



## QUESTIONS CONCERNING THE DISPOSITION OF NEGLECTED BURIAL GROUNDS

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### ISSUE

Are municipalities responsible for a neglected burial ground consisting of private plots? Can a municipality transfer an abandoned burial ground to an individual or business for development? Can one adversely possess an abandoned burial ground?

The answer to these questions may require a legal opinion. Because the Office of Legislative Research is not authorized to issue legal opinions, this report should not be considered one.

### SUMMARY

State law establishes rules for the operation and care of burial grounds (i.e., cemeteries, burial places, or graveyards), but these rules do not establish maintenance standards ([CGS §§ 19a-295 to 19a-319](#)). Generally, burial grounds are overseen by burial ground authorities (i.e., municipalities, ecclesiastical societies, and cemetery associations). But in the event that burial grounds are neglected, there are several ways municipalities may assist in their upkeep, including appropriating funds for their maintenance or acquiring title to them.

The law generally prohibits municipalities from using burial grounds for any purpose other than as burial grounds if (1) they are municipally-acquired “abandoned cemeteries” (see below) or (2) they have existed for over 100 years (“ancient burial places”). The law does not otherwise specify the conditions under which an abandoned burial ground’s use may change. Because burial grounds are governed by statute and in some cases bylaws, it may be prudent for one to check whether applicable bylaws dictate when a burial ground’s use may change.

An “ancient burial place” is land that has been used as a burial ground, or has been in existence as a burial ground, for more than 100 years.  
([CGS § 19a-315](#))



We could not find any Connecticut case law concerning the adverse possession of abandoned burial grounds. But generally, real property can be acquired by adverse possession subject to certain exceptions. One exception may be particularly relevant in the burial ground context. The Connecticut Supreme Court has long held that property held by the state or any of its subdivisions for public use cannot be acquired by adverse possession (*Goldman v. Quadrato*, 142 Conn. 398 (1955)). The category of publicly held lands for public use would likely include most municipally-owned burial grounds.

Connecticut law recognizes adverse possession as a method of acquiring title to property without the title owner's consent. Adverse possession is accomplished by an open, visible, exclusive, and uninterrupted possession of land for 15 years.

(*Goldman*, 142 Conn. at 402; [CGS § 52-575](#))

Because burial grounds are a unique type of property and adverse possession claims require fact-specific inquiries, individuals should seek a legal opinion to determine how the law applies to their specific circumstances.

## **MUNICIPAL RESPONSIBILITY FOR NEGLECTED BURIAL GROUNDS**

The law does not require municipalities to maintain neglected burial grounds. However, several laws authorize municipalities to assist in the maintenance of neglected cemeteries and burial grounds, including those that they do not own.

### ***Appropriations***

The law authorizes municipalities to annually appropriate funds necessary to (1) maintain and properly care for public cemeteries and public burial grounds they own or control or (2) aid in the maintenance and care of public cemeteries and public burial grounds owned or controlled by ecclesiastical societies or cemetery associations ([CGS § 19a-295](#)).

### ***Maintenance***

Municipalities can undertake certain maintenance of cemeteries and burial grounds that (1) have more than six places of interment; (2) are not under the control or management of a functioning cemetery association; and (3) show certain signs of neglect, including weeds or damage to fences. Such maintenance includes clearing weeds, briars, and bushes; lawn mowing; repairing fences and walls; and straightening memorial stones. The law specifies that municipalities and their agents cannot be held civilly or criminally liable for undertaking such maintenance ([CGS § 19a-308](#)). Municipalities acting pursuant to this law may apply for grants from the Office of Policy and Management, which distributes maintenance funds through the Neglected Cemetery Account Grant Program ([CGS § 19a-308b](#)).

Municipalities may also undertake more extensive maintenance of ancient burial places, cemeteries, and burial places they oversee, including repairing, rehabilitating, repositioning, or resetting grave markers and renovating a burial ground as a whole. If a site-wide renovation is planned, the municipality must post notice of the project and notify the local probate court and the Department of Economic and Community Development. The probate court may order a hearing to determine whether the renovation is necessary ([CGS § 19a-315c](#)).

### **Acquisition**

Municipalities may acquire title to “abandoned cemeteries.” Before doing so, they must use due diligence to identify any owners of the cemetery or any of its lots or grave sites. A municipality must notify the owners of its intention to acquire the cemetery, and if it cannot locate them, it must publish notice of its intent in a newspaper. The notice must include a basic description of the cemetery and the date and place where the municipality will hear objections to the acquisition. Any owner who receives the notice may reassert his or her right of ownership over the cemetery or its lots or grave sites. Any owner who reasserts his or her rights must promptly comply with any municipal ordinances concerning the cemetery, lot, or grave site.

If a municipality receives no objection during the redemption period, title to the property vests in the municipality. As the owner, the municipality must maintain the cemetery's characteristics, including its use as a burial ground. It may appoint a cemetery superintendent or sexton and may appropriate funds for the property's maintenance. The law prohibits municipalities from transferring to another party an abandoned cemetery it acquires ([CGS § 19a-308a](#)).

### **TRANSFER OF BURIAL GROUND PROPERTY**

The law generally allows municipalities to transfer their real property for any municipal or public purpose, including cemeteries ([CGS § 7-148\(c\)\(3\)](#)). It also specifically allows them to sell unused, abandoned cemetery plots to recoup unpaid assessments. However, other laws prohibit municipalities from transferring to private parties for use as something other than a burial ground (1) abandoned cemeteries they acquire or (2) ancient burial places.

An “abandoned cemetery” is a cemetery:

1. where no burial has occurred during the previous 40 years and in which the lots or graves have not been maintained during the last 10 years except for maintenance by the municipality;
2. where no lots have been sold in the last 40 years and in which most lots or graves have not been maintained during the last 10 years except for maintenance by the municipality; or
3. where one burial has occurred in the past 40 years, but the removal, transit and burial permit was issued after the burial.

([CGS § 19a-308a](#))

### ***Protection for Ancient Burial Places and Abandoned Cemeteries***

With one exception, the law prohibits municipalities from using, or transferring to someone who will use, an ancient burial place for any purpose other than as a burial ground. Under the exception, municipalities may take an ancient burial place for public use, but only with the General Assembly's approval ([CGS § 19a-315a](#)).

As noted above, municipalities that acquire an abandoned cemetery cannot transfer it and must "maintain the characteristics of such cemetery and make no changes in the use of such cemetery land" ([CGS § 19a-308a](#)).

### ***Selling Abandoned Plots (CGS § 19a-307)***

The law authorizes municipalities to sell the unused portions of burial plots in cemeteries, other than space for a surviving spouse, when charges have not been paid for 10 years. The municipality must first send notice to the title owner and any known beneficiary, at his or her last known address. If he or she cannot be located, then notice must be published in a local newspaper. The notice must inform the recipient that the plot or plots will be sold if assessed charges are not paid within a year. If the charges are not paid and the property is sold, the sale's proceeds must go first toward the unpaid charges and the costs of the sale; the remainder must be deposited in a perpetual care fund for uncared-for plots ([CGS § 19a-307](#)).

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