.590 Transfer of plot or right of interment
- 97.600 Descent of plot

- 97.610 Determining occupant of burial plot having coowners
- 97.620 Death of coowner; authorization to use plot under directions of surviving owners
- 97.630 Family plots; order of occupation
- 97.640 Waiver or termination of vested right of interment
- 97.650 Limitations upon vested right of interment

#### CEMETERY MANAGEMENT

- 97.710 Power of cemetery to make rules and regulations
- 97.720 Record of interments and cremations; inspection
- 97.730 Gifts and bequests in trust for cemeteries

#### INDIAN GRAVES AND PROTECTED OBJECTS

- 97.740 Definitions for ORS 97.740 to 97.760
- 97.745 Prohibited acts; application; notice
- 97.750 Permitted acts; notice
- 97.760 Civil action by Indian tribe or member; time for commencing action; venue; damages; attorney fees

#### OREGON PIONEER CEMETERY COMMISSION

- 97.772 Definition of "pioneer cemetery"
- 97.774 Oregon Pioneer Cemetery Commission; terms
- 97.776 Commission members; nominations
- 97.778 Chairperson; quorum; meetings
- 97.780 Duties
- 97.782 Listing of pioneer cemeteries; form
- 97.784 Executive secretary; support services

#### CEMETERY CARE

- 97.810 Endowment care and nonendowed care cemeteries
- 97.820 Placing cemetery under endowed care; deposit; commingling endowment and special care funds; trustee or custodian of fund
- 97.825 Suits to enforce endowed care statutes; attorney fees

- 97.830 Investment and reinvestment of principal of endowed care funds; use and application of income
- 97.835 Limitation of duties and liability of trustee
- 97.840 Cemetery authority authorized to receive and hold gifts of property; disposition of gifts
- 97.850 Endowment and special care funds are charitable
- 97.860 Agreements for care
- 97.865 Cemetery authority; application of ORS 97.810 to 97.865; filing with Secretary of State
- 97.870 Unused and uncared for portions of cemetery declared common nuisances
- 97.880 Resolution declaring a nuisance
- 97.890 Complaint
- 97.900 Summons
- 97.910 Disuse as prima facie evidence of abandonment
- 97.920 Decree declaring nuisance, authorizing abatement and creating and foreclosing lien

#### FEDERAL AID FOR CEMETERIES

- 97.930 Department of Transportation use of federal moneys for cemetery care

#### ANATOMICAL GIFTS

- 97.950 Definitions for ORS 97.950 to 97.964
- 97.952 Personal authority to make anatomical gift; procedure; delegation
- 97.954 Authority to make anatomical gift of body of decedent; priority; procedure
- 97.956 Authority of medical examiner or local public health officer over body within examiner's jurisdiction or officer's custody; documentation
- 97.958 Duties of hospital staff at or near time of patient's death; discussion with patient and family; search for document of gift
- 97.960 Delivery of document of anatomical gift; effect on validity of gift
- 97.962 Rights of procurement organization accepting anatomical gift; autopsies
- 97.964 Anatomical gift as authorization for examination to assure medical acceptability
- 97.966 Liability of executor who carries out anatomical gift
- 97.968 Transplants not covered by implied warranty

#### PENALTIES

- 97.990 Penalties

## CROSS-REFERENCES

Abuse of corpse prohibited, 166.085, 166.087

Acquisition of abandoned cemeteries in cities, 226.510 to 226.630

Cemetery and crematory corporations, 65.855 to 65.875

Investigation of certain deaths, procedures, Ch. 146

Prearranged funeral plans as trusts, 128.400 to 128.440

97.120

Illegal transportation of dead body, 432.995

Permit for burial, removal or other disposition of dead body, necessity and prerequisites, 432.307 to 432.327

97.160

Report of deaths to local registrar, 432.165, 432.307

97.170

Funds for burial of indigents, 432.312

97.310

Rights of way through cemeteries, 366.325

School districts controlling realty for cemetery purposes, 332.210

97.450

Discontinuance of abandoned cemetery and removal of remains, 226.510 to 226.630

97.710

Abuse of memorial to dead, 166.076

97.740 to 97.760

Archaeological objects and sites, 358.905 to 358.955

Archaeological sites and historic material, 390.235, 390.237

Disposition of remains, disputes, resolutions, 390.240

Reinterment required, notice to Indian tribe and Commission on Indian Services, 358.940

97.810

Funds paid under certain agreements to buy graves in endowment care cemeteries not in trust, 128.412

## 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 and 97.990:

- (1) “Human remains” or “remains” means the body of a deceased person in any stage of decomposition or after cremation.
- (2) “Cemetery” means any place dedicated to and used, or intended to be used, for the permanent interment of human remains.
- (3) “Burial park” means a tract of land for the burial of human remains in the ground used, or intended to be used, and dedicated for cemetery purposes.
- (4) “Mausoleum” means a structure for the entombment of human remains in crypts or vaults in a place used, or intended to be used, and dedicated for cemetery purposes.
- (5) “Crematory” means a structure containing a retort for the reduction of bodies of deceased persons to cremated remains.
- (6) “Columbarium” means a structure or room containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.
- (7) “Interment” means the disposition of human remains by cremation, inurnment, entombment or burial.
- (8) “Cremation” means the reduction of a body of a deceased person to cremated remains in a crematory.
- (9) “Inurnment” means placing cremated remains in an urn and depositing it in a niche.
- (10) “Entombment” means the placement of human remains in a crypt or vault.
- (11) “Burial” means the placement of human remains in a grave.
- (12) “Grave” means a space of ground in a burial park used, or intended to be used, for burial of the remains of one person.
- (13) “Crypt” or “vault” means a space in a mausoleum of sufficient size used, or intended to be used, to entomb uncremated human remains.
- (14) “Niche” is a recess in a columbarium used, or intended to be used, for the interment of the cremated remains of one or more persons.
- (15) “Cemetery authority” includes cemetery corporation, association, corporation sole or other person or persons owning or controlling cemetery lands or property.
- (16) “Cemetery association” means any corporation or association authorized by its articles to conduct any or all the businesses of a cemetery, but does not include a corporation sole or a charitable, eleemosynary association or corporation.
- (17) “Cemetery business,” “cemetery businesses” and “cemetery purposes” are used interchangeably and mean any business and 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.
- (18) “Directors” or “governing body” means the board of directors, board of trustees, or other governing body of a cemetery association.
- (19) “Lot,” “plot” or “burial space” 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.
- (20) The term “plot owner” or “owner” means any person in whose name a burial plot stands as owner of the right of sepulture therein in the office of the cemetery authority, or who holds from such cemetery authority a conveyance of the right of sepulture or a certificate of ownership of the right of sepulture in a particular lot, plot or space.
- (21) “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 established and maintained pursuant to the provisions of ORS 97.810 to 97.865. Endowment care cemeteries owned by a city or a county may supplement their general care and maintenance trust funds from general revenues.
- (22) “Special care” is any care in excess of endowed care in accordance with the specific directions of any donor of funds for such purposes. [Amended by 1955 c.545 s.1; 1965 c.396 s.1]

**97.020 Exemption of certain organizations and cemeteries from certain sections of chapter.** (1) The provisions of ORS 97.030, 97.120, 97.310 to 97.350, 97.360 (1), 97.510 and 97.550 relating to private cemeteries do not apply to:

(a) Any religious or eleemosynary corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination or any cemetery that such entity organizes, controls or operates.

(b) Any county or city cemetery.

(2) The provisions of ORS 97.810 to 97.865 relating to private cemeteries do not apply to:

(a) Any religious or eleemosynary corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination or any cemetery that such entity organizes, controls or operates, unless the cemetery authority for an entity described in this paragraph elects to subject itself to ORS 97.810 to 97.865.

(b) Any county or city cemetery, unless the county or city elects to subject itself to ORS 97.810 to 97.865.

[Amended by 1955 c.473 s.1; 1997 c.167 s.1]

**97.030 Vested rights not acquired.** No cemetery authority or person having a right of sepulture or any other right under ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990 acquires any vested right by virtue thereof which the Legislative Assembly may not subsequently amend, alter or repeal.

**97.040 Private family burial grounds.** Except for ORS 97.730, 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990 do not apply to private family burial grounds where lots are not offered for sale.

**97.050** [1977 c.183 s.1; 1983 c.526 s.4; 1985 c.747 s.49; 1987 c.660 s.16; 1989 c.1034 s.8; renumbered 127.605 in 1989]

**97.055** [1977 c.183 s.2; 1979 c.211 s.1; 1983 c.526 s.5; renumbered 127.610 in 1989]

**97.060** [1977 c.183 s.3; renumbered 127.615 in 1989]

**97.065** [1977 c.183 s.4; renumbered 127.620 in 1989]

**97.070** [1977 c.183 s.5; renumbered 127.625 in 1989]

**97.075** [1977 c.183 s.6; repealed by 1983 c.526 s.7]

**97.080** [1977 c.183 s.7; renumbered 127.630 in 1989]

**97.083** [1983 c.526 s.1; renumbered 127.635 in 1989]

**97.084** [1983 c.526 s.2; renumbered 127.640 in 1989]

**97.085** [1977 c.183 ss.8,9,10; renumbered 127.645 in 1989]

**97.090** [1977 c.183 s.11; renumbered 127.650 in 1989]

## DISPOSITION OF HUMAN BODIES

**97.110 Human remains not to be attached.** No person shall attach, detain or claim to detain any human remains for any debt or demand or upon any pretended lien or charge.

**97.120 Human remains to be deposited in accordance with ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990.** A cemetery authority shall deposit or dispose of human remains as provided by ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990.

**97.130 Right to control disposition of remains; delegation.** (1) Any individual of sound mind who is 18 years of age or older, by completion of a written signed instrument or by preparing or prearranging with any funeral service practitioner licensed under ORS chapter 692, may direct any lawful manner of disposition of the individual's remains.

Except as provided under subsection (6) of this section, disposition directions or disposition prearrangements that are prepaid or that are filed with a funeral service practitioner licensed under ORS chapter 692 shall not be subject to cancellation or substantial revision.

(2) A person within the first applicable listed class among the following listed classes that is available at the time of death or, in the absence of actual notice of a contrary direction by the decedent as described under subsection (1) of this section or actual notice of opposition by completion of a written instrument by a member of the same class or a member of a prior class, may direct any lawful manner of disposition of a decedent's remains by completion of a written instrument:

- (a) The spouse of the decedent.
- (b) A son or daughter of the decedent 18 years of age or older.
- (c) Either parent of the decedent.
- (d) A brother or sister of the decedent 18 years of age or older.
- (e) A guardian of the decedent at the time of death.
- (f) A person in the next degree of kindred to the decedent.
- (g) The personal representative of the estate of the decedent.
- (h) The person nominated as the personal representative of the decedent in the decedent's last will.
- (i) A public health officer.

