# VACATING CEMETERY IN TOWNSHIP
# Act 49 of 1895

AN ACT to provide for vacating cemeteries in townships.

**History:** 1895, Act 49, Eff. Aug. 30, 1895.

*The People of the State of Michigan enact:*

## 128.31 Removal of private cemetery; complaint; grounds; proceedings to vacate; power of circuit court.

Sec. 1. When a complaint is made in writing to the board of trustees of a township in this state, by 10 or more residents of the township, setting forth the fact that a private cemetery within the bounds of the township should be removed for the reason that the cemetery has become commons, has become neglected or abandoned by its owner or owners, has become a public nuisance, or shall impede the growth of a city or village in the township, or when a private cemetery endangers the health of the people living in the immediate vicinity of the private cemetery, the township board of trustees immediately shall institute proceedings to vacate the cemetery in the manner provided in this act. The circuit court for the county in which the cemetery is located may vacate the private cemetery, or a part of the private cemetery, on petition made to the court as provided in this act.

**History:** 1895, Act 49, Eff. Aug. 30, 1895;—CL 1897, 2387;—CL 1915, 2163;—CL 1929, 2657;—CL 1948, 128.31;—Am. 1980, Act 367, Imd. Eff. Dec. 30, 1980.

## 128.32 Petition; filing; contents; notice; neglect or refusal to appoint attorney or agent; proceeding by freeholder resident; security for costs.

Sec. 2. The petition shall be made by the board of trustees by an agent or attorney appointed by it for that purpose. The agent or attorney shall file a petition signed and sworn to by the agent or attorney, in the office of the register of the court for the proper county. The petition shall set forth his or her authority as attorney or agent, the particular reasons for making and filing the petition, and a distinct description of the premises on which the cemetery is located. The petition shall be filed 30 days before the first day of the term for which the petition shall be noticed for hearing. Notice of the pendency and hearing of the petition shall be given for the same space of time, by publishing the same in a newspaper, published in the proper county, once in each week for 4 successive weeks before the first day of the term when the case is noticed for hearing. If the board of trustees neglects or refuses to appoint an attorney or agent within 30 days after the complaint in writing has been filed with the board, then a freeholder resident of the township may file the petition and proceed in the same manner as though regularly appointed as an agent or attorney. The freeholder may be required, upon the order of the circuit court, to furnish security for costs should the petition be denied.

**History:** 1895, Act 49, Eff. Aug. 30, 1895;—CL 1897, 2388;—CL 1915, 2164;—CL 1929, 2658;—CL 1948, 128.32;—Am. 1980, Act 367, Imd. Eff. Dec. 30, 1980.

## 128.33 Hearing; burden of proof; order, recording.

Sec. 3. That the hearing on such petition may be continued from term to term, in the discretion of the court, without further notice; that all testimony may be taken in open court, or the taking of the same may be referred, in the discretion of the court, to a circuit court commissioner of the proper county; that, under the discretion of the court, proper issues may be made for the determination of all questions of law and fact, and all questions of compensation to any person or persons to be affected by such proceedings, and all questions touching the compensation to be paid by the person or persons to whom said premises or any part thereof shall be sold after the same shall have been vacated as such cemetery, and all issues of fact may be tried by a jury, or 3 commissioners, if the court shall so order, and any person adversely interested may cause himself to be made defendant to such petition. In all cases where reference shall be made to a jury or commissioners to determine the compensation to be paid to or by any persons as aforesaid, the proceedings upon such reference, shall, so far as practicable, be like those had in cases where a jury is impaneled or commissioners are selected, to ascertain and determine the necessity of taking lands, franchises, and other property for the construction of railroads, and to appraise the damages and compensation to be allowed therefor. If upon hearing, such petitioner shall produce satisfactory evidence to the court that the notice required by this act has been given, and that such cemetery should be vacated in whole or in part, as a place of burial, for any of the reasons given in this act for vacating cemeteries, such court shall thereupon order that such cemetery shall be vacated, in whole or in part, as a place of burial. That a copy of such order, certified by the register of such court under his seal, shall be recorded by the petitioners in the office of the register of deeds of the proper county.


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**History:** 1895, Act 49, Eff. Aug. 30, 1895;—CL 1897, 2389;—CL 1915, 2165;—CL 1929, 2659;—CL 1948, 128.33.

### 128.34 Reinterment of dead bodies and remains; removal and erection of fences, tombstones, and monuments; removal during certain months prohibited; exception; costs.

Sec. 4. (1) When a cemetery is vacated as provided in this act, the township board of trustees shall cause all the dead bodies and remains buried in the cemetery to be reinterred in the cemetery of the township, if it has a cemetery, and if not, then in some suitable cemetery in an adjoining township, in a prudent, careful, and respectful manner, and shall cause to be removed and again erected over the proper remains, permanent fences around graves and lots, tombstones, and monuments, with as little injury possible. If the cemetery vacated belongs to a religious society or church, and another suitable cemetery belonging to the same church or denominational society exists within the township or an adjoining township, then the removal may be made to that cemetery instead of to the township cemetery. A removal of bodies and remains shall not be made during June, July, August, or September, except in the Upper Peninsula.

(2) The removal and the cost of the proceedings under this act shall be at the expense of, and paid by, the township in which the cemetery is situated. If the proceeding is instituted by an individual, without the consent of the township board of trustees, and the petition is denied by the court, the person instituting the proceeding shall be required to pay the costs allowed by order of the circuit court.

**History:** 1895, Act 49, Eff. Aug. 30, 1895;—CL 1897, 2390;—CL 1915, 2166;—CL 1929, 2660;—CL 1948, 128.34;—Am. 1980, Act 367, Imd. Eff. Dec. 30, 1980.

### 128.35 Reimbursement of lot owner.

Sec. 5. If the land vacated reverts to the township or to a person, the township, on demand, and upon the conveyance of the lot, if conveyance is necessary, to the township board of trustees or private person, shall repay to the owner the price the owner paid for the lot.

**History:** 1895, Act 49, Eff. Aug. 30, 1895;—CL 1897, 2391;—CL 1915, 2167;—CL 1929, 2661;—CL 1948, 128.35;—Am. 1980, Act 367, Imd. Eff. Dec. 30, 1980.

### 128.36 Reversion to original owner; conditions.

Sec. 6. In all cases where the land embraced in the cemetery so vacated shall not exceed 1 acre in area it shall revert to the original grantor or his heirs, or be so conveyed to him or them by the said township if necessary: Provided, said grantor or his heirs shall first pay to said township the value of said land based upon the market price of like land in the immediate vicinity.

**History:** 1895, Act 49, Eff. Aug. 30, 1895;—CL 1897, 2392;—CL 1915, 2168;—CL 1929, 2662;—CL 1948, 128.36.


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