

WHO IS IN MY GRAVE?
A COMPARISON OF STATE AND LOCAL
LAWS IN ILLINOIS AND UTAH THAT
GUIDE RESOLUTION OF GRAVE PLOT
OWNERSHIP CLAIMS.

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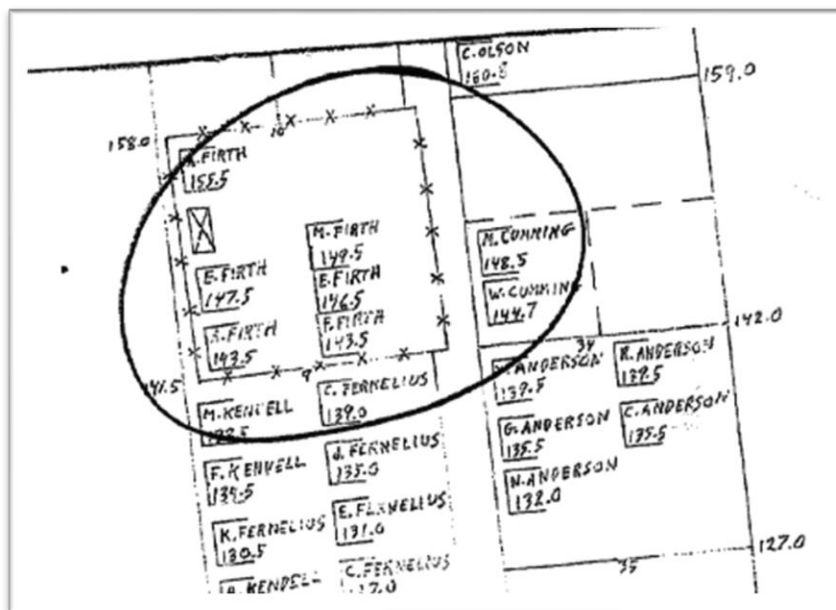
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The above graphic is an example of a historical cemetery sexton’s map from the cemetery office in Uintah, Utah. The map shows the Firth Family plot of eight graves purchased in 1906.² Two empty graves remain available for use.

² Copy of the Firth Family cemetery plot from the City of Uintah, Utah, provided to Anne Hansen (May 29, 2014).

I. INTRODUCTION

On a bright, spring morning, Emily and Arthur³ travel to visit the graves of Emily's parents in her hometown cemetery, a hundred miles from where she now lives with her husband and children. Emily regrets not being able to visit her parents' graves more often but is always sure to visit at least once a year on Memorial Day. This Memorial Day is no different. Prepared with a large flower arrangement filled with daisies and spring crocuses, Emily arrives at the cemetery with a heart full of fond memories and sadness that lingers from her loss.

The small cemetery is the burial place of Emily's family back six generations. Her family was among the original settlers that founded the area. Her parents' graves are among the many relatives buried next to Emily's grandparents and baby sister. Emily remembers when her parents brought her little sister home from the hospital. It had been such an exciting and happy day for her family. The happiness of that day was equal to the incredible sadness and grief they all felt when her baby sister died unexpectedly in her sleep. Emily's mother was devastated and visited the lonely grave once a week for the rest of her life. Emily remembered the many times during her childhood and teenage years she accompanied her mother to the cemetery. They visited on holidays and her sister's birthday to decorate the small headstone with toys and flowers. When Emily's mother passed away, Emily promised her that she would continue to care for and look over the small grave.

As the car pulls up the small cemetery lane, Emily notices something strange. A large, unfamiliar headstone has been placed near her parents' graves that was not there the year before. Emily and Arthur approach with the flowers to investigate the new addition. The foreign headstone had been placed on the grave next to her sister's. Adding to Emily's shock, the name on the stone is that of a stranger. The grave plot next to her sister's was owned by Emily's family and was unused. Emily's father had left the grave plot to her in his will for her personal use, although the original deed was not included in his final documents.

Shocked and distraught, Emily openly weeps as Arthur tries to comfort her. Thinking of a stranger invading her family's plot, and, in her mind, disturbing her baby sister's grave is unfathomable. How could Emily have failed her mother and sister so miserably? Arthur tries to contact an employee at the cemetery but is unsuccessful due to the holiday. Emily becomes increasingly more upset as they wait overnight to contact someone about the apparent mistake. The next day brings more questions than answers and does

³ Emily and Arthur are not real people; this narrative provides an insight into the emotional impact issues relating to cemeteries have on the lives of real people, and the complexity of resolving claims.

nothing to relieve Emily's now immense grief. The cemetery sexton⁴ explains that the grave was used by someone claiming to be a family member. The grouping of grave plots had been purchased by Emily's great-grandfather and divided among his children in the 1920s. The graves had been used in succession throughout the previous generations, until now.

With the help of the sexton, Emily discovers that the person buried in the grave is the spouse of a distant descendant of the original grave plot owner. A person, in Emily's mind, completely unrelated to the family. The distant relative, Emily's second cousin-once-removed, claimed the ownership and use of the grave plot that remained in Emily's great-grandfather's name. After showing proof of a family connection, the cemetery authorized the use and transferred the grave into that family member's name.

This distant cousin had taken up a new hobby earlier in the year, genealogy.⁵ Through researching census, vital birth and death records, family history documents, and other sources, she had been learning about her ancestors. She learned what countries they came from, what they did for work, where they died, and where they were buried. This research led her to the graves of her great-great-grandparents, where she discovered an unused grave in the family plot, still in her great-great-grandfather's name. When her husband died unexpectedly a few months later and she did not have the money to purchase a grave plot, her discovery became a blessing. After providing the cemetery sexton a family history chart showing she was related to the long-deceased owner of the grave, she was allowed to use the grave plot for her husband's burial.

Despite Emily's father gifting the grave to her in his will, the lack of the original deed certificate, and the fact that the grave was never transferred into his name gives Emily no obvious recourse. Finding no resolution through conversations with the cemetery sexton, Emily confronts the mayor of the town, her grief turned into anger. She is unable to be reasoned with as she demands reparation for lost loved ones. Despite established local ordinances and guiding state statutes, the mayor responds to Emily's grief and the uncomfortable nature of the situation by authorizing the sexton to provide two free grave plots to Emily with the mayor's sincerest apologies (a potential revenue loss to the cemetery of just over \$3,000).⁶

⁴ Cemetery Sexton: the office of a person who is in charge of a cemetery, the caretaker. The responsibilities of a sexton include sales, keeping records of burials, grave ownerships, keeping updated maps, opening and closing of graves, maintaining the landscape, and overseeing all operation of the cemetery. *Sexton Records*, FAMILYSEARCH, https://www.familysearch.org/wiki/en/Sexton_Records (last updated September 20, 2017).

⁵ Genealogy: the study of family lines of ancestors. *Genealogy*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/genealogy> (last visited Mar. 14, 2020).

⁶ Based on the purchase price and perpetual care fee for two graves in the City of South Jordan, Utah. *See* appendix.

