



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Wendy H. Gridley

Sub. H.B. 454

132nd General Assembly
(As Passed by the General Assembly)

Reps. Patterson and Arndt, Ashford, Seitz, Becker, Reece, Hambley, Holmes, Boyd, Brown, Anielski, Antonio, Barnes, Craig, Green, Lepore-Hagan, Miller, O'Brien, Perales, Rogers, Sheehy, Sprague

Sens. Coley, Eklund, Gardner, Hoagland, Lehner, Manning, O'Brien, Peterson, Schiavoni, Tavares, Terhar, Thomas, Uecker, Williams, Wilson, Yuko

Effective date: March 20, 2019

ACT SUMMARY

- Requires a township to offer compensation to owners of certain unused cemetery lots or rights who come forward before the lot or right is reclaimed.
- Requires a township to publish on its website the notice required by continuing law before reentering a lot.

CONTENT AND OPERATION

Background

Under continuing law, townships have a right of reentry to resell unused cemetery lots¹ that were sold after 1986 (post-1986 lots) because of legislation enacted that year allowing townships a right of reentry *by deed or contract*. For lots sold before 1986, there was no statutory language authorizing the right of reentry and although the General Assembly eventually provided for a right of reentry for those lots, the Attorney General determined in 2009 that a township could not reclaim its interest in sold but unused cemetery lots under a theory that the burial easement was extinguished by

* This version updates the effective date.

¹ A board of township trustees is empowered by R.C. 517.07 to sell lots in township cemeteries to the public.

abandonment on the basis of nonuse.² Because the pre-1986 owners of record to the burial easements and their heirs have acquired legal rights to their cemetery lots, compensation must be afforded to them under Ohio Constitution, Article I, Section 19. The act, primarily, is providing for the payment of compensation to those owners (see **COMMENT**).

Compensation to cemetery lot owner for reclaiming lot

Under continuing law, a township may reclaim its interest in an unused "pre-1986"³ cemetery lot if it provides notice to the owner and the owner does not respond within 90 days.⁴ The act increases this period to 180 days and provides that, if an owner responds during that time, the township must offer to (1) allow the owner to retain or renew their interest in the lot at no cost, (2) provide the owner a different lot or right at no cost, or (3) provide the owner 80% of the owner's original purchase price. The act also allows a township, at any point, to repurchase a pre-1986 lot from the owner for a mutually agreed-upon price.⁵

For "post-1986 lots,"⁶ continuing law allows the township and owner to enter into an agreement whereby the township pays the owner 80% of the original purchase price if the township reclaims its interest in the lot or right because the owner does not renew the owner's interest. Under the act, the township must offer to pay the 80% as under ongoing law, or to provide the owner a different lot or right at no cost.⁷

For both pre- and post-1986 lots, the act requires a township to publish notice of its reentry on its website. Continuing law requires the township to send notice to an owner whose address is known or to publish the notice in the newspaper if the address is not known.⁸

² Ohio Attorney General Opinion (O.A.G.) 2009-006. See also O.A.G. 1972-031, as modified, and O.A.G. 1990-066.

³ Lots purchased before July 24, 1986, and entombment rights purchased before September 29, 2015. These are the effective dates of previous legislation that applied new regulation prospectively to "post-1986 lots," therefore creating different treatment of the two types of lots.

⁴ For deeds not containing a termination date, a township sets the time period.

⁵ R.C. 517.073. This authority exists for post-1986 lots under R.C. 517.07.

⁶ Lots purchased on or after July 24, 1986, and entombment rights purchased on or after September 29, 2015.

⁷ R.C. 517.07.

⁸ R.C. 517.07 and 517.073.



COMMENT

The Ohio Constitution provides that, "Private property shall ever be held inviolate, but subservient to the public welfare. When taken . . .," compensation must be made to the owner.⁹ Although the act provides compensation to a pre-1986 lot owner who responds *before* the notice period ends, a court may find that applying the law to an owner who responds *after* the notice period ends constitutes an unlawful taking without compensation.¹⁰ This issue exists under continuing law and is not resolved by the act. The option the act provides to an owner to receive 80% of the original purchase price may not constitute due or adequate compensation in some cases. For example, a lot purchased for \$100 in 1920 may be worth \$1,200 in 2018; \$80 is significantly less than today's fair market value and probably would not be considered due compensation. This is not an issue under continuing law for post-1986 lots because lot owners agree to be subject to the 80% term. In other words, the township is utilizing its *contractual right* to reclaim its interest in the lot and compensate the owner 80% of the purchase price as authorized under the statute.

HISTORY

ACTION	DATE
Introduced	12-21-17
Reported, H. State & Local Gov't	02-28-18
Passed House (92-1)	06-20-18
Reported, S. Local Gov't, Public Safety & Veterans Affairs	12-04-18
Passed Senate (31-0)	12-13-18

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⁹ Ohio Constitution, Article I, Section 19.

¹⁰ O.A.G. 2009-006.

