

# NJ N2K Hour: Terrors in Title

Cemeteries and Zombie  
Foreclosures

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Underwriting

Tuesday, October 8, 2024



# Regulation of Cemetery Lands in NJ

- New Jersey cemeteries are governed by the “New Jersey Cemetery Act, 2003.” N.J.S.A. 45:27-1 et seq., which repealed the previous law established in 1971.
- As of 1971, all newly established New Jersey cemeteries must be run by nonprofit organizations. N.J.S.A. 45:27-7(a).
- Per N.J.S.A. 45:27-2, a cemetery is defined as any land or place used or dedicated for use for burial of human remains, cremation of human remains, or disposition of cremated human remains.
- Per N.J.S.A 45:27-3, the New Jersey Cemetery Board is continued and established within the Division of Consumer Affairs in the Department of Law and Public Safety.
- The Cemetery Board consists of ten (10) members.

# Regulation of Cemetery Lands in NJ (cont.)

- Five of the members shall be persons who have served at least five consecutive years immediately preceding appointment as a member of the governing board or an official of a cemetery company.
- Two of the members must be public members and shall have no interest directly or indirectly in any cemetery company or allied industry.
- These seven members are appointed by the Governor with the advice and consent of the NJ Senate.
- The members shall serve for a term of four years and until the appointment and qualification of a successor, and vacancies are filled in the same manner as original appointments but for the unexpired term only.
- The other three members consist of the Commissioner of Community Affairs or the commissioner's designee serving ex-officio; the Attorney General or his designee serving ex-officio; and the designee of the Commissioner of Health and Senior Services.

# The NJ Cemetery Board

- The Governor has the authority to remove any member from office for cause upon notice and opportunity to be heard.
- The Cemetery Board shall also elect a chairperson and officers amongst the members and meet at least four times a year.
- The chairperson can request a meeting; or two members can make a written request for a meeting directed to the chairperson.
- The chairperson shall fix the time and place of the meeting for the Board.
- The Division of Consumer Affairs must also assign its employees to serve as staff for the Board, if necessary.
- The Board is responsible for administering the provisions of the Cemetery Act and shall have general supervision, jurisdiction, and control over all cemetery companies and their property in the State.

# Religious Organizations

- A cemetery company is defined in the Act as a person that owns, manages, operates or controls a cemetery, directly or indirectly.
- However, a cemetery company does not include a religious organization that owns a cemetery which restricts burials to members of that religion or their families unless the organization has obtained a certificate of authority for the cemetery.
- If the cemetery is owned by a religious organization which restricts burials to members of that religion or their families, then the statutes that govern religious and non-profit organizations would control in this case.
- The provisions of the Cemetery Act would not be applicable for these religious organizations.
- However, determining whether a religious organization is exempt from the NJ Cemetery Act is often difficult, so please consult your underwriter for further guidance on the issue.

# Pet Cemeteries

- Pet cemeteries are governed by a different statute, N.J.S.A. 4:22A-1 et seq.
- A pet cemetery is defined under the statute as any land, place, structure, facility or building provided by any person, whether or not for profit, to veterinarians or members of the general public for use, or reservation for use, for the permanent interment or inurnment above or below ground of pet remains.
- Also, a disposal facility is defined under the statute as a facility, owned or operated by any person, whether or not for profit, that offers to dispose of deceased pets.
- In NJ, pets are not allowed to be buried in human cemeteries.
- However, if a person elects to be cremated, the ashes can be scattered in a pet cemetery containing their pet's remains.
- Lastly, a person can be buried in a pet cemetery as long as the pet cemetery permits human remains to be buried in their plots.

# Burying on Private Property

- There is no prohibition in NJ on burying human remains on private property.
- However, a burial may be disallowed if it is deemed dangerous to public health.
- Per N.J.S.A. 26:6-5, if the court shall determine that the cemetery or burial ground or any part thereof is dangerous to the public health for any reason, or that further interments therein would be inadvisable, the court may, by injunction or otherwise, grant such relief as may be proper and necessary for the protection of the public health.
- Before burying a body on private property, local laws and rules should be consulted and a burial permit must be obtained. N.J.S.A. 26:6-5.1.
- When burying a body on private property, a map of the burial ground must be drawn and filed with the property deed, so the location is disclosed in the public records.
- One recent example is the burial of Ivana Trump, as her body was buried at the Trump National Golf Club in Bedminster, NJ.