Cemetery claims and issues, such as the one depicted above, are rarely reported, publicized, or submitted to legal process in the courts. Problems arising from the death or burial of a loved one evoke deep feelings of empathy and sympathy from the general public.⁷ Despite following well-established rules, ordinances, and statutes, a cemetery authority appears unfeeling, heartless, or worse when such problems are made public by grieving family members.⁸ This leads elected officials of cemetery authorities and/or the employees to respond quickly and outside of existing policies and rules to diffuse such situations as fast as possible to avoid public scrutiny.

Grave plot ownership disputes arise more commonly in situations related to divorcing couples or siblings following the death of a parent. Claims are made for other reasons as well, including fraud resulting in financial gain from reselling the grave plots. As described in the narrative above, the growing interest in genealogy has the potential for increasing the number and frequency of claims.

Genealogy has been growing in popularity over the last decade, as detailed in Section II(A) of this paper. Hobby-genealogists commonly search death, burial, and cemetery records to locate important information about their ancestors such as birth dates, death dates, and possibly spouse and children's names. If unable to find the information online, or to seek a connection with a deceased family member, a person may visit the cemetery in person. This increase in the number of people looking at burial maps, or visiting in person, naturally increases the number of people who are aware of empty graves near or next to their interred ancestors.

Due to the rarity of legal claims raised in this area, the nuances of the laws specific to cemeteries and burials are generally unfamiliar to most legal practitioners, including those representing the cemetery authorities themselves. This article begins with a background section establishing the growth and popularity of the genealogy industry thus demonstrating the reasonable likelihood of increased future claims. Following the genealogy section, the underlying foundational common law that directs essential rights related to (1) the final disposition and burial of a deceased person, and (2) rights related to the burial place are explained.⁹ These deep-rooted rights form the basis from which current statutes and rules of various jurisdictions have been created.¹⁰

⁷ See Rick Aaron, *Repossessed? Draper City Councilman Suggests Burial Plot Buyback*, ABC4.COM, (Oct. 31, 2019, 6:25 PM), <https://www.abc4.com/news/local-news/repossessed-draper-city-councilman-suggests-burial-plot-buyback/>.

⁸ *Id.*

⁹ TANYA D. MARSH & DANIEL GIBSON, *CEMETERY LAW: THE COMMON LAW OF BURYING GROUNDS IN THE UNITED STATES* 12 (2015).

¹⁰ *Id.*

Cemetery laws vary from state to state, and the enforced rules and regulations differ from one cemetery to another within those states. Section III provides an outline of the laws relating to grave plot ownership in Illinois and Utah for a comparative view. Illinois represents an older, longer-established state in the union compared to Utah. Utah is home to the most commercial organizations dedicated to genealogy and the United States' largest genealogical library. Additionally, as a means of mitigating the number of future grave plot ownership claims, Section III also discusses the process cemetery authorities may use for repossessing abandoned, unused graves by statute.

The last subsection in Section III provides a more granular view by examining the related municipal ordinances and cemetery rules and regulations from a representative municipality in each state. The two municipalities, Bloomington, Illinois, and South Jordan, Utah, serve similar populations, both between 74,000 and 78,000, experience around the same number of burials annually (between 65 and 80), and have cemeteries that were established in the early to mid-1800s (1831 and 1863 respectively).¹¹

Section IV analyzes the effectiveness of the state and local laws and rules in resolving the issue of grave plot ownership claims. Finally, Section V provides alternative approaches and adjustments that may be made to these laws and rules to strengthen the cemetery authorities' ability to resolve ownership claims and minimize the number of possible future claims.

II. BACKGROUND

A. The Popularity of Genealogy Increases Risk of Grave Ownership Disputes

The growing popularity of genealogy as a hobby increases the risk of possible grave plot ownership claims by increasing the awareness of more people to vacant, unused graves in ancestral family plots. Genealogy experts often direct newcomers to the vast resource of genealogical information that can be found in cemeteries.¹² Cemetery records can hold such vital information including a person's birth and death date, possible military service, and spouse or children's name.¹³ Additionally, headstones may include inscriptions denoting parent's names, or other descriptive information about the individual.¹⁴ If the records are not available online, the amateur genealogist is encouraged to visit in person, if possible, to gather the

¹¹ See appendix for a comparative view of the cities' demographics and cemetery statistics.

¹² *Using Cemeteries and Funeral Homes for Genealogy*, GENEALOGY.COM, <https://www.genealogy.com/articles/research/00000049.html> (last visited Dec. 30, 2019).

¹³ *Id.*

¹⁴ *Id.*

information.¹⁵ By reviewing online records, maps, or visiting cemeteries in person, it is reasonable to assume a vacant grave near or next to an ancestor will become known to the new genealogist.

In 2014, Marketwired and Ancestry.com reported in a news release that in the preceding decade, “online family history research [had] grown in the United States by over fourteen times.”¹⁶ In May 2019, Ancestry.com, a company dedicated to providing genealogical data and research, including DNA testing, hit a milestone by surpassing 15 million DNA customers.¹⁷ Ancestry launched DNA testing worldwide in 2015, offering everyday customers the opportunity to know what geographical areas of the world their ancestors came from.¹⁸ The global market for genealogy products and services is projected to reach over \$12 billion between 2019 and 2029.¹⁹ In addition to nine popular genealogy themed television programs (Who Do You Think You Are?, Relative Race, The Generations Project, etc.), these services also include ancestral tourism.²⁰

“Ancestral tourism is a rapidly-growing sector of the tourism industry with the current wave of interest in genealogy.”²¹ This special tourism is sometimes referred to as heritage, roots, nostalgic, legacy, or genealogy tourism.²² Essentially, tourism can be categorized as genealogy tourism if the “visit . . . might be partly or wholly motivated by a need to connect or reconnect with an individual’s ancestral past.”²³ Ancestral tourism is reported as one of the fastest-growing segments of the heritage tourism market, riding upon a wave of interest by those researching their cultural and ethnic roots.²⁴ Expert genealogists encourage those new to the field to visit cemeteries in person to locate graves that cannot be found online, providing tips such as examining available cemetery maps and checking in with the cemetery office to gain information not available on headstones.²⁵

¹⁵ *Id.*

¹⁶ Leland Meitzier, *Family History Research Has Grown in the USA by 14 Times in the Past Decade*, GENEALOGYBLOG (Nov. 19, 2014), <https://www.genealogyblog.com/?p=33493>.

¹⁷ *AncestryDNA is Now Available in Canada*, ANCESTRY (June 9, 2015), <https://blogs.ancestry.com/ancestry/2015/06/09/ancestrydna-is-now-available-in-canada/>.

¹⁸ *Id.*

¹⁹ Shubham Bh, *Genealogy Products and Services Market Global Trends, Market Share, Industry Size, Growth, Opportunities, and Market Forecast 2019 to 2029*, MEDIUM (August 10, 2019), <https://medium.com/@shubhambhosale1911/genealogy-products-and-services-market-global-trends-market-share-industry-size-growth-31b803105339>.

²⁰ Sunny Jane Morton, *9 Must-See Genealogy TV Shows that will Inspire You*, FAMILY TREE, <https://www.familytreemagazine.com/premium/must-see-genealogy-tv/> (last updated Oct. 2019).