(3) The decedent or any person authorized in subsection (2) of this section to direct the manner of disposition of the decedent's remains may delegate such authority to any person 18 years of age or older. Such delegation shall be made by completion of the written instrument described in subsection (7) of this section. The person to whom the authority is delegated shall have the same authority under subsection (2) of this section as the person delegating the authority.

(4) If a decedent or the decedent's designee issues more than one authorization or direction for the disposal of the decedent's remains, only the most recent authorization or direction shall be binding.

(5) A donation of anatomical gifts under ORS 97.952 or 97.954 shall take priority over directions for the disposition of a decedent's remains under this section only if the person making the donation is of a priority under subsection (1) or (2) of this section the same as or higher than the priority of the person directing the disposition of the remains.

(6) If the decedent directs a disposition under subsection (1) of this section and those financially responsible for the disposition are without sufficient funds to pay for such disposition or the estate of the decedent has insufficient funds to pay for the disposition, or if the direction is unlawful, the direction shall be void and disposition shall be in accordance with the direction provided by those persons given priority in subsection (2) of this section and who agree to be financially responsible.

(7) The signature of the individual shall be required for the completion of the written instrument required in subsection (3) of this section. The following form or a form substantially similar shall be used by all individuals:

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APPOINTMENT OF PERSON  
TO MAKE DECISIONS  
CONCERNING DISPOSITION  
OF REMAINS

I, \_\_\_\_\_, appoint \_\_\_\_\_, whose address is \_\_\_\_\_ and whose telephone number is (\_\_\_\_) \_\_\_\_\_, as the person to make all decisions regarding the disposition of my remains upon my death for my burial or cremation. In the event \_\_\_\_\_ is unable to act, I appoint \_\_\_\_\_, whose address is \_\_\_\_\_ and whose telephone number is (\_\_\_\_) \_\_\_\_\_, as my alternate person to make all decisions regarding the disposition of my remains upon my death for my burial or cremation.

It is my intent that this Appointment of Person to Make Decisions Concerning Disposition of Remains act as and be accepted as the written authorization presently required by ORS 97.130 (or its corresponding future provisions) or any other provision of Oregon Law, authorizing me to name a person to have authority to dispose of my remains.

DATED this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
(Signature)

DECLARATION OF WITNESSES



We declare that \_\_\_\_\_ is personally known to us, that he/she signed this Appointment of Person to Make Decisions Concerning Disposition of Remains in our presence, that he/she appeared to be of sound mind and not acting under duress, fraud or undue influence, and that neither of us is the person so appointed by this document.

Witnessed By:

\_\_\_\_\_ Date: \_\_\_\_\_

Witnessed By:

\_\_\_\_\_ Date: \_\_\_\_\_

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(8) Subject to the provisions of ORS 97.950 to 97.964, if disposition of the remains of a decedent has not been directed and authorized under this section within 10 days after the date of the death of the decedent, a public health officer may direct and authorize disposition of the remains. [Amended by 1969 c.175 s.10; 1969 c.591 s.279; 1973 c.823 s.97; 1995 c.717 s.10; 1997 c.472 s.1; 1999 c.201 s.5]

**97.132** [1961 c.674 s.1; repealed by 1969 c.175 s.12]

**97.134** [1961 c.674 ss.2,3; repealed by 1969 c.175 s.12]

**97.140** [Repealed by 1957 c.423 s.1 (97.141 and 97.145 enacted in lieu of 97.140)]

**97.141** [1957 c.423 s.2 (97.141 and 97.145 enacted in lieu of 97.140); repealed by 1997 c.472 s.13]

**97.145 Liability for failure to conform to written instrument directing control of remains.** No cemetery authority, crematory operator or licensed funeral service practitioner interring or cremating remains pursuant to a written instrument signed by the decedent or a person described in ORS 97.130 (2) shall be liable for any failure to conform to the priority of control of remains provided in ORS 97.130, except when it shall have received two or more conflicting written instruments prior to interment or cremation of said remains. [1957 c.423 s.3 (97.141 and 97.145 enacted in lieu of 97.140); 1997 c.472 s.2]

**97.150 Disposition of cremated remains; procedures; notice; actions against cemetery or funeral service providers.** (1) If the cemetery authority, crematory operator or licensed funeral service practitioner has been authorized to cremate remains of a decedent pursuant to ORS 97.130, the authorization shall also contain further instructions to the cemetery authority, crematory operator or licensed funeral service practitioner as to the final disposition of the cremated remains. If the cremated remains are left in the possession of the cemetery authority, crematory operator or licensed funeral service practitioner and no such instructions are given to the cemetery authority, crematory operator or licensed funeral service practitioner within 180 days after the date of cremation, the cemetery authority, crematory operator or licensed funeral service practitioner shall make a reasonable effort to notify the person, pursuant to ORS 97.130, who has the right to control the disposition of the cremated remains. The notice shall state that the cemetery authority, crematory operator or licensed funeral service practitioner intends to dispose of the cremated remains unless such person gives instructions to the contrary to the cemetery authority, crematory operator or licensed funeral service practitioner within 30 days of the date of such notice from the cemetery authority, crematory operator or licensed funeral service practitioner. Reasonable effort to notify shall include, but not be limited to, notice, personally or by certified mail, return receipt requested, to the person who has the right to control the disposition of the cremated remains at the address of such person in the records of the cemetery authority, crematory operator or licensed funeral service practitioner. If disposition of the cremated remains has not been directed and authorized by such person within said 30-day period, the cemetery authority, crematory operator or licensed funeral service practitioner may dispose of the cremated remains as is legally practicable.

(2) No cemetery authority, crematory operator or licensed funeral service practitioner shall be liable, and no action shall lie against any cemetery authority, crematory operator or licensed funeral service practitioner relating to any cremated remains that have been left in its possession for a period of 180 days unless the cemetery authority, crematory operator or licensed funeral service practitioner has failed to make such reasonable effort to notify the person described in subsection (1) of this section or unless a written contract has been entered into with the cemetery authority, crematory operator or licensed funeral service practitioner for their care or unless permanent interment has

been made. If the cemetery authority, crematory operator or licensed funeral service practitioner has complied with this section, then the cemetery authority, crematory operator or licensed funeral service practitioner may dispose of the remains as is legally practicable. [Amended by 1989 c.669 s.1; 1997 c.472 s.3]

**97.153 Diagnostic or therapeutic radioisotopes in body.** Notwithstanding section 14, chapter 653, Oregon Laws 1991, or ORS 469.525, diagnostic or therapeutic radioisotopes remaining inside the uncremated body of a deceased person may be buried, entombed or otherwise disposed of in a cemetery or other lawful place for the burial, entombment or other disposal of the uncremated body of the deceased person even though the body contains low-level radioactive waste as defined under 42 U.S.C. 2021(b) as of January 1, 1995, by-product material as defined under 42 U.S.C. 2014 as of January 1, 1995, or special nuclear material exempted by the United States Nuclear Regulatory Commission as of January 1, 1995, under authority of 42 U.S.C. 2077(d). [1995 c.252 s.1]

**Note:** 97.153 was enacted into law by the Legislative Assembly but was 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.

**97.160 Duty of hospital or sanitarium to notify before sending remains to undertaker; procedures.** (1) No hospital or sanitarium, or the employees, agents or representatives thereof, shall send or cause to be sent to any funeral service practitioner, undertaker, mortician or embalmer the remains of any decedent without having complied with this section before final disposition of the remains.

(2) If the admitting record contains the name of a relative, friend or other person identified by the decedent in the admitting record, or if the hospital or sanitarium is aware of the name of any other person chargeable with the funeral expenses of the decedent, the hospital or the sanitarium must notify the relative, friend or other person personally or by certified mail, return receipt requested.

(3) If a hospital or sanitarium is unable to give actual notice to a relative, friend or other person under the provisions of subsection (2) of this section, the hospital or sanitarium must publish a notice of death at least one time in a newspaper of general circulation in the county where the death occurred, or, if there is no such newspaper, in a newspaper most likely to give notice of the death to relatives and friends of the decedent. The notice must contain the name of the decedent and the address and phone number for the hospital or sanitarium.

(4) If the remains of the decedent are not claimed within 10 days after the giving of notice under subsection (2) of this section, or within 10 days after publication under subsection (3) of this section if publication is made under subsection (3) of this section, the hospital or sanitarium may arrange for the disposal of the remains of the decedent without further notice in the manner specified by ORS 97.170 to 97.200.

(5) Nothing in this section limits or governs the authority of any administrator or executor, trustee or other person having a fiduciary relationship with the deceased or to the state, counties, cities or towns in the disposition of the remains of a deceased person. [Amended by 1993 c.92 s.1]

**97.170 Disposition of body of indigent or child in custody of State Office for Services to Children and Families.** (1) Except as set forth in subsection (4) of this section, any licensed funeral service practitioner having charge of the body of a deceased person thought to be an unclaimed indigent shall use all reasonable diligence promptly to notify the relatives of the deceased person or any other person having an interest in the deceased person and shall arrange with any relative who claims the body or with any friend of the deceased person who will pay the expenses to make disposition of the body. If no one claims the body within five days after death, or if those notified acquiesce, the funeral service practitioner shall notify, by telephone, the Demonstrator of Anatomy of the Oregon Health Sciences University. The Demonstrator of Anatomy, who shall be appointed by the Oregon Health Sciences University Board of Directors from the staff of the Oregon Health Sciences University, shall immediately inform the funeral service practitioner whether the body is deemed to be in fit condition and is desired for medical instruction or the advancement of medical science. If the body is desired for these purposes, the funeral service practitioner shall arrange for a licensed embalmer to make such preparation as is necessary and shall, within 72 hours, deliver it to the Oregon Health Sciences University, or any other school or college within the State of Oregon qualifying applicants for examination in the fundamental sciences as required and specified in ORS 683.010 to 683.335 and ORS chapters 676 to 681 and 684 to 686, as the Demonstrator of Anatomy directs. The expenses of embalming, transportation of the body to such school or college, filing fees and other related expenses shall be paid from the funds appropriated specifically for the purposes of this section. Such expenses shall not exceed the normal rates charged for such services to the general public.

(2) If the Demonstrator of Anatomy does not require any such body for instruction or research, it may be assigned, on request, to any other properly authorized institution within this state or to any qualified physician for instruction or research.