# Burial and Cremation

- In NJ, embalming is required only in limited circumstances.
- Embalming is a process in which blood is drained from the body and replaced with fluids that delay disintegration.
- Per N.J.A.C. § 8:9-1.1, if a body won't be buried or cremated within 48 hours, it must be either embalmed or refrigerated.
- Furthermore, per N.J.A.C. § 8:9-1.7, a body must be embalmed and enclosed in a leakproof casket if it will be shipped by a common carrier (e.g. airplane or train) and will not reach its destination within 24 hours.
- NJ does not have any law or regulation requiring a casket for burial.
- However, a local cemetery may have certain requirements to have the body placed in an alternative container for burial.
- Caskets may be purchased from third parties such as online retailers.



# Burial and Cremation (cont.)

- NJ does not have any restriction as to where you may keep or scatter ashes as long as you obtain a cremation permit no less than 24 hours before cremation.
- Ashes may be stored in a container, crypt, grave, or small container in the home.
- Ashes can also be scattered on your own private property, or another property as long as you obtain permission from the property owner to do so.
- Permission should also be requested before scattering any ashes on public or federal land.
- You may have to check with the municipality first before scattering ashes in a public park, lake or pond.
- A permit may also be required from the Environmental Protection Agency (EPA) or NJDEP to scatter ashes at sea or in a river or waterway controlled by the state agency.

# Historic Cemeteries

- N.J.S.A. 40:10B-3 controls the regulation of historic cemeteries within the state.
- This statute permits local governments to assist in the restoration, maintenance and preservation of any historic cemetery located within its borders.
- Under the statute, a “historic cemetery” is defined as a cemetery not owned by the State, a county, municipality, or religious corporation or association, in which are interred the remains of prominent citizens or residents of the State or of the Colony of East Jersey or the Colony of West Jersey, or veterans of the Colonial Wars, the War of Independence, the War of 1812, the Mexican-American War, the Civil War, the Spanish-American War, or World War I, in which not more than 10% of the interments have been made after 1880, in which no interment has been made for 50 years, and for which no funds are available for regular maintenance or preservation.
- The governing body of a county or municipality may also appropriate funds under a certain threshold within the statute for the restoration, maintenance, and preservation of these cemeteries.

# Taxes and Judgments

- Per N.J.S.A. 45:27-20, all lands dedicated for cemetery purposes or owned by cemetery companies are exempt from the payment of any real estate taxes, rates and assessments or personal property taxes on lands and equipment dedicated to cemetery purposes.
- However, cemetery lands are not exempt from water and sewer rents.
- Cemetery companies are also exempt from business taxes, sales taxes, income taxes, and inheritance taxes.
- Land dedicated to cemetery purposes and structures, buildings, and equipment used for the maintenance of that land or the operation of a cemetery shall be exempt from sale for collection of judgments.
- The cemetery company may use available income to pay a judgment lien, but if a judgment against a cemetery company cannot be paid, a court may also order the issuance of bonds, notes or other evidences of indebtedness by the cemetery company.

# Real Estate Conveyances

- Per N.J.A.C. 13:44J-13.4, no cemetery company shall sell land dedicated for cemetery purposes or grant an easement of such land without prior approval from the Cemetery Board.
- N.J.A.C. 13:44J-13.6 further states that a cemetery company shall not lease or license cemetery lands to another organization or entity without prior approval from the Cemetery Board.
- Although there is no express restriction on mortgaging cemetery lands, N.J.S.A. 45:27-21b states that after property is dedicated to cemetery purposes by a cemetery company, neither the dedication nor the title of the interment space owner shall be affected by the dissolution of the cemetery company by nonuse on its part, by alienation of the property, by any encumbrances, by sale under execution, or otherwise except as provided in this act and by law.
- Therefore, cemetery lands may be immune from execution sales to enforce a mortgage or judgment lien.