²¹ SANDRA L. BRAUN, ANCESTRAL AND DIASPORIC TOURISM: AN UNTAPPED POTENTIAL 42 (2018).

²² *Id.* at 43.

²³ *Id.*

²⁴ *Id.*

²⁵ Bryley Williams, *6 Quick Tips to Prepare for a Genealogy Cemetery Trip*, N.Y. GENEALOGICAL & BIOGRAPHICAL SOC’Y (Aug. 3, 2018), <https://www.newyorkfamilyhistory.org/blog/6-quick-tips-prepare-genealogy-cemetery-trip>.

B. Historical Overview of Cemetery Common-Law

Many American laws are rooted in English Common Law.²⁶ In England, prior to the American Revolution, cemeteries were usually established in churchyards and governed by ecclesiastical law.²⁷ When colonists came to North America, they created public cemeteries.²⁸ They did this to demonstrate a rejection of English customs and from a lack of government-established churches.²⁹ As colonies grew and towns became more developed, organized cemeteries were created and often plotted in the center of municipalities.³⁰ Not all of these cemeteries were owned or run by religious societies.³¹ Over time, many cemeteries became owned and managed by municipalities for the benefit of all residents.³² Municipalities were better able to maintain and care for the graves and landscaping, while also allowing the cemeteries to be open to the use of the public.³³

Municipal, corporate-owned, and even churchyard cemeteries began to sell property interests in grave plots for individual and family use.³⁴ Later, rather than providing a fee-simple type ownership to the land, the rights purchased were limited by deed or certificate to burial rights only.³⁵ This shift made the right more of a servitude on the land than an actual property interest, as it specifically narrowed the use to one purpose.³⁶

The owner of the burial rights, or that person's designee, alone was permitted to give authorization for the burial use of each plot.³⁷ These advances in the official interest of property led to the need for laws to ensure that the rights of the person to be buried, the owner of the graves, and the owner of the cemetery were all met and protected.³⁸ The existing statutory laws connect back to the common law rights of sepulcher and interment.³⁹

²⁶ TANYA D. MARSH & DANIEL GIBSON, CEMETERY LAW: THE COMMON LAW OF BURYING GROUNDS IN THE UNITED STATES 15 (2015).

²⁷ *Id.* at 196.

²⁸ *Id.* at 196-97.

²⁹ *Id.*

³⁰ *Id.* at 197.

³¹ TANYA D. MARSH & DANIEL GIBSON, CEMETERY LAW: THE COMMON LAW OF BURYING GROUNDS IN THE UNITED STATES 197 (2015).

³² *Id.*

³³ *Id.* at 245.

³⁴ *Id.*

³⁵ *Id.* at 245, 256.

³⁶ TANYA D. MARSH & DANIEL GIBSON, CEMETERY LAW: THE COMMON LAW OF BURYING GROUNDS IN THE UNITED STATES 247 (2015).

³⁷ *Id.* at 245.

³⁸ *Id.*

³⁹ *Id.* at 12.

The common law Right of Sepulcher is essentially the right to possess, bury, and protect the body of a deceased family member.⁴⁰ Prior to the burial or interment, this right attaches to the actual human remains and exists to protect the next-of-kin's right to preserve and dispose of the remains.⁴¹ Following the burial, this right attaches to the grave to protect and care for the grave.⁴²

In contrast to the Right of Sepulcher, the Right of Interment is the right to the physical burial plot, and is also divided into two phases.⁴³ The first applies when a grave is purchased and entitles the purchaser an interest allowed for by the cemetery authority, such as the burial right.⁴⁴ This right attaches to the property itself and not to the human remains.⁴⁵ The second phase, following the burial, often merges with the Right of Sepulcher, though two separate individuals can also hold these rights.⁴⁶ The Right of Interment has been found in some cases to pass only by inheritance and is not devisable or alienable.⁴⁷ Some courts have held that the rights cannot be granted through a will as a matter of policy, finding the ownership should remain with a blood-relative.⁴⁸ This policy is meant to preserve the "familial heritage or interest in [a] burial lot," rather than allowing it to be assumed by an unrelated, uninvested stranger (which has included a prior owner's spouse in some instances).⁴⁹

These common law rights and burial traditions have led to what is generally the practice in the United States today. The Right of Sepulcher is still commonly observed throughout the U.S. and is found in state statutory laws related to the disposition of human remains.⁵⁰ Though many states do not use the original title, the statutes address the same rights in the care and disposition of deceased family members.⁵¹ The Right of Interment is found

⁴⁰ *Right of Sepulchre (Burial Rights)*, THE WOLTERS KLUWER BOUVIER LAW DICTIONARY (Desk ed. 2012).

⁴¹ TANYA D. MARSH & DANIEL GIBSON, CEMETERY LAW: THE COMMON LAW OF BURYING GROUNDS IN THE UNITED STATES 12 (2015).

⁴² *Id.*

⁴³ Tanya D. Marsh, *When Dirt and Death Collide: Legal and Property Interests in Burial Places*, PROB. & PROP., February 29, 2016, at 7.

⁴⁴ *Id.*

⁴⁵ TANYA D. MARSH & DANIEL GIBSON, CEMETERY LAW: THE COMMON LAW OF BURYING GROUNDS IN THE UNITED STATES 245 (2015).

⁴⁶ Tanya D. Marsh, *When Dirt and Death Collide: Legal and Property Interests in Burial Places*, PROB. & PROP., February 29, 2016, at 7.

⁴⁷ *Id.*

⁴⁸ A. L. Schwartz, Annotation, *To Whom Does Title to Burial Pass on Testator's Death, in Absence of Specific Provision in His Will*, 26 A.L.R. 3d 1425 (1969).

⁴⁹ *Id.*

⁵⁰ See UTAH CODE ANN. § 58-9-602 (West 2020) (Determination of control of disposition); see also 755 ILL. COMP. STAT. 65/5 (2020) (Right to control disposition; priority).

⁵¹ See UTAH CODE ANN. § 58-9-602 (West 2020) (Determination of control of disposition); see also 755 ILL. COMP. STAT. 65/5 (2020) (Right to control disposition; priority).

in statutes, ordinances, and cemetery rules that govern the purchase and ownership of a burial right in a grave plot.⁵²

III. OUTLINE OF CURRENT STATE LAWS ADDRESSING CEMETERY GRAVE PLOT OWNERSHIP

Three key areas impacting the ownership of burial interests in grave plots are analyzed for both the State of Utah and Illinois. First, how does the state define, regulate, or interpret what right or interest the cemetery authorities can sell to customers? As explained in Section II, although in early United States history cemeteries sold a real property right for grave plots, cemeteries are now generally restricted to selling only a burial or interment interest that is often viewed as more of a servitude than an actual real property interest.⁵³

Second, are there laws outlining the process for a cemetery authority to regain or repossess ownership of unused, abandoned graves? Allowing the cemetery authority to regain ownership of unused grave plots can provide a level of protection against ownership claims by eliminating the unclaimed graves. Finally, does the state identify a process for legally transferring ownership of a grave plot into the name of a new owner during or following the life of the original owner? Following the state laws, examples of local cemetery authority ordinances and rules are also examined for insights into how grave plot ownership is regulated at that level.