(3) When the body of a deceased person is deemed in unfit condition by the Demonstrator of Anatomy and disposition does not take place as set forth in subsections (1) and (2) of this section, and no relatives, friends or interested persons claim the body after notification is attempted, then the funeral service practitioner may commence to cremate or bury the body without the consent of persons listed in ORS 97.130 and is furthermore indemnified from any liability arising from having made such disposition. The method of disposition must be in the least costly manner that complies with law, and that does not conflict with known wishes of the deceased. Reimbursement for costs of disposition shall be made as set forth in subsection (5) of this section.

(4) When the deceased person is a child over whom the State Office for Services to Children and Families held guardianship at the time of death, and no relatives, friends or interested persons claim the body after notification is attempted as set forth in subsection (1) of this section, the division may at its discretion notify the Demonstrator of Anatomy and proceed as set forth in subsection (1) of this section, or may authorize burial or cremation of the body. Expenses related to burial or cremation authorized by the division under this subsection shall be borne by the division.

(5) Upon receipt of an itemized statement of expenses, the Health Division shall reimburse the funeral service practitioner within 30 days the reasonable costs for disposition of any unclaimed deceased person who has insufficient assets and for whom no one takes responsibility. The method of disposition must be in the least costly manner and shall not exceed \$450 per disposition. [Amended by 1973 c.842 s.1; 1985 c.704 s.1; 1993 c.345 s.4; 1995 c.162 s.62]

**97.180 Period within which indigent's body may not be used.** Upon receipt of any body by a school or college pursuant to ORS 97.170, it shall be properly embalmed for anatomical purposes, but shall be retained 30 days before being used or dismembered. If it is claimed by any relative or friend within that period, it shall be delivered to the claimant.

**97.190 Post-mortem examination of indigent's body.** Unless required by a medical examiner to determine the cause of death or specifically authorized and ordered by the superintendent of the hospital or institution in which any person coming under the provisions of ORS 97.170 may die, no such body as is mentioned in ORS 97.170 is subject to post-mortem examination, except by consent of the Demonstrator of Anatomy. [Amended by 1959 c.629 s.43; 1965 c.221 s.13; 1977 c.582 s.1]

**97.200 Disposition of indigent's remains after educational use thereof.** The remains of any corpse used for the purposes authorized by ORS 97.170 shall, upon completion of such use, be decently buried or cremated and the ashes, in case of cremation, shall be delivered to any relative who claims them, after establishing relationship. All expenses incident to burial and cremation and the delivery of ashes to any relative shall be borne by the educational institution which used the body for educational purposes.

**97.210 Exceptions to application of ORS 97.170 to 97.200.** The body of any person who died of smallpox, diphtheria, scarlet fever or other disease that the Health Division, by rule, may prescribe, shall not be subject to the provisions of ORS 97.170 to 97.200. [Amended by 1977 c.582 s.2]

**97.220 Disinterment.** (1) The remains of a deceased person interred in a plot in a cemetery may be removed therefrom with the consent of the cemetery authority and written consent of the person who has the right to control the disposition of the remains of the deceased person. If the consent of any such person or of the cemetery authority cannot be obtained, permission by the county court or the board of county commissioners 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 or the board of county commissioners.

(2) If the payment for the purchase of an interment space becomes past due and so remains for a period of 90 days, 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.

(3) 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 s.3]

**97.230** [Repealed by 1973 c.286 s.1]

**97.250** [1969 c.175 s.1; repealed by 1995 c.717 s.9]

**97.255** [1969 c.175 s.3; repealed by 1995 c.717 s.9]

**97.260** [1969 c.175 s.2; repealed by 1995 c.717 s.9]

**97.265** [1969 c.175 s.4; 1973 c.823 ss.98,157; 1993 c.218 s.1; repealed by 1995 c.717 s.9]

**97.268** [1985 c.379 s.1; repealed by 1995 c.717 s.9]

**97.270** [1969 c.175 s.5; repealed by 1995 c.717 s.9]

**97.275** [1969 c.175 s.6; 1969 c.591 s.278a; 1975 c.215 s.1; repealed by 1995 c.717 s.9]

**97.280** [1969 c.175 s.7; repealed by 1995 c.717 s.9]

**97.285** [1969 c.175 s.8; repealed by 1995 c.717 s.9]

**97.290** [1969 c.175 s.9; repealed by 1995 c.717 s.9]

**97.295** [Formerly 116.115; 1995 c.717 s.11; renumbered 97.966 in 1995]

**97.300** [1969 c.271 s.1; 1995 c.717 s.12; renumbered 97.968 in 1995]

## DEDICATION TO CEMETERY PURPOSES; PLATTINGS

### **97.310 Survey and subdivision of land; map or plat of mausoleum or columbar-ium; access easement.** (1)

Every cemetery authority, from time to time as its property may require for cemetery purposes, shall:

(a) In case of land, survey and subdivide it into sections, blocks, plots, avenues, walks or other subdivisions and make a good and substantial map or plat showing them, with descriptive names or numbers. In all instances this shall be done in compliance with ORS 92.010 to 92.190 except that ORS 92.090 (2)(a) and (b) shall not be applicable to streets, alleys, ways and footpaths located wholly within a cemetery.

(b) In case of a mausoleum or columbar-ium, make a good substantial map or plat on which are delineated the sections, halls, rooms, corridors, elevation and other divisions, with descriptive names or numbers. In all instances this shall be done in compliance with the state building code.

(2) Every lot in a cemetery subdivision shall include an access easement across the lot for the benefit of adjacent lots. Designated areas between lots for the purpose of providing access to separate lots are not required to approve a subdivision under this section. A cemetery authority must disclose to a potential purchaser of a lot in the cemetery the existence of the access easement across the lot. [Amended by 1965 c.396 s.2; 1979 c.57 s.1; 1985 c.582 s.3; 1999 c.381 s.1]

**97.320 Filing map or plat and declaration of dedication of land to cemetery purposes.** In case of a cemetery lot, the cemetery authority shall file the map or plat in the office of the recording officer of the county in which all or a portion of the property is situated, and it forthwith shall file for record in that officer's office a written declaration dedicating the property delineated on the plat or map exclusively to cemetery purposes.

**97.330 When dedication is complete.** Upon the filing of the map or plat and of the declaration for record, the dedication is complete for all purposes, and thereafter the property shall be held, occupied and used exclusively for cemetery purposes.

**97.340 Effect of dedication.** After property is dedicated to cemetery purposes pursuant to ORS 97.310 to 97.330 and 97.360 (1), neither the dedication nor the title of a plot owner shall be affected by the dissolution of the cemetery

authority by nonuser on its part, by alienation of the property, by any encumbrances, by sale under execution or otherwise, except as provided in ORS 97.310 to 97.350, 97.360 (2), 97.440, 97.510 to 97.650, 97.710, 97.720 and 97.810 to 97.865.

**97.350 Dedication to cemetery purposes not invalid.** Dedication to cemetery purposes pursuant to ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990 is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property, and is deemed to be in respect for the dead, and is a provision for the interment of human remains and is a duty to, and for the benefit of, the general public.

**97.360 Resurvey and alteration in shape or size; vacation of streets, walks, driveways and parks and replatting into lots.** (1) Any part or subdivision of the property so mapped and platted may, by order of the directors and consent of the lot owners, be resurveyed and altered in shape and size and an amended map or plat filed, so long as such change does not disturb any interred remains.

(2) Whenever a majority of the lots as platted or laid out in any cemetery established before March 3, 1927, or any part thereof, has been sold without the owners or persons in control of the cemetery having made provision for the establishment of an adequate endowment fund for the perpetual maintenance, upkeep and beautification of the cemetery and of the lots therein, the avenues, streets, alleys, walks, driveways and parks therein may be vacated or altered and replatted into lots which may be sold for burial purposes in the manner provided in this subsection and in ORS 97.370 to 97.430. Application for the vacation or alteration of any avenues, streets, alleys, walks, driveways or parks, and for the replatting of the same, or any portion thereof, for cemetery lots in any such cemetery shall be made to the county court or board of county commissioners in the county where the cemetery is situated. The application may be by the owners or persons in control of the cemetery or by a group of 20 or more persons owning lots or having relatives buried therein. The application shall be verified and shall specify the lots owned by each petitioner in which are buried bodies of relatives in which the petitioner is interested and shall state the reason for the proposed change and what provisions have theretofore been made for the perpetual upkeep, maintenance and beautification of the cemetery, and there shall be presented therewith a plat of the cemetery, together with the proposed replat, which shall have clearly indicated thereon the proposed changes.

**97.370 Fixing date of hearing; notice.** When any application mentioned in ORS 97.360 (2) is filed, the court or board shall fix the time for the hearing of it and notice of the time thereof shall be given by publication in a paper of general circulation published in the town in which the cemetery is situated or in the town to which it is nearest once a week for a period of six successive weeks prior to the date of the hearing and a copy of such notice shall be posted for a like period at three public and conspicuous places in the cemetery. Such notice shall be addressed to all persons owning lots or having an interest in the cemetery, but need not name them, and shall set forth in a general way the proposed changes, the reason stated in the application for making it, the time when the hearing of the application will be had, and shall state that a plat showing the proposed changes is on file with the county clerk of the county in which the cemetery is situated.

**97.380 Hearing; order allowing replat-ting.** At the hearing mentioned in ORS 97.370 the court or board shall consider and hear any evidence introduced in favor of the proposed change and all objections thereto and, after a full hearing thereon, may allow the proposed change and replat in whole or in part. If the proposed change is allowed, either in whole or in part, an order allowing it shall be made providing that title to any new lot created by the alteration or vacation of any avenues, streets, alleys, driveways, walks or parks, or any part thereof, shall be vested in the owner of the fee of the part of the cemetery sought to be vacated in trust for burial purposes, or vested in any association which may be formed for the purpose of taking over the cemetery and operating and maintaining it in accordance with the provisions of ORS 97.400. [Amended by 1985 c.582 s.4; 1999 c.381 s.2]

**97.390 Assessment of benefits and damages.** If any damages are claimed by the owner of any lot in any such cemetery as is mentioned in ORS 97.360 (2), which lot is adjacent to the avenues, streets, alleys, driveways or parks vacated as provided in ORS 97.380, they shall be ascertained by the county court or board of county commissioners and offset against the benefits accruing to the lot owner on account of the upkeep and beautification of the cemetery in the manner provided in ORS 97.400. Any person feeling aggrieved at the amount of damages so assessed by the board may appeal from such order of allowance to the circuit court of the county in which the cemetery is situated in the

same manner as is provided by statute for appeal from the assessment of damages by the exercise of eminent domain in locating a county road and on such appeal the jury, in assessing the amount of damages to be allowed to the appellant, shall offset against such damages the benefits accruing to the appellant as in this section above provided.