# Real Estate Conveyances (cont.)

- Per N.J.S.A. 45:27-34d, the Superior Court shall not approve the removal (disinterment) of human remains from lands to be transferred unless notice and an opportunity to be heard in opposition has been given to the owners of all affected graves.
- The cemetery company must obtain consent of the heirs of those buried before transferring any land which includes the graves for these burials.
- If the owner of a grave is not known or cannot be located, the court may order notice by publication.
- Per N.J.S.A. 45:27-28, the cemetery company can transfer an interment space or burial plot by deed.
- The conveyance issued by a cemetery shall indicate whether the cemetery company is transferring title to the interment space or niche or only a right of burial in it, subject to certain reasonable restrictions.

# Insuring Cemetery Lands

- When insuring a conveyance of cemetery lands, whether a lease or purchase, written consent and approval from the Cemetery Board is required.
- Please also require proof that no disinterment is required pursuant to N.J.S.A. 45:27-34.
- Any restrictions set forth by the Cemetery Board as part of its approval process must be raised as exceptions to title.
- Also, any restrictions set forth in the deed by the cemetery company must be raised as exceptions to title.
- Any sale or transfer of land by a cemetery company requires compliance with N.J.S.A. 45:27-25, which states that a cemetery shall not be established or enlarged in any municipality without first obtaining the consent of the municipality by resolution.

# Insuring Mortgages

- As previously mentioned, there is no express restriction on mortgaging cemetery lands.
- However, since cemetery lands may be immune from execution sales, insuring a mortgage may be extremely difficult, and should not be insured if it is determined to be an unenforceable lien.
- Some cemetery lands which are owned by religious organizations may not be subject to the Cemetery Act, but you must consult your underwriter for further guidance on the issue regarding insurability.
- Transactions involving a mortgage may require additional requirements or exceptions and must be handled on a case-by-case basis.
- Not all mortgage transactions are the same regarding cemetery lands, and underwriting approval is required.

# Burial Plots

- The conveyance of a burial plot can be insured through the recording of a deed.
- The deed must be carefully reviewed to determine if the conveyance is for a fee simple interest or easement.
- Any restrictions within the deed must be raised as exceptions on title.
- The policy must also except for any restrictions or conditions set forth by the cemetery company, whether or not those restrictions appear on record.
- Also, please be aware of any property that may contain an ancient cemetery or burial plot on the land.
- The burial plot may be recorded as an easement in favor of the relatives or surviving heirs of the deceased.
- Since the surviving heirs have a right to visit the burial plot as set forth in the easement, then the easement must be raised as an exception.



A woman with dark hair, wearing a blue sweater, is shown from the chest up. She has a serious, slightly concerned expression. The background is dark and out of focus. The text "YOU ONLY MOVED THE HEADSTONES!" is overlaid at the bottom of the image in a bold, white, sans-serif font with a black outline.

**YOU ONLY MOVED THE HEADSTONES!**

# The Disinterment of Snake Hill

- “You moved the cemetery, but you left the bodies, didn’t you?” You left the bodies, and you only moved the headstones! You only moved the headstones! Why? Why?”  
*Poltergeist, Tobe Hooper, Craig T. Nelson, MGM/UA Entertainment Co., 1982.*
- In 2002, movie fantasy became reality in Secaucus, NJ, when the NJ Turnpike Authority wanted to build a new interchange off of Exit 15X on the NJ Turnpike to give motorists access to the Secaucus Junction train station.
- As workers began excavating the area, human remains were discovered.
- This discovery then led to the largest disinterment of bodies in American history.
- In a 10-month period from 2002 to 2003, thousands of bodies were discovered in the Meadowlands vicinity.
- 4,000 of those bodies had to be re-buried at a local cemetery in Hackensack, and next of kin were notified of the discovery as the human remains were eventually identified.