A. Utah State Laws

1) Burial Rights not Real Property

Although most municipal cemeteries in Utah began as private property during the pioneer migration, municipalities took over ownership in the later nineteenth through the mid-twentieth centuries.⁵⁴ The State of Utah has since designated that a municipal cemetery is restricted from selling a real property interest in grave plots; instead, municipal cemeteries sell only a burial right in the grave plot.⁵⁵ Additionally, under the same Utah code, the cemetery authority, whether municipal or otherwise, is required to properly execute and provide the purchaser of a grave plot with a certificate detailing the burial

⁵² See UTAH CODE ANN. § 8-5-7 (West 2020); SOUTH JORDAN, UTAH, MUNICIPAL CODE § 12.20.050 (2019); *Cemetery Rules*, EVERGREEN MEMORIAL CEMETERY, <https://evergreenmemorialcemetery.com/about/cemetery-rules> (last visited Feb. 14, 2020).

⁵³ TANYA D. MARSH & DANIEL GIBSON, CEMETERY LAW: THE COMMON LAW OF BURYING GROUNDS IN THE UNITED STATES 247 (2015).

⁵⁴ RONALD R. BATEMAN, OF DUGOUTS AND SPIRES: THE HISTORY OF SOUTH JORDAN, UTAH 38 (1998).

⁵⁵ UTAH CODE ANN. § 8-5-7 (West 2020).

rights purchased.⁵⁶ A record of these purchases is to be filed by the cemetery authority with the county recorder biannually.⁵⁷

2) *Unused or Abandoned Graves*

A grave is considered “unused” rather than abandoned in Utah.⁵⁸ A grave is unused when the owner has not used it for a burial purpose or made any improvement to the grave for over sixty years.⁵⁹ If no claim has been made on these unused graves after sixty years, the cemetery authority may give notice to any grantee, take back ownership, and resell them to another patron.⁶⁰ If a person holding a claim to a grave repossessed by the cemetery authority can present the original certificate of title, the cemetery authority must: 1) compensate them for the grave(s) at the current value; 2) renew the ownership of the original graves purchased, if available; or 3) provide ownership to new graves if the original graves are no longer available.⁶¹ At that time, the cemetery authority may hold the person responsible for any unpaid perpetual care charges for the graves.⁶² Perpetual care fees are a one-time payment to the cemetery authority that is deposited into a perpetual care fund.⁶³ The interest from this fund is used by the cemetery authority to provide maintenance in perpetuity.⁶⁴

3) *Transfer of Ownership*

The cemetery authority provides a certificate of title for each purchased grave, as required by Title 8 of the state code.⁶⁵ Utah state code does not provide an official process for transferring ownership.⁶⁶ Instead, the process is addressed in either local municipal ordinances or the rules and regulations of the cemetery.⁶⁷ The transfer of ownership after the original owner is deceased is addressed only limitedly in the Utah code, stating that ownership

⁵⁶ UTAH CODE ANN. § 8-3-2 (West 2020).

⁵⁷ UTAH CODE ANN. § 8-3-3 (West 2020).

⁵⁸ UTAH CODE ANN. § 8-5-1 (West 2020).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ UTAH CODE ANN. § 8-5-8 (West 2020).

⁶² *Id.*

⁶³ *Cemeteries Law and Legal Definition*, US LEGAL, <https://definitions.uslegal.com/c/cemeteries/> (last visited Dec. 14, 2019).

⁶⁴ *Id.*

⁶⁵ UTAH CODE ANN. § 8-3-2 (West 2020).

⁶⁶ UTAH CODE ANN. § 8 (West 2020); *see also* SOUTH JORDAN, UTAH, MUNICIPAL CODE § 12.20.060 (2019).

⁶⁷ SOUTH JORDAN, UTAH, MUNICIPAL CODE § 12.20.060 (2019).

can be claimed by the estate's "grantee" by presenting the original certificate to the cemetery authority.⁶⁸

B. Illinois State Laws

1) *Burial Rights not Real Property*

Illinois state law outlines consumer rights under the Cemetery Oversight Act.⁶⁹ The Act requires cemetery authorities to provide consumers with pricing for "cemetery related products and services," and specifically requires a contract for interment,⁷⁰ inurnment,⁷¹ or entombment⁷² to be signed by both parties.⁷³ The Act does not define these services as a real property right.⁷⁴ Instead, the Act describes the services only as interment and entombment rights, including the right of consumers to extend "term burials."⁷⁵ Illinois statutes include details on an option for cemetery authorities to grant limited-time burials, rather than a permanent burial in perpetuity.⁷⁶ Because of this, the state statute is careful to include protection language for consumers.⁷⁷

2) *Unused or Abandoned Graves*

Illinois law includes a provision allowing cemetery authorities to allege abandonment of burial rights.⁷⁸ Abandonment can occur if a burial right was purchased over fifty years ago, and has not been used or improved, meaning used for burial or improved by having a headstone or other marker installed.⁷⁹

⁶⁸ UTAH CODE ANN. § 8-5-8 (West 2020).

⁶⁹ 225 ILL. COMP. STAT. 411/5-999 (2020).

⁷⁰ Interment refers to the disposition of human remains by earth burial, entombment or inurnment. *Interment*, LAW INSIDER, <https://www.lawinsider.com/dictionary/interment> (last visited Mar. 9, 2020).

⁷¹ Inurnment refers to the placement of cremated remains in a plot or in a niche. *Inurnment*, LAW INSIDER, <https://www.lawinsider.com/dictionary/inurnment> (last visited Mar. 9, 2020). Niche refers to, a recess or hollow in a memorial wall for the placing of ashes. *Niche*, LAW INSIDER, <https://www.lawinsider.com/dictionary/niche> (last visited Mar. 9, 2020).

⁷² Entombment refers to the placement of uncremated human remains in a crypt in a mausoleum. *Entombment*, LAW INSIDER, <https://www.lawinsider.com/dictionary/Entombment> (last visited Mar. 9, 2020).

⁷³ 225 ILL. COMP. STAT. 411/35-15 (2020).

⁷⁴ *Id.* at 411/5-15.

⁷⁵ *Id.* at 411/35-15.

⁷⁶ *Id.*

⁷⁷ *Id.* at 411/35-10.

⁷⁸ 765 ILL. COMP. STAT. 835/10 (2020).

⁷⁹ *Id.* at 835/9.