**97.400 Disposal of newly created lots; disposition and use of proceeds from sale; failure of owner to perform duties.** Any owner or association accepting the trust of handling and disposing of lots newly created pursuant to ORS 97.380 shall by the acceptance thereof agree to dispose of the lots only for burial purposes and at a price not less than that fixed by the county court or board of county commissioners. The net funds derived from the sale of the lots remaining after the payment of the reasonable expenses incident to the vacation and of the sale shall be placed in an irreducible and perpetual fund and the interest therefrom shall be used for the perpetual upkeep and beautification of the cemetery and the lots therein situated. The fund shall be placed in some reliable trust company specified by the court or board, which trust company shall invest the same and pay the income therefrom to the owner or association charged with the disposal of such lots. Any owner or association taking over the sale of the lots shall comply with such provisions as the court or board may require of it in the upkeep, beautification and care of the cemetery with the income thereof, and if such owner or association for any reason fails to perform such duties, the court or board may, on its own motion, from time to time, appoint some other association or individual to perform them. The restrictions of this section shall not apply to the sale of lots obtained by replatting cemeteries owned and maintained by any county.

**97.410 Right of adjacent lot owner upon vacation of way.** The vacation of an avenue, street, alley, driveway, walk or park adjacent to a cemetery lot shall vest in the owner of such lot no interest in the vacated portion thereof; but the adjacent owner shall, for 30 days after the date of such an order of vacation, have the right to purchase any new lot adjacent to the lot of the owner at the price fixed by the court or board at which the lots are to be sold, and if there is more than one adjacent lot owner, the new lot shall be sold to the one offering the highest price therefor.

**97.420 Effect of failure to object.** Any owner of such cemetery as is mentioned in ORS 97.360 (2), or of any lot therein, or any relative or heir of any deceased person buried in such cemetery who fails to appear and file written objection to any proposed replat, alteration or vacation, authorized by ORS 97.360 (2), shall be deemed to have consented to the proposed change and shall be forever barred from claiming any right to use and have open for traffic or passageway any streets, alleys, driveways or parks vacated, or any right, title or interest therein, except as provided in ORS 97.360 (2) and 97.370 to 97.410.

**97.430 Declaration of exercise of police power and right of eminent domain.** The enactment of ORS 97.360 (2) and 97.370 to 97.430 is hereby declared to be a necessary exercise of the police powers of the state in order to preserve and keep existing cemeteries as resting places for the dead and to preserve old and historic cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are located. The taking of avenues, streets, alleys, walks, driveways and parks for the purpose and by the method specified in ORS 97.360 (2) and 97.370 to 97.420 is hereby declared an exercise of the right of eminent domain in behalf of the public health, safety, comfort, pleasure and historic instruction.

**97.440 Removal of dedication.** Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes unless and until the dedication is removed from all or any part of it by an order and decree of the county court or board of county commissioners of the county in which the property is situated in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the court that the following conditions exist:

(1) That the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

(2) That notice of hearing provided in this section shall be given by publication once a week for at least four consecutive weeks in a newspaper of general circulation in the county where the cemetery is located and by posting copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed. The notice shall:

(a) Describe the portion of the cemetery property sought to be removed from dedication.

(b) State that all remains have been removed or that no interments have been made in the portion of the cemetery property sought to be removed from dedication.

(c) Specify the time and place of the hearing.

**97.445 Vacating county interest in cemetery real property.** Consistent with the provisions of ORS 368.326 to 368.366, a county may vacate any real property interests the county may own in a cemetery. Consistent with ORS 368.366 (2), the county may vacate its real property interests in favor of a private nonprofit organization provided the organization states its intent to provide for the continuing maintenance and care of the cemetery and associated facilities. [1997 c.747 s.2]

**97.450 Discontinuance of cemetery and removal of remains and markers.** Whenever any cemetery which is within the limits of any county, city or town has been abandoned, or it is desirable to abandon such cemetery, or such cemetery has been allowed to remain in a dilapidated condition for a period of five years or longer, the governing body of any county, if the cemetery is owned by the county, or the corporate authorities of the city or town, if the cemetery is owned by the city or town, or the trustees or directors, if the cemetery is owned by an association or corporation, may order that such burial ground be discontinued, cause the remains of all persons interred therein to be moved to some other suitable place and provide for the removal and reerection of all stones and monuments marking said graves. However, such removal shall be made in an appropriate manner and in accordance with the directions of the Assistant Director for Health, and written notice shall first be given to the family, or next of kin of the deceased, if known, and if unknown, notice of the removal shall be published for at least four successive weeks in a newspaper of general circulation in the county in which the cemetery is located. Such removal and the costs of the proceedings under this section shall be at the expense of the county, city or town, party, corporation or association owning the cemetery to be moved. [Amended by 1955 c.472 s.1]

**97.460 Approval required prior to establishment of cemetery or burial park.** No association, corporation, cemetery authority, or person shall after February 24, 1903, lay out, open up or use any property for cemetery or burial park purposes, without the approval of the planning commission of the county or city having jurisdiction under ORS 92.042 or, if there is no such commission in such county or city, the governing body of such county or city. [Formerly 64.060; 1965 c.396 s.3]

#### SALES AND RIGHTS IN RESPECT OF CEMETERY PLOTS

**97.510 Sale and conveyance of plots by cemetery authority.** After filing the map or plat and recording the declaration of dedication, a cemetery authority may sell and convey plots subject to such rules and regulations as may be then in effect and subject to such other and further limitations, conditions and restrictions made a part of the declaration of dedication by reference or included in the instrument of conveyance of the plot.

**97.520 Sale or offer to sell cemetery plot upon promise of resale at financial profit.** No person, firm or corporation shall sell or offer to sell a cemetery plot upon the promise, representation or inducement of resale at a financial profit, except with the consent and approval of the Secretary of State. Each violation of this section constitutes a separate offense. [Amended by 1989 c.171 s.13]

**97.530 Commission, bonus or rebate for sale of plot or services.** No cemetery authority shall pay or offer to pay, and no person, firm or corporation shall receive, directly or indirectly, a commission, bonus, rebate or other thing of value for the sale of a plot or services. This does not apply to a person regularly employed by the cemetery authority for such purpose. Each violation of this section constitutes a separate offense.

**97.540 Commission, bonus or rebate for recommendation of cemetery.** No person shall pay, cause to be paid or offer to pay, and no person, firm or corporation shall receive, directly or indirectly, except as provided in ORS 97.530, any commission, bonus, rebate or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any cemetery. Each violation of this section constitutes a separate offense.

**97.550 Plots are indivisible.** 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.

**97.560 Presumption of sole ownership in grantee of plot.** All plots conveyed to individuals are presumed to be

solely and separately owned by the person named in the instrument of conveyance.

**97.570 Spouse has vested right of interment.** (1) The spouse of an owner of any plot containing more than one interment space has a vested right of interment of the remains of the spouse in the plot, and any person thereafter becoming the spouse of the owner has a vested right of interment of the remains of the person in the plot if more than one interment space is unoccupied at the time the person becomes the spouse of the owner.

(2) The purchase by a married person of more than one interment space shall create in the spouse a right of interment therein.

**97.580 Divestiture of spouse's right of interment.** No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of the vested right of interment, except that a final decree of divorce between them terminates the right unless otherwise provided in the decree.

**97.590 Transfer of plot or right of interment.** No transfer of any plot, heretofore or hereafter made, or any right of interment is complete or effective until recorded on the books of the cemetery authority.

**97.600 Descent of plot.** Upon the death of the owner, unless the owner has disposed of the plot either by specific direction in the will of the owner or by a written declaration filed and recorded in the office of the cemetery authority, if no interment has been made in an interment plot which has been transferred by deed or certificate of ownership to an individual owner or if all remains previously interred are lawfully removed, the plot descends to the heirs at law of the owner, subject to the rights of interment of the decedent and the surviving spouse of the decedent.

**97.610 Determining occupant of burial plot having coowners.** When there are two or more owners of a burial plot or of rights of interment therein, such owners may designate one or more persons to designate the burials to be made in the plot and file written notice of such designation with the cemetery association. In the absence of such notice or of written objection to its so doing, the cemetery association is not liable to any owner for interring or permitting an interment therein upon the request or direction of any registered coowner of the plot.

**97.620 Death of coowner; authorization to use plot under directions of surviving owners.** An affidavit by any person having knowledge of the fact, setting forth the fact of the death of one owner and establishing the identity of the surviving owners named in the deed to any plot, when filed with the cemetery authority operating the cemetery in which the plot is located, is authorization to the cemetery authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving owners or their successors in interest.

**97.630 Family plots; order of occupation.** (1) 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 by direction in the owner's will, or by a written declaration filed and recorded in the office of the cemetery authority, the plot thereby becomes inalienable and shall be held as the family plot of the owner, and occupied in the following order:

(a) One grave, niche or crypt may be used for the owner's interment; one for the owner's surviving spouse, if there is one, who by ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990 has a vested right of interment in it; and in those remaining, if any, the children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot.

(b) If no child survives, the right of interment goes in order of death to the spouse of any child of the record owner.

(2) Any surviving spouse, child or child's spouse who has a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of either the deceased owner or of the deceased owner's spouse, and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot.

(3) Notwithstanding subsection (1) of this section, the personal representative of the deceased owner of a family plot may sell unoccupied interment spaces in the plot as property of the estate of the deceased owner when there are no existing rights of interment in those spaces or all existing rights of interment in those spaces have been waived and thereby terminated.

(4) Whenever a plot is transferred by deed or certificate of ownership to an individual owner and the transfer is recorded on the books of the cemetery authority, the cemetery authority shall provide to the individual owner a written



statement, in a form approved by the State Mortuary and Cemetery Board, containing a clear explanation of the provisions of subsections (1) and (2) of this section and of the rights of interment established thereby. [Amended by 1985 c.652 s.1]

**97.640 Waiver or termination of vested right of interment.** A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom it is vested.

**97.650 Limitations upon vested right of interment.** No vested right of interment gives to any person the right to have the remains of the person interred in any interment space in which the remains of any deceased person having equal or prior vested right of interment have been interred; nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules and regulations of the cemetery in which the interment space is located.