# The Disinterment of Snake Hill (cont.)

- Snake Hill, which is now known as Laurel Hill, lies in Secaucus, NJ near a bend by the Hackensack River.
- This hill served as the location of the Old Bergen Poor Farm in the late 18<sup>th</sup> century.
- In 1840, when the southern part of Bergen County became part of Hudson County, the county purchased this land to build a mental institution and almshouse on this land.
- However, in later years, the mental institution would be converted to a tuberculosis hospital, penitentiary, and then a juvenile detention center.
- The grounds were also used as the Hudson County Burial Grounds where the deceased from this facility were placed.

# The Disinterment of Snake Hill (cont.)

- The problem that resulted was the fact that the deceased were often buried one on top of the other, and throughout the years, record-keeping in the county became a significant issue as well.
- Some bodies were disinterred and relocated when original construction of the NJ Turnpike began in the 1950s.
- However, in 1970, a morgue custodian at Meadowview Hospital who was responsible for hiring contractors to recover the bodies in this area for relocation to other cemeteries had been indicted for using inmates and road crews to do the work instead of hiring legitimate contractors.
- The popular opinion, although not officially confirmed, is that these “contractors” simply removed the grave markers and headstones, and just left the bodies in the ground.

# The Disinterment of Snake Hill (cont.)

- When the NJ Turnpike Authority discovered these bodies, it was required by state law to remove them and put them elsewhere; and also attempt to find the dead's next of kin.
- However, there are many families that have still not received any notice of their loved ones passing or being buried on these grounds, because not all of the bodies were able to be identified.
- Also, the discovery of these human remains has also given significant attention to possible conspiracy theories and urban legends from locals that prominent people may have been buried in this vicinity as well, including Jimmy Hoffa.
- Local and state officials have often said that this was something that can only be scripted in a Hollywood movie, but unfortunately, this was a true story.



# Zombie Foreclosures

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# What is a Zombie Foreclosure?

- A zombie foreclosure occurs when a property is left vacant by the homeowner who has defaulted on their mortgage and after receiving a foreclosure notice, the homeowner decides to abandon the property.
- The homeowner may incorrectly believe that the lender now owns their property after receiving the foreclosure notice or does not wish to go through an eviction process.
- After the property becomes unoccupied, the state of the property eventually falls into disrepair, causing safety hazards or lowering of property values in the surrounding area.
- The term “zombie foreclosure” or “zombie property” became popular after the 2008 financial crisis when many properties across the United States were abandoned by homeowners.
- At one point, NJ had one of the highest number of zombie foreclosures in the country, and still today, there are many properties in NJ that have been abandoned and have fallen into disrepair.

# Zombie Mortgages

- Another recent problem that has occurred is the rise of “zombie” mortgages.
- The problem dates back roughly to the mid-2000s.
- Lenders had offered prospective homebuyers two mortgages in the form of 80/20 loans, with the second 20% mortgage taking the place of a down payment.
- However, after the 2008 housing crisis, the federal government began advocating for loan modifications on mortgages to curb the increase in foreclosures.
- Borrowers had mistakenly thought their loan was forgiven, but the lenders frequently sold these loans to debt collectors at a fraction of the price, often without homeowners knowing.



# Zombie Mortgages (cont.)

- As of today, the collectors or holders of these loans are now seeking payment of the zombie mortgage along with interest and other fees accumulated over time.
- Foreclosure notices are now on the rise because of these zombie mortgages.
- A lender may attempt to collect several years' worth of interest by threatening to take the house through a "zombie" foreclosure, even though no monthly mortgage statements have been received for several years.
- Since borrowers are still "haunted" by these old mortgages, they may have to seek legal counsel to work out a settlement with the lender or do a new loan modification.
- A recent study by NPR found at least 10,000 old second mortgages that foreclosure activity had been initiated on in just the last two years.