Unpaid required dues for a period of thirty years or more can also qualify as abandonment.⁸⁰

The state allows a cemetery authority to file a verified petition with the circuit court, to request the entry of an order adjudicating graves abandoned.⁸¹ Notification is required as in other civil cases and must name the owners as defendants.⁸² If the owner is known to be deceased, the cemetery authority must give notice to the person's heirs-at-law or next-of-kin.⁸³

If the owner or claimant submits proof of ownership to the court or appears in answer to the petition, the court will find that presumption of abandonment no longer exists.⁸⁴ Instead, a hearing will be scheduled, and an answer may be filed.⁸⁵ If the owner or claimant fails to respond or appear following notice, the court shall adjudicate the right abandoned and subject for public sale by the cemetery authority one year from the date of the entry of the order.⁸⁶ The court will also make this finding if, at the hearing, evidence of abandonment for fifty years, or nonpayment of required dues for over thirty years is presented.⁸⁷ When the court enters the order of abandonment, an amount will be set to cover a reasonable fee for the petitioner's attorney's services.⁸⁸

At any time before the one-year expiration date, the owner or claimant can contact the court or cemetery authority and pay all of the past-due, unpaid maintenance care charges for the graves, reimburse the cemetery authority for the costs of the suit, and enter into a contract for future care and maintenance.⁸⁹ Following these steps, the interment rights will not be sold, and the court, by petition of the owner or claimant, may vacate the judgment.⁹⁰

If the owner or claimant does not contact the court or cemetery authority within the one year time period, the cemetery authority has the authority to resell the rights at a public sale and grant the rights to a new purchaser.⁹¹ The cemetery authority may also bid on the interment rights at the public sale.⁹² The sale must be publicly noticed no less than thirty days before, and the proceeds from the sale must be used to reimburse the petitioner for the costs

⁸⁰ *Id.*

⁸¹ *Id.* at 835/10.

⁸² *Id.* at 835/11.

⁸³ 765 ILL. COMP. STAT. 835/10 (2020).

⁸⁴ *Id.* at 835/12.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ 765 ILL. COMP. STAT. 835/12 (2020).

⁸⁹ *Id.* at 835/13.

⁹⁰ *Id.*

⁹¹ *Id.* at 835/14.

⁹² *Id.*

of the suit.⁹³ The remaining balance must be deposited into the cemetery authority's care fund or account used for care and maintenance.⁹⁴ The proceeds cannot be used for any other purpose.⁹⁵

3) *Transfer of Ownership*

Illinois law addresses the transfer of unused interment rights in the Cemetery Protection Act.⁹⁶ Once an owner is deceased, the burial rights pass according to the decedent's will.⁹⁷ If no will exists, the ownership of the burial rights can be determined by the information included in a standard affidavit form made available by the state that is designated for cemetery interment rights use.⁹⁸

The affidavit form is included in the Illinois statutes.⁹⁹ The original owner partially fills it out, and then it is later completed and provided to the cemetery authority by the owner's executor or designee.¹⁰⁰ The affidavit allows the original owner to list individuals who will receive an ownership interest in the interment rights.¹⁰¹ The right passes in order of the list designated from one person to the next as the heirs also become deceased.¹⁰² Those that inherit the rights are not precluded from selling them.¹⁰³ The use of the official affidavit form releases the cemetery authority from liability.¹⁰⁴

C. Examples of Municipal Cemetery Authority Ordinances and Rules

1) *City of South Jordan, Utah Cemetery*

An early settler donated the land for the South Jordan Memorial Park for the area's first burial on September 10, 1863.¹⁰⁵ The City of South Jordan took over the operation of the cemetery on October 1, 1945.¹⁰⁶ Municipal ordinances authorize those assigned to the operation of the cemetery to

⁹³ 765 ILL. COMP. STAT. 835/14 (2020).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ 765 ILL. COMP. STAT. 835/16 (2020).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ 765 ILL. COMP. STAT. 835/16 (2020).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ RONALD R. BATEMAN, OF DUGOUTS AND SPIRES: THE HISTORY OF SOUTH JORDAN, UTAH 37 (1998).

¹⁰⁶ *Id.*

establish rules, policies, and procedures that are enforceable as needed.¹⁰⁷ These regulations include visiting hours at the cemetery, office hours, size and placement of grave markers, grave decoration allowances, schedule of decoration removal following holidays for maintenance, etc.¹⁰⁸

The municipality sells and conveys graves according to the fee schedule set by resolution of the elected municipal council.¹⁰⁹ The fees for the purchase of a grave include the cost of the individual grave plot and a one-time perpetual maintenance fee per grave.¹¹⁰ The staff overseeing the operation of the cemetery determines which unsold graves are available for purchase. The staff also maintains the records of the cemetery, which includes individual ownership and vital information of burials for each grave.¹¹¹ A certificate is issued to the purchaser detailing the quantity and location of graves purchased. The certificate is signed and sealed by the municipal recorder before being sent to the new owner.¹¹²

The owner may transfer ownership of a grave if the perpetual care fees have been paid in full.¹¹³ A living owner may transfer an unoccupied grave to any person by returning the original certificate of ownership to the municipality and paying the fee for issuing a new certificate, which is set by the elected municipal council.¹¹⁴

After the owner has died, the ownership of the graves may be transferred by a personal representative named in the decedent's will or other estate documents.¹¹⁵ If no will or other estate document exists, the ownership may be transferred to the signer of an affidavit evidencing the right to the ownership of the graves named in the affidavit.¹¹⁶ A form for the affidavit is provided in the municipal ordinance.¹¹⁷

If an owner requests a replacement certificate from the municipality, authorization must be given by all of the owners of record, and their identity must be verified by a valid driver's license or other official means.¹¹⁸ After paying the certificate fee set in the municipality's fee schedule, a replacement certificate will be issued with the words "replacement certificate" on it.¹¹⁹

¹⁰⁷ SOUTH JORDAN, UTAH, MUNICIPAL CODE § 12.20.030 (2019).

¹⁰⁸ *Id.*

¹⁰⁹ SOUTH JORDAN, UTAH, MUNICIPAL CODE § 12.20.050 (2019).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ SOUTH JORDAN, UTAH, MUNICIPAL CODE § 12.20.060 (2019).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ SOUTH JORDAN, UTAH, MUNICIPAL CODE § 12.20.070 (2019).

¹¹⁹ *Id.* This discourages the fraudulent efforts of those attempting to seize ownership without making a formal claim. This has commonly occurred in situations between divorcing couples prior to an official divorce decree.

The municipality may follow a reversion (or repossession) process for graves where the owners fail to pay the perpetual care fee (annual maintenance fee).¹²⁰ As an alternative to collecting the past due amount, the municipality may cancel the owner's certificate of ownership for unoccupied graves and reassume municipal ownership of the graves following the specified notice procedure.¹²¹ A hearing will be held by the elected municipal council to allow the owner the opportunity to appear and present good cause as to why his interest should not be terminated.¹²² If the owner, or owner's representative, fails to appear or respond, the unoccupied graves may be reverted to the ownership of the municipality and resold.¹²³

After reverting to the municipality, the grave will not be sold for a period of ten days, during which time the owner may redeem the grave by paying the redemption price, which equals the amount of perpetual care fees that are due, any collection fees, fifty dollars to cover the hearing and notice, and any required future maintenance fees.¹²⁴ Within one year of the date of the hearing, the former owner may purchase any available grave in the cemetery by paying the redemption price of the grave as outlined above.¹²⁵

2) *City of Bloomington, Illinois Cemetery*

In 1831, the first burial took place on the Kimler family farm, after which friends and neighbors requested to be buried there.¹²⁶ The City of Bloomington purchased the cemetery in 1852, and also purchased additional acreage to expand the cemetery over the next seventeen years.¹²⁷ A private, for-profit group created a cemetery authority next to the municipal cemetery.¹²⁸ After the private authority became insolvent, the municipality purchased the adjoining cemetery and merged the two into Bloomington's Evergreen Memorial Cemetery in 1963.¹²⁹

The municipal code outlines the following provisions: the municipal clerk will prepare an official deed under the official municipal seal signed by the mayor and countersigned by the municipal clerk, detailing the exact number and location of the graves purchased.¹³⁰ The municipality keeps an accurate plat and record of each purchase, noting the name of the owner, the

¹²⁰ SOUTH JORDAN, UTAH, MUNICIPAL CODE § 12.20.130 (2019).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ SOUTH JORDAN, UTAH, MUNICIPAL CODE § 12.20.130 (2019).