## CEMETERY MANAGEMENT

**97.710 Power of cemetery to make rules and regulations.** (1) The cemetery authority may make and enforce rules and regulations for:

- (a) The use, care, control, management, restriction and protection of its cemetery;
  - (b) Restricting and limiting the use of all property within its cemetery;
  - (c) Regulating the uniformity, class and kind of all markers, monuments and other structures within its cemetery;
  - (d) Prohibiting the erection of monuments, markers or other structures in or upon any portion of its property;
  - (e) Regulating or preventing the erection of monuments, effigies and structures within any portion of the cemetery grounds and for the removal thereof;
  - (f) Regulating the care or preventing the introduction of plants or shrubs within such grounds;
  - (g) Preventing the interment in any part thereof of a body not entitled to interment therein;
  - (h) Preventing the use of burial plots for purposes violative of its restrictions;
  - (i) Regulating the conduct of persons and preventing improper assemblages therein; and
  - (j) All other purposes deemed necessary by the cemetery authority for the proper conduct of its business and the protection and safeguarding of the premises and the principles, plans and ideals on which the cemetery was organized.
- (2) The cemetery authority from time to time may amend, add to, revise, change or modify such rules and regulations.
- (3) Such rules and regulations shall be plainly printed or typewritten and maintained, subject to inspection, in the office of the cemetery authority.

**97.720 Record of interments and cremations; inspection.** (1) The person in charge of any premises on which interments or cremations are made shall keep a record of all remains interred or cremated on the premises under the person's charge, in each case stating the name of each deceased person, the date of interment or cremation, and the name and address of the funeral service practitioner. The interment records shall be open to inspection by survivors of the decedent during the customary office hours of the cemetery authority.

(2) A record shall be kept of the ownership of all plots in the cemetery which have been conveyed by the cemetery authority and of all transfers of plots in the cemetery.

**97.730 Gifts and bequests in trust for cemeteries.** Gifts, grants and bequests of personal property in trust for the purpose of providing perpetual care and maintenance, improvement or embellishment of private burial lots in or outside of cemeteries and of the walks, fences, monuments, structures or tombs thereon, are permitted and shall be deemed to be for perpetual and benevolent uses. They are not invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instrument creating the trust; nor are they invalid as violating any existing laws against perpetuities or suspension of the power of alienation of title to property. But nothing in this section affects any existing authority or cause to pass upon the reasonableness of the amount of such gift, grant or bequest. Any cemetery association may act as trustee of and execute any such trust with respect to lots, walks, fences, monuments, structures or tombs, both within or outside its own cemetery limits, but within the county where such cemetery association has its principal office and place of business, whether such power is otherwise included in its corporate powers or not.

## INDIAN GRAVES AND PROTECTED OBJECTS

**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 s.1; 1981 c.442 s.3; 1985 c.198 s.2; 1993 c.459 s.9; 1997 c.249 s.34]

**97.745 Prohibited acts; application; notice.** (1) Except as provided in ORS 97.750, no person shall willfully remove, mutilate, deface, injure or destroy any cairn, burial, human remains, funerary object, sacred object or object of cultural patrimony of any native Indian. Persons disturbing native Indian cairns or burials through inadvertence, including by construction, mining, logging or agricultural activity, shall at their own expense reinter the human remains or funerary object under the supervision of the appropriate Indian tribe.

(2) Except as authorized by the appropriate Indian tribe, no person shall:

- (a) Possess any native Indian artifacts, human remains or funerary object having been taken from a native Indian cairn or burial in a manner other than that authorized under ORS 97.750.
- (b) Publicly display or exhibit any native Indian human remains, funerary object, sacred object or object of cultural patrimony.
- (c) Sell any native Indian artifacts, human remains or funerary object having been taken from a native Indian cairn or burial or sell any sacred object or object of cultural patrimony.

(3) This section does not apply to:

- (a) The possession or sale of native Indian artifacts discovered in or taken from locations other than native Indian cairns or burials; or
  - (b) Actions taken in the performance of official law enforcement duties.
- (4) Any discovered human remains suspected to be native Indian shall be reported to the state police, the State Historic Preservation Officer, the appropriate Indian tribe and the Commission on Indian Services. [1977 c.647 s.2; 1979 c.420 s.1; 1981 c.442 s.4; 1985 c.198 s.1; 1993 c.459 s.10]

**97.750 Permitted acts; notice.** (1) Any proposed excavation by a professional archaeologist of a native Indian cairn or burial shall be initiated only after prior written notification to the State Historic Preservation Officer and the state police, as defined in ORS 358.905, and with the prior written consent of the appropriate Indian tribe in the vicinity of the intended action. Failure of a tribe to respond to a request for permission within 30 days of its mailing shall be deemed consent. All associated material objects, funerary objects and human remains removed during such an excavation shall be reinterred at the archaeologist's expense under the supervision of the Indian tribe.

(2) In order to determine the appropriate Indian tribe under this section and ORS 97.745, a professional archaeologist or other person shall consult with the Commission on Indian Services which shall designate the appropriate tribe. [1977 c.647 s.3; 1979 c.420 s.2; 1981 c.442 s.5; 1993 c.459 s.11]

**97.760 Civil action by Indian tribe or member; time for commencing action; venue; damages; attorney fees.**

(1) Apart from any criminal prosecution, an Indian tribe or enrolled member thereof shall have a civil action to secure an injunction, damages or other appropriate relief against any person who is alleged to have violated ORS 97.745. The action must be brought within two years of the discovery of the violation by the plaintiff. The action may be filed in the circuit court of the county in which the subject grave, cairn, remains or artifacts are located, or within which the defendant resides.

(2) Any conviction pursuant to ORS 97.990 (5) shall be prima facie evidence of a violation of ORS 97.745 in an action brought under this section.

(3) If the plaintiff prevails:

(a) The court may grant injunctive or such other equitable relief as is appropriate, including forfeiture of any artifacts or remains acquired or equipment used in the violation. The court shall order the disposition of any items forfeited as it sees fit, including the reinterment of any human remains in accordance with ORS 97.745 (1);

(b) The plaintiff shall recover imputed damages in an amount not to exceed \$10,000 or actual damages, whichever is greater. Actual damages include special and general damages, which include damages for emotional distress;

(c) The plaintiff may recover punitive damages upon proof that the violation was willful. Punitive damages may be recovered without proof of actual damages. All punitive damages shall be paid by the defendant to the Commission on Indian Services for the purposes of Indian historic preservation; and

(d) An award of imputed or punitive damages may be made only once for a particular violation by a particular person, but shall not preclude the award of such damages based on violations by other persons or on other violations.

(4) The court may award reasonable attorney fees to the prevailing party in an action under this section. [1981 c.442 s.2; 1995 c.543 s.1; 1995 c.618 s.55]

**97.770** [1995 c.457 s.7; repealed by 1999 c.731 s.14]

**97.771** [1995 c.457 s.1; 1997 c.632 s.1; repealed by 1999 c.731 s.14]

## OREGON PIONEER CEMETERY COMMISSION

**97.772 Definition of “pioneer cemetery.”** For purposes of ORS 97.772 to 97.784, “pioneer cemetery” means any burial place that contains the remains of one or more persons who died before February 14, 1909. [1999 c.731 s.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 s.3; repealed by 1999 c.731 s.14]

**97.774 Oregon Pioneer Cemetery Commission; terms.** (1) There is established within the State Parks and Recreation Department the Oregon Pioneer Cemetery Commission 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 s.2]

**Note:** See note under 97.772.

**Note:** Section 3, chapter 731, Oregon Laws 1999, provides:

**Sec. 3.** Notwithstanding the term of office specified by section 2 of this 1999 Act [97.774], of the members first appointed to the Oregon Pioneer Cemetery Commission:

(1) One shall serve for a term ending July 1, 2000.

(2) Two shall serve for terms ending July 1, 2001.

(3) Two shall serve for terms ending July 1, 2002.

(4) Two shall serve for terms ending July 1, 2003. [1999 c.731 s.3]

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

**97.776 Commission members; nominations.** The members of the Oregon Pioneer Cemetery Commission must be citizens of this state who are well informed on the restoration and maintenance of pioneer cemeteries. The State Parks

and Recreation Director shall select members from nominations made by organizations of local pioneer 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 s.4]

**Note:** See note under 97.772.

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

**97.778 Chairperson; quorum; meetings.** (1) The Oregon Pioneer Cemetery Commission 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 s.5]

**Note:** See note under 97.772.

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

**97.780 Duties.** The Oregon Pioneer Cemetery Commission shall:

(1) Maintain a listing of all pioneer cemeteries in this state.

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

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

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

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

(6) Assist the director in locating and listing pioneer cemeteries.

(7) Assist cemeteries listed as pioneer cemeteries with the commission to rehabilitate and maintain those cemeteries and to promote public education relating to pioneer and 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 s.6]

**Note:** See note under 97.772.

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

**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 Pioneer Cemetery Commission. One staff person of the department shall be the executive secretary of the commission. [1999 c.731 s.8]

**Note:** See note under 97.772.

CEMETERY CARE

**97.810 Endowment care and nonendowed care cemeteries.** (1) An endowment care cemetery is one which after July 5, 1955, deposits with the trustee or custodian of its endowment care fund not less than the following amounts for plots sold after that date:

(a) Fifteen percent of the gross sales price with a minimum of \$5 for each grave or, when the gross sales price is paid in installments, 15 percent of each installment until at least 15 percent of the gross sales price has been deposited, with a minimum of \$5 for each grave.

(b) Five percent of the gross sales price for each niche or, when the gross sales price is paid in installments, five percent of each installment until at least five percent of the gross sales price has been deposited.

(c) Five percent of the gross sales price for each crypt or, when the gross sales price is paid in installments, five percent of each installment until at least five percent of the gross sales price has been deposited.

(2) The cemetery authority shall deposit with the trustee or custodian of its endowment care fund any payment received by it and required by subsection (1) of this section to be paid into such fund, within 30 days from the receipt of such payment.

(3) Within 75 days of the end of its fiscal year, each endowment care cemetery, except one owned by a city or a county, shall file with the Secretary of State a statement containing the following information pertaining to the endowment care fund: The total amount invested in bonds, securities, mortgages and other investments, the total amount of cash on hand not invested at the close of the previous calendar or fiscal year, the income earned by investments in the preceding calendar or fiscal year, the amounts of such income expended for maintenance in the preceding calendar or fiscal year, the amount paid into the fund in the preceding calendar or fiscal year and such other items as the Secretary of State may from time to time require to show accurately the complete financial condition of the trust on the date of the statement.

(4) All of the information appearing on the statement shall be verified by an owner or officer of the cemetery authority, and a copy of the statement shall be maintained in the business office of the cemetery authority.