# Abandoned Properties

- In NJ, when a property becomes abandoned, it is still owned by the homeowner until the lender completes the foreclosure process.
- The homeowner is still responsible for the upkeep and maintenance of the property despite the fact that they have vacated the premises.
- If a property is abandoned for a significant period of time, the Abandoned Properties Rehabilitation Act (N.J.S.A. 55:19-78) permits municipalities to take action in rehabilitating abandoned properties.
- Under the statute, an “abandoned property” is defined as any property that has not been legally occupied for six months, and which also meets any one of the following criteria: (a) the property is in need of rehabilitation, and no rehabilitation has taken place for six months; (b) construction was initiated and then discontinued prior to completion, and no construction has taken place for six months; (c) the property is in property tax arrears by at least one installment; or (d) the property is determined to be a nuisance by the public officer.

# Abandoned Properties (cont.)

- Once a local ordinance is enacted, a public officer will create an abandoned property list.
- The municipality may add properties to the abandoned property list at any time. N.J.S.A.55:19-55.b.
- The law also gives municipalities the authority to remove properties on the municipality's abandoned property list from the regular tax sale process and sell them through special tax sales.
- Property owners must be notified and given the opportunity to appeal inclusion of their property on an abandoned property list.
- Furthermore, N.J.S.A. 55:19-86 sets forth the procedural requirements for a municipality to file a complaint and lis pendens for a property that is determined to be abandoned.

# Abandoned Property List

- At least 30 days before filing the complaint, the municipality shall serve a notice of intention to take possession of an abandoned building.
- This notice shall inform the owner and interested parties that the property has not been legally occupied for six months and of those criteria that led to a determination of abandonment.
- Any owner or lienholder may challenge the inclusion of a property on the list within 30 days from receipt of the notice, or 40 days from mailing or publication of the notice.
- However, for a successful appeal, the owner must provide sufficient proof that the property is not abandoned or should be excluded from the list.

# Abandoned Property List (cont.)

- The property owner must show that the property is legally occupied or that rehabilitation of the property has commenced.
- A property owner can also successfully appeal that the property should be excluded from the list if an entity other than the municipality is the holder of a tax sale certificate.
- Any unpaid sums expended for the purpose of rehabilitating the property may result in a municipal lien against the real property.
- If a lien is created, the municipality can then sell a tax sale certificate at auction to a third-party bidder, which can result in a foreclosure of the property by the third-party purchaser.

# Abandoned Property Registration Fees

- Many municipalities have enacted local ordinances to charge fees, fines and penalties related to vacant and abandoned properties.
- Even though there is no statutory authority to do so, some municipalities treat these fees as liens against real property.
- Tax searches will typically disclose if there are any vacant or abandoned registration fees that may be due for the property.
- Property Registration Champions (ProChamps) used to be a reliable source to obtain information on vacant or abandoned property registration fees.

# Abandoned Property Registration Fees (cont.)

- However, ProChamps filed for liquidation back in July of 2023, so they can no longer be used as a resource to obtain information.
- If your municipal tax search discloses any notes pertaining to vacant or abandoned property registration fees, you must contact the municipality to confirm the status of this lien.
- If no resolution can be reached regarding the status or payment of this fee, then the following exception must be added to all title commitments and policies:

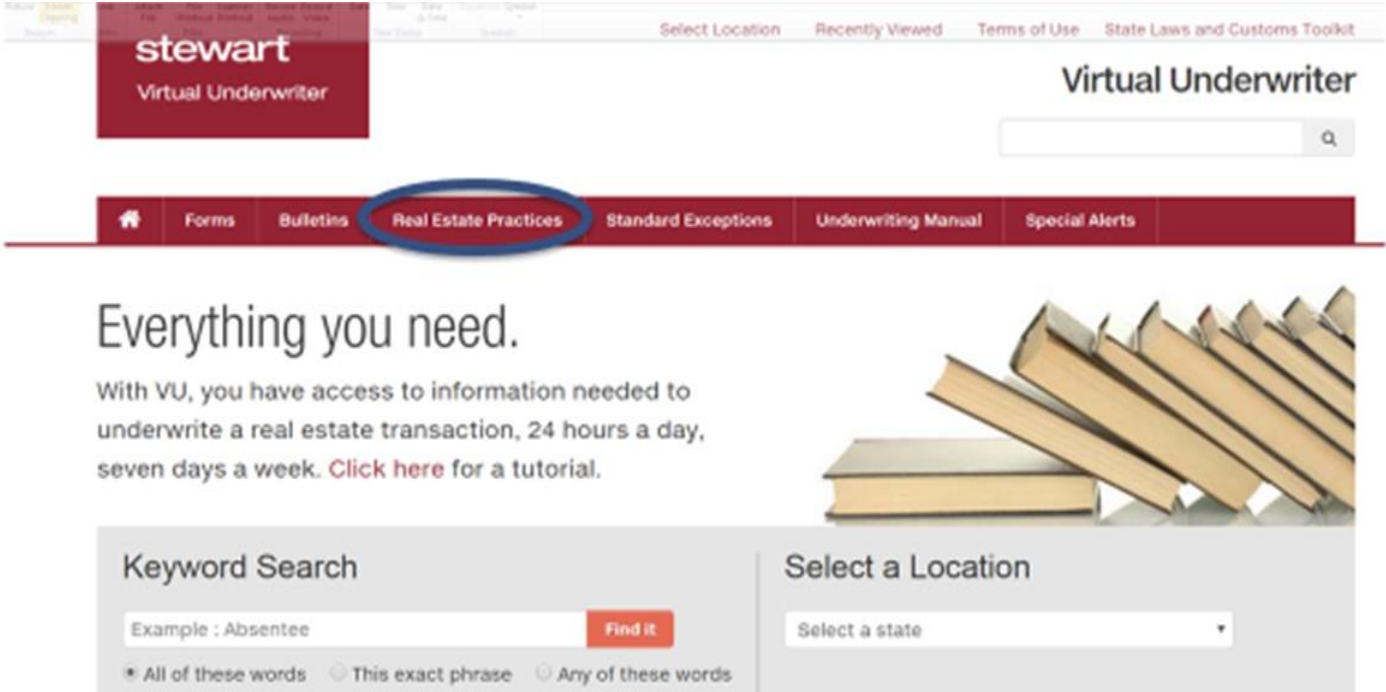
**Vacant or abandoned property registration fees, fines, and penalties, if any, with respect to the Land.**

# Conclusion and Wrap-Up

- New Jersey cemeteries are governed by the “New Jersey Cemetery Act, 2003.” N.J.S.A. 45:27-1 et seq., and when insuring a conveyance of cemetery lands, whether a lease or purchase, written consent and approval from the Cemetery Board is required.
- Even though there is no express restriction on mortgaging cemetery lands, the cemetery lands may be immune from execution sales, so please consult your underwriter regarding insurability of a mortgage for cemetery property.
- Zombie foreclosures have become quite common in recent years due to old mortgages that were never forgiven, and several years’ worth of interest accruing on these mortgages.
- In NJ, if a property becomes abandoned by the homeowner, a municipality may add the property to the abandoned property list at any time. N.J.S.A.55:19-55.b.



# www.VUwriter.com



The screenshot shows the Stewart Virtual Underwriter website. At the top left is the Stewart logo with the text "Virtual Underwriter". To the right are navigation links: "Select Location", "Recently Viewed", "Terms of Use", and "State Laws and Customs Toolkit". Below this is a search bar with a magnifying glass icon. A dark red navigation bar contains several menu items: a home icon, "Forms", "Bulletins", "Real Estate Practices" (circled in blue), "Standard Exceptions", "Underwriting Manual", and "Special Alerts". The main content area features the heading "Everything you need." followed by the text: "With VU, you have access to information needed to underwrite a real estate transaction, 24 hours a day, seven days a week. [Click here](#) for a tutorial." To the right of this text is an image of several books stacked. Below the text are two search sections: "Keyword Search" with a text input field containing "Example : Absentee", a "Find it" button, and radio button options for "All of these words", "This exact phrase", and "Any of these words"; and "Select a Location" with a dropdown menu labeled "Select a state".

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# THANK YOU FOR JOINING US

Please mark your calendars for our:

## **November N2K HOUR**

Tuesday  
November 12th  
11:00AM