¹²⁶ *About Us*, EVERGREEN MEMORIAL CEMETERY, <https://evergreenmemorialcemetery.com/about/about-us> (last visited Feb. 14, 2020).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ BLOOMINGTON, ILL., MUNICIPAL CODE § 31-1204 (2019).

number of graves sold, and the date of sale next to the number of the block or square on the record.¹³¹

The municipal code also includes provisions related to property damage. Any person who damages or removes any property or article placed in the cemetery, violates any of the rules and regulations, or “plucks” flowers in the cemetery, may be punished, including a fine of no less than \$50 and no more than \$500.¹³² A permit is required for all interments in the cemetery, as well as for any exhumations.¹³³ Other Illinois criminal statutory provisions address the specific events of grave robbing, injury to monuments, or any other damage to tombs, or cemetery property.¹³⁴

Rules and regulations of the Evergreen Memorial Cemetery outline visiting hours, tombstone and monument policy, holiday closures, pet cemetery rules for burials, and grave decoration.¹³⁵

IV. HOW THE EXISTING LAWS HELP OR FALL SHORT IN RESOLVING OWNERSHIP CLAIMS

Illinois and Utah both have statutes related to cemeteries and grave ownership. In addition to standard ownership disputes, if complicated ownership claims for unused ancestral graves (graves where the owner has been deceased over 25 years) increase due to the growing popularity of genealogy, how do these existing laws help or hinder the resolution of such claims?

A. Illinois

Illinois state law is more comprehensive than Utah in addressing cemetery regulations, protecting consumers, and outlining grave ownership rules. This can be attributed to the age difference between the states, and the high number of churchyard and private family cemeteries that exist throughout Illinois in comparison to Utah.¹³⁶

Based on the existing Illinois state laws, two provisions exist that would assist in resolving ownership claims of unused ancestral graves. First, 765 ILCS 835/9 – the abandoned graves provision – allows cemetery authorities to reclaim graves where no burial has taken place for over fifty years.¹³⁷

¹³¹ BLOOMINGTON, ILL., MUNICIPAL CODE § 31-1206 (2019).

¹³² BLOOMINGTON, ILL., MUNICIPAL CODE § 31-1210 (2019).

¹³³ BLOOMINGTON, ILL., MUNICIPAL CODE § 31-1211 (2019).

¹³⁴ *Id.* For state law as to robbing graves, *see* Ill. Rev. Stat. 1959, ch. 38, Par. 354. As to injuring monuments, tombs, and other cemetery property, *see* Ill. Rev. Stat. 1959, ch. 38, Par. 355.

¹³⁵ *Cemetery Rules*, EVERGREEN MEMORIAL CEMETERY, <https://evergreenmemorialcemetery.com/about/cemetery-rules> (last visited Feb. 14, 2020).

¹³⁶ *See* appendix.

¹³⁷ 765 ILL. COMP. STAT. 835/10 (2020).

Reclaiming graves helps by forcing anyone with a claim to the graves to respond following public notice, allowing a descendant the opportunity to make a claim where it can be resolved through the court.¹³⁸ Additionally, if the owner, or their appointee, does not respond or appear, the cemetery authority is able to reclaim the grave, eliminating the privately held interment rights, so there are no unused grave plots to be claimed.¹³⁹

Second, the Illinois statute provides a standard affidavit form for *Cemetery Interment Rights Use*.¹⁴⁰ This form allows owners, at the time of purchase, to identify heirs who should receive the right to interment on unused graves following the owner's death.¹⁴¹ If properly completed and returned to the cemetery authority following the owner's death, this determines who receives the remaining interment rights and allows this person the option to use or the option to sell the unused interment rights.¹⁴² The only concern here is the consistency of the cemetery authority following through with this step at the time of purchase, and the likelihood of the executor or designee being able to locate the form following the owner's death.

The Illinois representative municipality of Bloomington does not maintain any municipal ordinances, cemetery rules, or regulations that outline how ownership claims should be handled. Due to the absence of additional local direction, Illinois state law would be followed.

B. Utah

Utah state law outlines the means of identifying unused or abandoned graves.¹⁴³ The provision states that if a grave is unimproved for more than sixty years, or if a party makes no notice of claim to the cemetery authority for over sixty years, the burial right can be deemed unused.¹⁴⁴ The cemetery authority can then take steps to reclaim ownership.¹⁴⁵ Like the Illinois state law, this allows any descendants to make a claim following the notice period.¹⁴⁶ It also allows the cemetery authority to reclaim the ownership of the graves to eliminate the unclaimed burial right.

The same statute provision allows any person who is able to present the original certificate of ownership to claim the grave.¹⁴⁷ Though this would

¹³⁸ *Id.* at 835/11.

¹³⁹ *Id.* at 835/12.

¹⁴⁰ *Id.* at 835/16.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ UTAH CODE ANN. § 8-5-1 (West 2020).

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

resolve the ownership claim without the need for further proceedings, the likelihood of a person having the original ownership certificate to an ancestral grave is low.

The representative municipality for Utah, the City of South Jordan, maintains municipal ordinances that resolve the claim of ownership while eliminating liability to the cemetery authority.¹⁴⁸ The municipal code includes a custom affidavit that can be completed and returned to the cemetery authority along with the original certificate (evidencing ownership), to have the ownership transferred to a different person.¹⁴⁹ The concern with this ordinance is that if a person had possession of the original certificate of ownership, there would likely not be a dispute or claim to be made.

South Jordan's code also includes a process for reverting the ownership to the municipality.¹⁵⁰ This power is based solely on the failure of the owner to pay the required fees and fails to address the cemetery authority's right to reclaim the burial rights in the case of abandonment.¹⁵¹

V. ALTERNATIVE APPROACHES TO RESOLVING AND MINIMIZING THE NUMBER OF FUTURE OWNERSHIP CLAIMS

Alternative approaches to resolving and minimizing the number of future ownership claims can and should be used at state and local levels. Three specific approaches are outlined below. The first is utilizing other existing state laws to address property claims when the owner dies intestate. Second, at a state and local level, laws should be adjusted to define abandonment more clearly, and authorize local authorities and cemeteries to establish processes for reclaiming unused graves. Finally, cemeteries and local authorities can and should update internal training, and policies related to maintaining current contact information, and handling claims. Through the utilization of alternative approaches, resolving and minimizing the number of future ownership claims becomes manageable.