(5) The Secretary of State shall have authority to require, as often as the Secretary of State deems necessary, the cemetery authority to make under oath a detailed report of the condition and assets of any cemetery endowment care fund.

(6) At the time of the filing of the statements of its endowment care fund each cemetery filing shall pay to the Secretary of State an annual fee as follows:

(a) Up to 100 interments per year, \$40.

(b) Over 100 interments per year, \$100.

(7) All fees received by the Secretary of State under this section shall be by the Secretary of State immediately turned over to the State Treasurer who shall deposit the moneys in the Division of Audits Account created under ORS 297.535.

(8) No cemetery shall operate after July 5, 1955, as an endowment care, permanent maintenance or free care cemetery until the provisions of this section are complied with. There shall be printed or stamped at the head of all contracts and certificates of ownership or deeds referring to plots in an endowment care cemetery, the following statement: "This cemetery is an endowment care cemetery," in lettering equivalent to at least 10-point No. 2 black type, and there shall be printed in the body of or stamped upon the above-described instruments the following statement: "Endowment care means the general care and maintenance of all developed portions of the cemetery and memorials erected thereon."

(9) A cemetery which otherwise complies with this section may be designated an endowment care cemetery even though it contains a small area which may be sold without endowed care, if it is separately set off from the remainder of the cemetery. There shall be printed or stamped at the head of all contracts and certificates of ownership or deeds referring to plots in this area the phrase "nonendowed care" in lettering equivalent to at least 10-point No. 2 black type.

(10) A nonendowed care cemetery is one that does not deposit in an endowment care fund the minimum specified in subsection (1) of this section.

(11) No cemetery shall in any way advertise or represent that it operates wholly or partially as an endowment care, permanent maintenance or free care cemetery, or otherwise advertise or represent that it provides general care or maintenance of all or portions of the cemetery or memorials erected thereon, until the provisions of this section are complied with. [Amended by 1955 c.545 s.2; 1965 c.396 s.4; 1967 c.213 s.1; 1987 c.295 s.1; 1995 c.144 s.4; 1999 c.66 s.1]

**97.820 Placing cemetery under endowed care; deposit; commingling endowment and special care funds; trustee or custodian of fund.** (1) Every cemetery authority that operates a cemetery may place its cemetery under

endowed care and establish, maintain and operate an endowment care fund. All endowed care funds shall be deposited with and held solely by the trustee or custodian appointed by the cemetery authority. The provisions of this subsection shall not apply to a city or county-owned cemetery, unless the city or county has elected to subject itself to ORS 97.810 to 97.865.

(2) Endowment care and special care funds may be commingled for investment and the income therefrom shall be divided between the endowment care and special care funds in the proportion that each fund contributed to the principal sum invested. The income of the endowment care fund may be used only to finance the care of the cemetery.

(3) The cemetery authority shall appoint as sole trustee of the endowment care fund a trust company as defined in ORS 706.008 that is authorized to transact trust business in this state, or an insured institution as defined in ORS 706.008 that is authorized to accept deposits in this state. Such trust company or insured institution shall receive and accept the fund, including any accumulated endowment care fund in existence at the time of its appointment and perform such duties as are agreed upon in the agreement between it and the cemetery authority. An insured institution not qualified to transact trust business in this state may act as custodian of such endowment care fund provided:

- (a) The duties of the insured institution are essentially custodial or ministerial in nature; and
- (b) The insured institution invests the funds from such plan only in its own time or savings deposits.

(4) The trustee or custodian may resign upon written notice to the cemetery authority or the cemetery authority may remove the trustee or custodian by written notice to it. In case of the resignation or removal of the trustee or custodian, the cemetery authority forthwith shall appoint a successor trustee or custodian and provide for the direct transfer of all endowed care funds and earnings thereon from the former trustee or custodian to the successor trustee or custodian.

(5) ORS 294.035 does not apply to funds held by a county or city under ORS 97.810 to 97.865. [Amended by 1955 c.545 s.3; 1965 c.396 s.5; 1985 c.450 s.1; 1987 c.295 s.2; 1993 c.18 s.19; 1993 c.229 s.22; 1993 c.318 s.11; 1997 c.167 s.2; 1997 c.631 s.395]

**97.825 Suits to enforce endowed care statutes; attorney fees.** (1) Should the cemetery authority fail to remit to the trustee or trustees in accordance with the law, the funds herein provided for endowment and special care, or fail to expend all such funds and generally care for and maintain any portion of a cemetery entitled to endowment care, any three lot owners whose lots are entitled to endowment care, or any one lot owner whose lot is entitled to special care, or the next of kin, heirs at law or personal representatives of such lot owners, shall have the right, or the district attorney of any county wherein is situated such lots, shall have the power, by suit for mandatory injunction or for appointment of a receiver, to sue for, to take charge of, and to expend such net income. Such suit may be filed in the circuit court of the county in which said cemetery is located, to compel the expenditure either by the cemetery authority or by any receiver so appointed by the court, of the net income from such endowment care fund for the purposes set out in ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990.

(2) When the Secretary of State has reason to believe that a cemetery endowment care fund does not conform to the requirement of law, or when the Secretary of State has reason to believe that any cemetery is operating in violation of ORS 97.810 or 97.820, or when an endowment care cemetery fails after 30 days' notice of delinquency to make any report to the Secretary of State required by ORS 97.810, the Secretary of State shall give notice of the foregoing to the trustee or trustees of the cemetery endowment care fund, the cemetery for the benefit of which the fund is established, the Attorney General of Oregon and the State Mortuary and Cemetery Board. Within 90 days after the receipt of such notice, the Attorney General shall institute suit in the circuit court of any county of this state in which such cemetery is located, for a mandatory injunction against further sales of graves, plots, crypts, niches, burial vaults, markers or other cemetery merchandise by such cemetery or for the appointment of a receiver to take charge of the cemetery, unless the Attorney General shall prior to that time be notified by the Secretary of State that such failure to conform to the requirements of the law or to report has been corrected.

(3) If a trustee fails to perform the duties of the trustee under ORS 97.810 to 97.920, the trustee shall be liable for any damage resulting from that failure to any lot owners or the next of kin, heirs at law or personal representatives of such lot owners.

(4) The court may award reasonable attorney fees, costs and disbursements to the prevailing party in an action under this section. [1955 c.545 s.5; 1965 c.396 s.6; 1985 c.450 s.2; 1999 c.67 s.1]

**97.830 Investment and reinvestment of principal of endowed care funds; use and application of income.** (1) The principal of all funds for endowed care shall be invested, from time to time reinvested and kept invested. If a trust agreement imposes upon the trustee or custodian the duty to direct the investment or reinvestment of endowed care

funds, the trustee or custodian shall perform this duty governed by the provisions of ORS 128.194 to 128.218. Otherwise, the cemetery authority, governed by the provisions of ORS 128.194 to 128.218, shall direct the investment and reinvestment of endowed care funds in the time or savings deposits of the custodian bank or savings association.

(2) The principal of invested endowed care funds shall never be voluntarily reduced, but shall be maintained separate and distinct by the trustee or custodian from all other funds except that it shall be proper to commingle endowment care funds with special care funds. The payment of charges chargeable against principal under ORS 129.115 (3) or of other expenses necessarily incurred in the administration of the trust in accordance with subsection (1) of this section shall not constitute a voluntary reduction of principal. The net income earned shall be used solely for the general care and maintenance of the cemetery property entitled to endowment care, as stipulated in the resolution, bylaw and other action or instrument by which the fund was established, and in such manner as the cemetery authority may from time to time determine to be in the best interests of such endowed property. Such net income shall never be used for the improvement or embellishment of undeveloped property offered for sale. [Amended by 1955 c.545 s.4; 1985 c.450 s.3; 1987 c.295 s.3; 1995 c.157 s.24; 1995 c.297 s.1]

**97.835 Limitation of duties and liability of trustee.** The trustee shall have no duty whatsoever to operate, maintain or to supervise the general maintenance of any endowment fund cemetery, and the trustee shall have no duty whatsoever to enforce collection of any of the trust funds either from the purchasers of lots, or from the cemetery authority, and the trustee shall have no duty whatsoever to see to the application of the net income after payment of the net income to the cemetery authority. The trustee shall be entitled to rely without liability upon the affidavit of the cemetery authority showing the amount payable to the trustee as endowment care funds. [1955 c.545 s.6]

**97.840 Cemetery authority authorized to receive and hold gifts of property; disposition of gifts.** A cemetery authority which has established an endowment care fund may take, receive and hold any property, real, personal or mixed, bequeathed, devised, granted, given or otherwise contributed to it for its endowment care fund. Within 30 days of the receipt of such contributions, the cemetery authority shall deposit, with the trustee or custodian of the fund to which the property was contributed, all moneys and all documents or instruments of title or conveyance evidencing the contribution. As soon as practicable, the cemetery authority shall provide for the sale of all property for fair market value and, within 30 days of the receipt of the proceeds thereof, shall deposit the proceeds with the trustee or custodian. The trustee or custodian shall execute all documents necessary to effect the sale, consistent with the purposes of this section. [Amended by 1987 c.295 s.4]

**97.850 Endowment and special care funds are charitable.** The endowment and special care funds and all payments or contributions to them are expressly permitted as and for charitable and eleemosynary purposes. Endowment care is a provision for the discharge of a duty from the persons contributing to the persons interred and to be interred in the cemetery and a provision for the benefit and protection of the public by preserving and keeping cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are situated.

**97.860 Agreements for care.** (1) Upon payment of the purchase price, including the amount fixed as a proportionate contribution for endowed care, there may be included in the deed of conveyance, or by separate instrument, an agreement to care, in accordance with the plan adopted, for the cemetery and its appurtenances to the proportionate extent the income received by the cemetery authority from the contribution permits.

(2) Upon the application of an owner of any plot, and upon the payment by the owner of the amount fixed as a reasonable and proportionate contribution for endowed care, a cemetery authority may enter into an agreement with the owner for the care of the plot of the owner and its appurtenances.

**97.865 Cemetery authority; application of ORS 97.810 to 97.865; filing with Secretary of State.** (1) The cemetery authority that operates a cemetery for any religious or eleemosynary corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination and any county or city may make an irrevocable election to have ORS 97.810 to 97.865 apply to any cemetery controlled or operated by the cemetery authority, county or city by filing a written statement indicating such action with the Secretary of State. The statement shall be in the form prescribed by the Secretary of State and shall contain the information specified by the Secretary of State.