A. Utilizing Other Laws to Address the Claims

Both Utah and Illinois state laws include a provision for claiming personal property after a person dies intestate. In Utah, this rule is called Collection of Personal Property by Affidavit.¹⁵² This rule allows a person to present a completed Affidavit for Collecting Personal Property in a Small

¹⁴⁸ SOUTH JORDAN, UTAH, MUNICIPAL CODE § 12.20.060 (2019).

¹⁴⁹ *Id.*

¹⁵⁰ SOUTH JORDAN, UTAH, MUNICIPAL CODE § 12.20.130 (2019).

¹⁵¹ *Id.*

¹⁵² UTAH CODE ANN. § 75-3-1201 (West 2020).

Estate Proceeding form to the cemetery authority to claim the ownership rights of the graves.¹⁵³

A person can provide this form to the cemetery authority more than thirty days following the original owner's death, to attest to the fact that they are the decedent's rightful successor or the authorized agent of the successor to the deceased's property.¹⁵⁴ If the value of the decedent's entire estate, less liens and encumbrances, is worth less than \$100,000, and the decedent did not have a will or name an executor of their estate, this person can legally claim ownership to the graves.¹⁵⁵

This process releases the cemetery authority from all liability and transfers it to the person presenting the affidavit.¹⁵⁶ Once the affidavit is received, the cemetery authority is required to transfer the ownership.¹⁵⁷ If a cemetery refuses to comply with the affidavit and attempts to compel the person to provide additional proof of their right (such as the deed or certificate), the cemetery authority may be liable for up to three times the value of the graves in addition to the costs of any resulting lawsuit, and reasonable attorney fees.¹⁵⁸

Illinois has a similar provision under the Probate Act of 1975 for small estates.¹⁵⁹ The standard form is available for download from the official website of the Illinois Secretary of State.¹⁶⁰ The form includes details identifying the deceased, the property to be claimed, and to whom the unused interment rights should be distributed.¹⁶¹ Once completed, the form can be presented to the cemetery authority with a required copy of the original owner's death certificate attached.¹⁶² The form allows the transfer of ownership and releases the cemetery authority from liability.¹⁶³

B. Adjusting Laws Related to Abandonment or Unused Graves

Another approach to improving the ability to minimize the number of ownership claims, if not avoid them completely, would be to modify the existing state or local laws pertaining to cemetery authorities reclaiming ownership of unused or abandoned graves. In Illinois, the state law could

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* Form available for download at https://www.utcourts.gov/resources/forms/probate/affidavit_personal_property.pdf.

¹⁵⁶ UTAH CODE ANN. § 75-3-1202 (West 2020).

¹⁵⁷ UTAH CODE ANN. § 75-3-1201 (West 2020).

¹⁵⁸ UTAH CODE ANN. § 75-3-1202 (West 2020).

¹⁵⁹ 755 ILL. COMP. STAT. 5/25-1 (2020).

¹⁶⁰ *Id.* Form available to download or fill out at https://www.cyberdriveillinois.com/publications/pdf_publications/rtopr31.pdf.

¹⁶¹ 755 ILL. COMP. STAT. 5/25-1 (2020).

¹⁶² *Id.*

¹⁶³ *Id.*

more clearly describe what constitutes an abandoned grave. Once the cemetery authority reclaims ownership, the previously unused interment right is no longer available for family members to dispute. Additionally, a provision could be added to municipal codes or cemetery authority rules and regulations citing to the relevant state law or outlining the basic process for the authority to reclaim abandoned unused grave plots.

In Utah, both state and municipal codes could be adjusted to reduce the number of years required to designate a burial right as unused or abandoned.¹⁶⁴ A shorter time period would not unfairly impact cemetery patrons as the cemetery authorities are required to follow a specified notification process. The notice allows any claimants the opportunity to appear or respond before the burial right is repossessed.¹⁶⁵

C. Update Cemetery Processes and Policies

The easiest adjustment would be for cemetery authorities to amend the rules and regulations of the cemetery and their internal processes. Adjustments could alleviate the potential liability risk of the cemetery not having a current owner identified for unused interment rights. Requirements could be imposed in the rules and regulations requiring the owners to contact the cemetery authority on an annual, or similarly routine, basis to update contact information. Owner information could be verified and updated at the time of burial requests. Additionally, cemetery authorities could create internal processes for sending routine communications to owners to ensure contact information is current and accurate. Maintaining current contact information would minimize the risk of graves becoming abandoned.

If supported by local and state code, the cemetery authority could also include a statement in the purchase agreement notifying the purchaser that after a specified period of time, if a current contact has not been provided, the ownership of any unused grave plot will be deemed abandoned and ownership reverted back to the cemetery authority.

VI. CONCLUSION

Grief and strong emotional connections to family members make handling cemetery issues more complicated and challenging than merely following established policies and procedures. Burial sites of loved ones remain sacred to descendants regardless of the amount of time that passes. In addition to the more common disputes over grave plot ownership (divorce,

¹⁶⁴ UTAH CODE ANN. § 8-5-1 (West 2020).

¹⁶⁵ *Id.*

etc.), the increasing popularity of genealogy adds the risk of increased future ownership claims on unused burial rights in ancestral family plots.

Steps can be taken by states, municipalities, and cemetery authorities to avoid the difficulty of resolving issues with grief-stricken patrons. State and municipal laws can be amended to include provisions for unused or abandoned graves to return to the ownership of the cemetery authority after a specified timeframe. Providing this measure to cemetery authorities would allow them to reclaim unused graves absent current living owners, following a proper notification period to descendants and possible heirs. This would mitigate public relations disasters for the cemetery authority and provide an opportunity for unaware heirs or descendants to make legal claims.

Cemetery authorities can also help themselves by updating their rules and regulations to require updates to ownership contact information and by following an internal process for ensuring information is current. Making an effort to ensure that staff, board members, and local officials are educated concerning the applicable laws and internal rules and policies will also help provide consistent resolution of disputes and claims.

Common-law established a fundamental right to the ownership and protection of burial sites. Jurisdictions have since established statutes outlining how cemeteries should be operated, and how ownership of burial rights can be bought and sold. Existing laws may help in addressing ownership claims of unused burial rights. With adjustments to laws at a state and local level, cemetery authorities would be empowered to act strategically and methodically to alleviate the number of unused burial rights, minimizing the risk of complicated, emotional ownership disputes.

VII. APPENDIX

CEMETERY DATA COMPARISONS

	South Jordan City, Utah ¹⁶⁶	Bloomington City, Illinois ¹⁶⁷
Average # of Grave Plots Sold Annually Based on the Last 5 Years¹⁶⁸	136	60
Average # of Burials Annually Based on the last 5 Years¹⁶⁹	75	67
Number of Official Grave Plot Transfers over the last 5 Years¹⁷⁰	17.8	6
Number of Sold, Unused Grave Plots¹⁷¹	2,697	1,000 (include multiple plots)
Number of Grave Plots Available for Purchase¹⁷²	239	3,000 – 4,500
Fee for In-Ground Grave Plot¹⁷³	\$1195 Resident \$1695 Non-Resident	\$1100 ¹⁷⁴
Perpetual Care Fees¹⁷⁵	\$438	Included in Price of Plot

¹⁶⁶ The City of South Jordan is located eighteen miles south of Salt Lake City in the Salt Lake Valley in Utah.

¹⁶⁷ Evergreen Memorial Cemetery is located in the City of Bloomington in central Illinois.

¹⁶⁸ E-mail from Kyle Bowen, Cemetery Sexton, City of South Jordan, Utah, to Anne K. Hansen, student, Southern Illinois University School of Law, (Jan. 13, 2020) (on file with author); E-mail from Misty Porter, Interim Cemetery Manager, Evergreen Memorial Cemetery, to Anne K. Hansen, student, Southern Illinois University School of Law, (Feb. 13, 2020) (on file with author).

¹⁶⁹ Bowen, *supra* note 168; Porter, *supra* note 168.

¹⁷⁰ Bowen, *supra* note 168; Porter, *supra* note 168.

¹⁷¹ E-mail from Kyle Bowen, Cemetery Sexton, City of South Jordan, Utah, to Anne K. Hansen, student, Southern Illinois University School of Law, (Mar. 9, 2020) (on file with author); E-mail from Misty Porter, Interim Cemetery Manager, Evergreen Memorial Cemetery, to Anne K. Hansen, student, Southern Illinois University School of Law, (Mar. 9, 2020) (on file with author).

¹⁷² Bowen, *supra* note 171; Porter, *supra* note 168.

¹⁷³ SOUTH JORDAN CITY CEMETERY, CEMETERY FEES (June 2020). (fees represent the least expensive grave options); EVERGREEN MEMORIAL CEMETERY, CEMETERY PRICE LIST (Feb. 11, 2019).

¹⁷⁴ The Evergreen Memorial Cemetery offers above-ground grave plot options including, columbarium niches for cremated remains, and above-ground, outdoor crypts, as well as in a chapel mausoleum. Evergreen Memorial, *supra* note 173.

¹⁷⁵ South Jordan, *supra* note 173; Evergreen Memorial, *supra* note 173.

Grave Opening/Closing Fee¹⁷⁶	\$567 Resident \$750 Non-Resident	\$1200
Grave Plot Transfer Fee¹⁷⁷	\$5.00	No Fee
Number of Cemeteries	Utah = 570+ ¹⁷⁸	Illinois = 14,000+ ¹⁷⁹

DEMOGRAPHIC COMPARISONS

	City of South Jordan, Utah	City of Bloomington, Illinois
Population	74,155 ¹⁸⁰	77,955 ¹⁸¹
Median Age	31.5 ¹⁸²	36.1 ¹⁸³
Median Home Value	\$363,300 ¹⁸⁴	\$164,800 ¹⁸⁵

¹⁷⁶ South Jordan, *supra* note 173; Evergreen Memorial, *supra* note 173.

¹⁷⁷ South Jordan, *supra* note 173. E-mail from Misty Porter, Interim Cemetery Manager, Evergreen Memorial Cemetery, to Anne K. Hansen, student, Southern Illinois University School of Law (Feb. 14, 2020) (on file with author).

¹⁷⁸ *Utah Cemeteries*, FAMILYSEARCH (Sept. 12, 2019), https://www.familysearch.org/wiki/en/index.php?title=Utah_Cemeteries&oldid=3695501.

¹⁷⁹ *A Resource for Understanding the Industry, Its Practices and Relevant Laws*, ILL. CEMETERY & FUNERAL HOME ASS'N (Sept. 2009), <https://www.illinois.gov/publicincludes/statehome/gov/documents/ICFHA%20Briefing%20Book%209-10-09%20final.pdf>.

¹⁸⁰ ACS Demographic and Housing Estimates, *2018 American Community Survey 1-year Estimates, South Jordan City, Utah*, U.S. CENSUS BUREAU, https://data.census.gov/cedsci/table?q=South%20Jordan,%20Utah&g=1600000US4970850&hidePreview=false&tid=ACSDP1Y2018.DP05&vintage=2010&layer=VT_2018_160_00_PY_D1&cid=DP05_0001E (last visited Aug. 14, 2020).

¹⁸¹ ACS Demographic and Housing Estimates, *2018 American Community Survey 1-year Estimates, Bloomington City, Illinois*, U.S. CENSUS BUREAU, https://data.census.gov/cedsci/table?q=bloomington,%20il&g=1600000US1706613&hidePreview=false&tid=ACSST1Y2018.B01003&vintage=2018&layer=VT_2018_160_00_PY_D1&cid=DP05_0001E (last visited Aug. 14, 2020).

¹⁸² ACS Demographic and Housing Estimates, *2018 American Community Survey 1-Year Estimates, South Jordan City, Utah*, U.S. CENSUS BUREAU, https://data.census.gov/cedsci/table?q=South%20Jordan,%20Utah&g=1600000US4970850&hidePreview=false&tid=ACSDP1Y2018.DP05&vintage=2010&layer=VT_2018_160_00_PY_D1&cid=DP05_0001E (last visited Aug. 14, 2020).

¹⁸³ ACS Demographic and Housing Estimates, *2018 American Community Survey 1-Year Estimates, Bloomington City, Illinois*, U.S. CENSUS BUREAU, https://data.census.gov/cedsci/table?q=bloomington,%20il&g=1600000US1706613&hidePreview=false&tid=ACSST1Y2018.S0101&vintage=2018&layer=VT_2018_160_00_PY_D1&cid=B01003_001E (Last visited Aug. 14, 2020).

¹⁸⁴ South Jordan, UT, DATA USA, <https://datausa.io/profile/geo/south-jordan-ut#housing> (last visited Aug. 14, 2020).

¹⁸⁵ Bloomington, IL, DATA USA, <https://datausa.io/profile/geo/bloomington-il#housing> (last visited Aug. 14, 2020).

Median Household Size	3.42 ¹⁸⁶	2.38 ¹⁸⁷
Median Household Income	\$99,856 ¹⁸⁸	64,503 ¹⁸⁹
Area (Square Miles)	22.26 ¹⁹⁰	22.5 ¹⁹¹

¹⁸⁶ Quick Facts, *Bloomington City, Illinois; South Jordan City, Utah*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/bloomingtoncityillinois,southjordancityutah/INC110218> (last visited Aug. 14, 2020).

¹⁸⁷ *Id.*

¹⁸⁸ South Jordan, UT, DATA USA, <https://datausa.io/profile/geo/south-jordan-ut#housing> (last visited Aug. 14, 2020).

¹⁸⁹ Bloomington, IL, DATA USA, <https://datausa.io/profile/geo/bloomington-il#housing> (last visited Aug. 14, 2020).

¹⁹⁰ City of South Jordan, *Economic Development*, SOUTH JORDAN, <https://www.sjc.utah.gov/economic-development/> (last visited Aug. 14, 2020).

¹⁹¹ Bloomington, Illinois, *Bloomington, Illinois (IL) Profile*, <http://www.city-data.com/city/Bloomington-Illinois.html> (last visited Aug. 14, 2020).