(2) When a cemetery authority, county or city files a statement described in this section with the Secretary of State,

ORS 97.810 to 97.865 will apply to a cemetery controlled or operated by the cemetery authority, county or city beginning on the first day of the fiscal year next following the filing of the statement. [1997 c.167 s.4]

**97.870 Unused and uncared for portions of cemetery declared common nuisances.** In all cases where a cemetery authority has owned a site for a cemetery for more than 40 years and has during that period sold lots, subdivisions of lots, pieces or parcels of the cemetery for burial purposes and the grantee or party claiming through the grantee has not used portions of such lots, subdivisions of lots, pieces or parcels of the cemetery for purposes of burial and has not kept them free of weeds or brush, but has allowed them to remain entirely unused for more than 40 years or uncared for and unused for more than 20 years prior to the adoption of the resolution provided for in ORS 97.880, and such lots, subdivisions of lots, pieces and parcels of the cemetery are adjacent to improved parts thereof, and by reason of their uncared-for condition detract from the appearance of the cemetery and interfere with the harmonious improvement thereof, and furnish a place for the propagation of weeds and brush, thereby becoming a menace to adjacent property, such lots, subdivisions of lots, pieces and parcels of such cemetery, which are unused and uncared for as aforesaid, hereby are declared to be a common nuisance and contrary to public policy. The provisions of this section are not applicable to portions of cemeteries which have been or are sold with agreements between the cemetery authority or its successor in interest, or both, and the grantee providing for endowment care, permanent care, maintenance or free care. [Amended by 1965 c.396 s.7]

**97.880 Resolution declaring a nuisance.** The governing board of a cemetery authority described in ORS 97.870 may adopt a resolution declaring such unused and unimproved portion of its cemetery as is described in ORS 97.870 a common nuisance and an abandoned and unused portion of such cemetery, and may direct its officers to file the complaint described in ORS 97.890. [Amended by 1983 c.740 s.9]

**97.890 Complaint.** (1) Upon the adoption of the resolution described in ORS 97.880 the officers of the cemetery association may file a complaint in the circuit court for the county in which the cemetery is located against the owners, holders or parties interested in such abandoned portion of its cemetery demanding that the court require such owners, holders or interested parties to keep the premises clear of weeds and brush and in condition in harmony with other lots and, if the owners, holders, or interested parties fail to appear in court and comply with the order of the court, demanding that the court make a decree declaring such portions of the cemetery a common nuisance, directing the governing board to abate the nuisance by clearing the premises and keeping them clear of weeds and brush, creating a lien upon such lots and parcels in favor of the cemetery association or other proprietor, decreeing that the lien be foreclosed and the lots and parcels be sold in the same manner as other sales upon execution are made and authorizing the governing board to become a purchaser thereof on behalf of the association or the proprietor.

(2) In such suit any number of owners of different lots, subdivisions of lots, pieces or parcels of the cemetery may be included in the one suit.

(3) It is a sufficient designation of the property so abandoned and unimproved to give the lot number or portion thereof, or a description of the piece or parcel having no lot number, together with the name of the owner thereof, as appears on the record of the cemetery association.

(4) In addition to the names of the persons that appear on the records of the cemetery association as the record owners of such unused and unimproved portions of the cemetery, the plaintiff shall include as a defendant in a complaint the following: "Also all other persons unknown claiming any right, title, estate, lien or interest in the unused and unimproved portions of the cemetery described in the complaint."

**97.900 Summons.** (1) Summons shall be served upon all owners or holders who are residents of this state in like manner as in service of summons in a civil action if such owners and holders are known to the sheriff in the county in which the cemetery is located. If the defendants are not known to the sheriff, it is sufficient to serve the owners and holders whose names appear on the tax rolls of the county for the year previous to that in which the suit is started. The plaintiff is not required to mail a copy of the summons or complaint to nonresident defendants.

(2) All owners and holders of such unimproved lots whose names do not appear on the tax rolls as aforesaid as shown by the return of the sheriff may be served by publication in any legal newspaper published in the county in which the cemetery is located for four consecutive weeks upon return of the sheriff that such owners and holders are not known and cannot be served in the jurisdiction of the sheriff.

(3) The published summons shall contain the names of the record owners, as shown by the records of the cemetery association, and "also all other persons unknown claiming any right, title, estate, lien or interest in the unused and



unimproved portions of the cemetery described in the complaint,” together with a brief description of the lot, or subdivisions of lots, pieces or parcels of the cemetery and a statement setting forth the order and decree described in ORS 97.890 (1) for which the plaintiff has applied to the court in the complaint. Such summons shall require all parties defendant to appear and show cause why an order should not be made declaring the unused and unimproved portions of the cemeteries to be a common nuisance, directing the cemetery association or other proprietor to abate the nuisance, creating a lien thereon, decreeing that it be foreclosed and directing that the unused and unimproved portion of the cemetery be sold within four weeks from and after the date of the first publication thereof.

**97.910 Disuse as prima facie evidence of abandonment.** In all cases arising under ORS 97.870 to 97.900, the fact that the owner, holder or interested party, of the unused and unimproved portion of the cemetery has not, for a term of 20 years or more, used the plot and has failed to keep it clear of weeds or brush is prima facie evidence that the owner, holder or interested party has abandoned it.

**97.920 Decree declaring nuisance, authorizing abatement and creating and foreclosing lien.** Upon the failure of the owner of the premises to comply with the order of the court requiring proper care of the premises or upon the failure of any of the defendants to appear and answer the complaint or upon the trial of the cause, if the court finds that the allegations of the complaint are supported by the evidence and that the summons has been served as provided in ORS 97.900, the court may enter a decree in accordance with the allegations of the complaint and the provisions of ORS 97.890 (1).

## FEDERAL AID FOR CEMETERIES

**97.930 Department of Transportation use of federal moneys for cemetery care.** (1) In addition to any other duties of the Department of Transportation, the department may apply for, accept and expend, use or dispose of moneys and property received from the federal government for the purpose of establishing any program of restoration, care, maintenance and preservation of cemeteries. The department shall administer any funds received pursuant to this section in accordance with the conditions established by the federal government.

(2) In carrying out the provisions of subsection (1) of this section the Department of Transportation may contract or consult with any nonprofit corporation established for the purpose of promoting cemetery care and maintenance. [1977 c.715 ss.2,3]

## ANATOMICAL GIFTS

**97.950 Definitions for ORS 97.950 to 97.964.** As used in ORS 97.950 to 97.964:

(1) “Anatomical gift” means a donation of all or part of a human body to take effect upon or after death.

(2) “Capable” has the meaning given in ORS 127.505 (13).

(3) “Decedent” means an individual who is dead as defined under ORS 432.300. “Decedent” includes a stillborn infant or fetus.

(4) “Document of anatomical gift” means a driver license or identification card endorsed with an appropriate code, a will, an advance directive or other signed document used to make an anatomical gift.

(5) “Donor” means an individual who makes an anatomical gift of all or part of that individual's body.

(6) “Enucleator” means a licensed embalmer, apprentice embalmer or eye bank technician that has completed a course in eye enucleation and has a certificate of competence from an agency or organization designated by the Board of Medical Examiners for the purpose of providing the training.

(7) “Hospital” means a facility licensed, accredited or approved as a hospital under the laws of any state or a facility operated as a hospital by the United States Government, a state or a subdivision of a state.

(8) “Identification card” means the card described in ORS 807.400 or a comparable provision of the motor vehicle laws of another state.

(9) “Part” means an organ or part thereof, tissue, eye or part thereof, bone, artery, blood, fluid or other portion of a human body.

(10) “Physician” means an individual licensed or otherwise authorized to practice medicine under the laws of any state.

(11) “Procurement organization” means an agency licensed, accredited or approved under the laws of any state for the acceptance, procurement, distribution or storage of human bodies or parts.

(12) "Technician" means an individual who is employed and authorized by a procurement organization to remove or process a part. [1995 c.717 s.1; 1997 c.472 s.4; 1999 c.201 s.1]

**Note:** 97.950 to 97.964 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.

**97.952 Personal authority to make anatomical gift; procedure; delegation.** (1) A capable individual who is at least 18 years of age may be the donor of an anatomical gift.

(2) An anatomical gift may be made by a document of anatomical gift signed by the donor. If the donor cannot sign, the document of anatomical gift must be signed by another individual and two witnesses, all of whom have signed at the direction and in presence of the donor and of each other and state that it has been so signed.

(3) An anatomical gift may be made by a designation to be provided on the driver license and identification card of an individual who is at least 18 years of age. The holder of a driver license or identification card desiring to be designated as a donor on the license or card must furnish a statement at the time of application for granting or renewing the license or card in the manner provided by the Department of Transportation. Signature of the license or card shall validate it as a document of anatomical gift. Revocation, cancellation or suspension of a driver license shall not invalidate the anatomical gift. Cancellation of a card or lapse of a license revokes the anatomical gift indorsement, which must be reinstated upon the reinstatement of the license or card. The form prepared by the Department of Transportation and incorporated in its application shall be in all respects a valid document of anatomical gift.

(4) An anatomical gift by will takes effect upon death of the testator, whether the will is probated or not probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(5) A donor may amend or revoke an anatomical gift not made by will only by:

(a) A signed statement;

(b) An oral statement made in the presence of two individuals;

(c) Any form of communication during a terminal illness or injury addressed to a physician or surgeon;

(d) In the case of an anatomical gift made by driver license or identification card application, lapse of the license or lapse or cancellation of the card or by a statement made and delivered in the manner specified by the Department of Transportation; or

(e) Destruction, cancellation or mutilation of the document of anatomical gift in the case of an anatomical gift not made by driver license or identification card.

(6) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (5) of this section.

(7) An anatomical gift that is not revoked by the donor before death is irrevocable and:

(a) Does not require the consent or concurrence of any person after the death of the donor.

(b) Shall not be subject to cancellation or substantial revision by persons described in ORS 97.954 (1).

(8) In the absence of contrary indications by the donor, an anatomical gift of a part is not a refusal to give other parts or a limitation on an anatomical gift under ORS 97.954 or on a removal or release of other parts under ORS 97.956.

(9) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make an anatomical gift of a different part.

(10) If an individual has amended or revoked an anatomical gift made by driver license or identification card, the Department of Transportation shall issue a replacement license upon payment by the individual of the department's fee for reissuance of the license or card.

(11) Notwithstanding any other requirement of this section, a license, card or document purporting to evidence the creation of a valid anatomical gift under the laws of another state shall be valid in this state absent evidence of revocation.

(12) Any anatomical gift validly made under ORS 97.275 (1993 Edition) prior to September 9, 1995, and not revoked shall continue in effect for its original period of validity.

(13) An individual described in subsection (1) of this section or any person authorized in ORS 97.954 (1) to make an anatomical gift of all or any part of a decedent's body may delegate such authority to any person 18 years of age or older. Such delegation shall be in writing and signed by the person delegating the authority. The person to whom the authority is delegated shall have the same priority under ORS 97.954 (1) as the person delegating the authority.

(14) If the individual described in subsection (1) of this section issues more than one authorization or donation of

anatomical gift for all or any part of the individual's body, only the most recent authorization or donation shall be binding. [1995 c.717 s.2; 1997 c.472 s.5]

**Note:** See note under 97.950.

**97.954 Authority to make anatomical gift of body of decedent; priority; procedure.** (1) A person within the first applicable listed class among the following listed classes that is available at the time of death or, in the absence of actual notice of a contrary direction by the decedent or actual notice of opposition by a member of the same class or a member of a prior class, may make an anatomical gift of all or a part of the body of a decedent for any authorized purpose:

- (a) The spouse of the decedent;
- (b) A son or daughter of the decedent 18 years of age or older;
- (c) Either parent of the decedent;
- (d) A brother or sister of the decedent 18 years of age or older;
- (e) A guardian of the decedent at the time of death;
- (f) A person in the next degree of kindred to the decedent;
- (g) The personal representative of the estate of the decedent;
- (h) The person nominated as the personal representative of the decedent in the decedent's last will; or
- (i) A public health officer.

(2) No person, hospital or procurement organization shall accept a gift made by an individual under subsection (1) of this section if:

- (a) An individual in a prior class is available at the time of death to make an anatomical gift;
- (b) The individual proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent;

or

(c) The individual proposing to make an anatomical gift knows of an objection to making an anatomical gift by another member of the individual's class or a member of a prior class.

(3) An anatomical gift by an individual authorized under subsection (1) of this section must be made by a document of anatomical gift signed by the individual or the individual's telegraphic, recorded telephonic or other recorded message, or other form of communication from the individual that is contemporaneously put in written form and signed by the recipient of the communication.

(4) An anatomical gift by an individual authorized under subsection (1) of this section may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, technician or enucleator removing the part knows of the revocation. [1995 c.717 s.3; 1997 c.472 s.6; 1999 c.201 s.2]

**Note:** See note under 97.950.

**97.956 Authority of medical examiner or local public health officer over body within examiner's jurisdiction or officer's custody; documentation.** (1) A medical examiner may release and permit the removal of a part from a body within the examiner's jurisdiction for transplantation, therapy or research if:

- (a) The examiner has received a request for the part from a hospital, physician or procurement organization;
- (b) The examiner does not know of a refusal or contrary indication by the decedent or objection by a person having priority to act as listed in ORS 97.954 (1);
- (c) The person requesting the part has made a reasonable effort to contact the person having priority to act as listed in ORS 97.954 (1);
- (d) The removal of the part is by a physician or technician or, in the case of eyes, by an enucleator, physician or technician;
- (e) The removal does not interfere with any autopsy or investigation;
- (f) The removal is performed in accordance with accepted medical standards; and
- (g) The person performing the removal also performs a restoration of the removed part, if appropriate.

(2) If the body is not within the jurisdiction of the medical examiner, the local public health officer may release and permit the removal of a part from a body in the local public health officer's custody for transplantation, therapy or research, if the requirements of subsection (1)(a) to (g) of this section are met.

(3) An official releasing and permitting the removal of a part shall retain, in the permanent death record of the

decedent, documentation of the person making the request, the date and purpose of the request, and the person to whom it was released.

(4) For purposes of this section, "reasonable effort" means:

(a) The person requesting the part has attempted to contact the person having priority to act as listed in ORS 97.954 (1), following notification of the death by the medical examiner or other authority or medical facility, and to obtain that person's consent or objection to the removal of the part requested;

(b) Unless the elapsed time from the notification of death would render the part useless for the purpose intended, any attempt described in paragraph (a) of this subsection that was unsuccessful has been repeated at least two additional times by telephone; and

(c) The attempts shall be documented by the person requesting the part, and the documentation shall be maintained in that person's permanent file. [1995 c.717 s.4; 1997 c.472 s.7; 1999 c.201 s.3]

**Note:** See note under 97.950.

**97.958 Duties of hospital staff at or near time of patient's death; discussion with patient and family; search for document of gift.** (1) If, at or near the time of death of a hospitalized patient, there is no medical record that the patient has authorized an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss with the patient and family members the option to make or refuse to make an anatomical gift. The administrator or representative may request the making of an anatomical gift under ORS 97.952 or 97.954. The request must be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards. An entry must be made in the medical record of the patient, stating the name and affiliation of the person making the request and the name, response and relationship to the patient of the individual to whom the request was made. The Health Division shall adopt rules to implement this subsection.

(2) The following persons shall, circumstances permitting, make a reasonable search for a document of anatomical gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(a) A law enforcement officer, firefighter, paramedic or other emergency rescuer who finds an individual whom the rescuer believes to be dead or near death; and

(b) A hospital, upon the admission of an individual at or near the time of death, if there is not immediately available any other source of that information.

(3) If a document of anatomical gift is located by the search required by subsection (2)(a) of this section, and the individual is taken to a hospital, the hospital must be notified of the contents of the document, if any, and the document must be sent to the hospital.

(4) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been authorized under ORS 97.952 or 97.954, or a release and removal of a part has been permitted under ORS 97.956, or that a patient or an individual in transit to the hospital is identified as a donor, the hospital shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift or release and removal of a part.

(5) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability. [1995 c.717 s.5; 1997 c.472 s.8; 1999 c.201 s.4]

**Note:** See note under 97.950.

**97.960 Delivery of document of anatomical gift; effect on validity of gift.** Delivery of a document of anatomical gift during the lifetime of a donor is not required for the validity of an anatomical gift. If delivery of a document of anatomical gift is desired, it may be deposited in any hospital, procurement organization or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the death of a donor, the person in possession shall allow the interested person to examine or copy the document of anatomical gift. [1995 c.717 s.6; 1997 c.472 s.9]

**Note:** See note under 97.950.

**97.962 Rights of procurement organization accepting anatomical gift; autopsies.** (1) Rights of a procurement

organization accepting an anatomical gift are superior to rights of others except with respect to autopsies required by law. A procurement organization may accept or reject an anatomical gift. If a procurement organization accepts an anatomical gift of an entire body, the organization, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is of a part of a body, the procurement organization, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(2) The time of death must be determined by a physician who attends the donor at death or, if none, the physician who certifies the death. Neither the physician who attends the donor at death nor the physician who determines the time of death may participate in the procedures for removing or transplanting a part.

(3) If there has been an anatomical gift, a technician may remove any donated parts other than eyes and an enucleator may remove any donated eyes after determination of death by a physician. [1995 c.717 s.7]

**Note:** See note under 97.950.

**97.964 Anatomical gift as authorization for examination to assure medical acceptability.** (1) An anatomical gift authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended, including but not limited to access to the decedent's medical chart and permission to test a sample of the decedent's blood for communicable diseases.

(2) ORS 97.950 to 97.964 are subject to the laws of this state governing autopsies.

(3) A hospital, physician, medical examiner, enucleator, technician or other person who acts or makes a good faith effort to act in accordance with ORS 97.950 to 97.964 shall not be liable thereby in a civil action or criminal proceeding.

(4) An individual who makes an anatomical gift under ORS 97.952 or 97.954 and the individual's estate are not liable for any injury or damage that may result from the making or the use of the anatomical gift. [1995 c.717 s.8]

**Note:** See note under 97.950.

**97.966 Liability of executor who carries out anatomical gift.** A person named executor who carries out the gift of the testator made under the provisions of ORS 97.950 to 97.964 before issuance of letters testamentary or under a will which is not admitted to probate shall not be liable to the surviving spouse or next of kin for performing acts necessary to carry out the gift of the testator. [Formerly 97.295]

**97.968 Transplants not covered by implied warranty.** (1) The procuring, processing, furnishing, distributing, administering or using of any part of a human body for the purpose of injecting, transfusing or transplanting that part into a human body is not a sales transaction covered by an implied warranty under the Uniform Commercial Code or otherwise.

(2) As used in this section, "part" means organs or parts of organs, tissues, eyes or parts of eyes, bones, arteries, blood, other fluids and any other portions of a human body. [Formerly 97.300]

## PENALTIES

**97.990 Penalties.** (1) Violation of ORS 97.160 is a misdemeanor and upon conviction is punishable by a fine not exceeding \$100.

(2) Every officer, agent or employee of this state or of any county, city or any other municipal subdivision thereof who willfully neglects to notify the Demonstrator of Anatomy of the existence of a body as required by ORS 97.170 to 97.210 or who refuses to deliver possession of such body according to the provisions of ORS 97.170 to 97.210 or who mutilates or permits any such body to be mutilated so that it is not valuable for anatomical purposes or who refuses or neglects to perform any of the duties enjoined upon the officer, agent or employee by ORS 97.170 to 97.210, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$50 for each offense.

(3) Violation of ORS 97.520, 97.530 or 97.540 is a misdemeanor.

(4) Any person, association or corporation who operates a cemetery, mausoleum or columbarium contrary to the provisions of ORS 97.020 to 97.040, 97.110 to 97.130, 97.145, 97.150, 97.220, 97.310 to 97.360 (1), 97.440, 97.510 to 97.560, 97.710, 97.720, 97.810, 97.820, 97.830 and 97.840 to 97.860 is guilty of maintaining a nuisance and, upon conviction, is punishable by a fine not exceeding \$500 or by imprisonment in the county jail for not more than six

months, or both.

(5)(a) Violation of ORS 97.745 is a Class C felony.

(b) In addition to any other sentence provided by law for criminal violations of ORS 97.745, the judge shall impose a penalty not to exceed \$10,000 on any person convicted of a criminal violation of ORS 97.745.

(6) In addition to the penalty of subsection (5) of this section, any native Indian artifacts or human remains taken by, or in possession of, any person sentenced under subsection (5) of this section and all equipment used in the violation may be ordered forfeited by the court in which conviction occurs, and may be disposed of as the court directs. [Subsections (5) to (7) enacted as 1977 c.183 s.12; subsection (8) enacted as 1977 c.647 s.4; 1979 c.420 s.3; 1983 c.526 s.6; 1985 c.198 s.5; subsections (5) to (7) renumbered 127.990 in 1991; subsection (5)(b) of 1995 Edition enacted as 1995 c.543 s.3]

**Note:** 97.990 (5)(b) was added to and made a part of 97.740 to 97.760 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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