



Lowenstein Sandler's Trusts & Estates Podcast: Splitting Heirs

Episode 18:
Grave Reservations: Everything You Didn't
Realize You Want to Know About Cemeteries

By [Warren K. Racusin](#), [Eric D. Weinstock](#)

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Warren Racusin: If you ever get to visit Buenos Aires, and I hope you do, it's a great city, you will undoubtedly spend some time at La Recoleta, one of the largest and most beautiful cemeteries in the world, the final resting place of Eva Peron, various Argentine presidents and Nobel Prize winners. A 14 acre, as they say there, "La Ciudad de los Muertos," a city of the dead, replete with the most elaborate statues and mausoleums imaginable laid out over a whole street grid.

When I was there earlier this year, one grave site caught my eye, a 22-year-old woman who had died well before her time. Her family wanted to be sure that she was comfortable in her next life, and so several feet down, they created a full-sized living room for her, furnished with couches, comfortable chairs, and a baby grand piano. When I saw that one, I turned to my wife and I said, "That right there. That's a podcast episode."

From the law firm, Lowenstein Sandler, this is Splitting Heirs. I'm Warren Racusin. There's actually a lot to learn about cemeteries and we have just the people who can dig in and unearth it all for us. Sorry, I couldn't resist. My colleague, Eric Weinstock has represented many estates during his career and has dealt with some of the more out-there legal issues surrounding these hallowed places, giving him a story or two that he'll share with us.

And just to show that Buenos Aires ain't got nothing on the good old USA, our special guest is Richard Moylan. Rich is the president of Green-Wood Cemetery in Brooklyn, New York. Maybe the most famous cemetery in this country. During Rich's five decades at Green-Wood, he's held, as he's fond of saying, nearly every job at the cemetery, starting with mowing the lawn while he was attending New York Law School. It was because of his successful efforts that Green-Wood's been designated as a national historic landmark back in 2006, cementing its place as a site of great historical, cultural, and architectural significance.

So, let's all get a quick education on the law and the lore of cemeteries. Okay, Eric ask me the question.

Eric Weinstock: Warren, why do cemeteries always have fences around them?

Warren Racusin: Why do cemeteries always have fences around them? Because everyone's dying to get in. Terrible joke, but there's actually a lot of legal guardrails

around cemeteries because they're such special places emotionally, physically, etc. Let's talk about those a little bit.

First things first, there's actually a system of regulation for cemeteries in New York and probably just about every other state as well. Tell us about that a little bit, Eric.

Eric Weinstock: Sure. Well, in New York, cemeteries are actually a fairly highly regulated industry. There's a whole body of state law that governs the operation of cemeteries. And the governing body that oversees cemeteries at the state level is the New York State Cemetery Board. They enforce regulations on cemetery practices that help keep the industry as transparent as possible and accountable to the folks who use them while maintaining standards that reflect the respect that's appropriately due, folks who have passed away and are buried in cemeteries.

Warren Racusin: Do people lobby to get on the New York Cemetery Board? Is this like a political plum or how does one try to and successfully get themselves on the New York Cemetery Board?

Richard Moylan: You're going to get me in trouble here, Warren. Yeah, it's not particularly a coveted position. There are designees from the Attorney General. There's a designee from the Department of Health and there's a designee from the Department of State, and the chairman is also a Department of State person. They're all really, really good people. I attend via Zoom cemetery board meetings every month. They're really fine people doing a pretty tough job. I mean, they meet once a month and they have a lot of issues to deal with, believe it or not.

Warren Racusin: I've actually read some of the minutes of meetings of the New Jersey Cemetery Board, the Garden State's analog for the New York Cemetery Board, and from what I gather, members of the public actually show up to at least some of these meetings and raise issues and questions and problems. Did that happen in New York also?

Richard Moylan: Absolutely. Right now, there's something going on out at Pine Lawn in Long Island. They have a lot of land that they may never use for cemetery purposes, so they're using it for other purposes including mini-malls and things like that, golf courses years ago. And there's a lot of interest in what's happening with their current situation.

I think it's a good thing for the cemetery. They are putting land to work, on a temporary basis it might be 99 years, but on a temporary basis generating income for the cemetery, but the public is concerned with traffic and this and that. So yeah, there have been people at recent meetings.

Warren Racusin: And I think that goes to show that these cemeteries are important to people. And important enough to show up at meetings and raise concerns so that everything is done the right way. I must say whenever I'm playing golf, it feels like I'm in a cemetery, but that's a whole different discussion.

Eric, so New York actually classifies cemeteries as non-profit organizations, right?

Eric Weinstock: That's correct. There's no profit in death. What that means as a practical matter is that cemeteries are not allowed to make a profit from the sale of burial plots and other services that they provide. So, what happens is the funds that are paid to buy plots are channeled within the cemetery into perpetual maintenance and care. That's why when you go to a cemetery, it looks as nice as it does. The cemetery has funds set aside to take care of the cemetery long-term, keep the grounds appropriately trimmed and tailored. It's respectful for those buried there, and it suits the public's interest in making sure that cemeteries are hallowed ground.

Also, something folks don't know is that cemeteries are actually required to have perpetual care funds to set aside funds in order to cover the long-term maintenance of the grounds at their cemetery.

Warren Racusin: And I guess one of the jobs of the cemetery board is to oversee that and make sure those funds are being held correctly and used correctly?

Eric Weinstock: Correct.

Richard Moylan: In New York's case, that fund is actually called the Permanent Maintenance Fund. This is really getting into the woods here. Perpetual care are individual endowments for individual plots. Permanent maintenance is 10% of sales plus \$35 per internment. But that only started in 1949, and that came about because there was a lot of problems in the cemetery industry, people building community mausoleums on spec and then selling it and running off with all the money.

Warren Racusin: I did see, speaking of mausoleums, in the minutes of one of those New Jersey Cemetery Board meetings, I read that there was a problem with a mausoleum because some people were living in it, which raises all sorts of interesting questions, which we're not going to get into today. I'll let everybody use their imagination.

Eric, when you buy a cemetery plot in New York, you might think it's yours forever, but that's not really the case. What does ownership really mean?

Eric Weinstock: That's right, Warren. So, when you buy a plot, it's not actually a real estate transaction. Folks think that they're buying the land where the plot's located, in which someone would be buried, but actually it operates more like a license. What you're buying is the right to use that plot in order to bury someone there. It's part of the high level of regulation that New York has.

And the regulations cover not only how someone gets buried there, it also can cover what kind of monuments you're allowed to have. It's not only the state law, but it's also the cemetery's rules about how you can use the plot that you've purchased.

Warren Racusin: So, the cemetery's regulations can include the restrictions on the types of monuments, burial practices, how you decorate or maintain the plot. I think in some cemeteries, you are not allowed to bring food into the cemetery. Why that would make a difference to the permanent residents of the cemetery is something I don't quite understand. But there you go. When you buy a burial plot, you're buying the right to use the plot for internment, but you don't actually own the, I guess I would call it, brick and mortar or dirt, right?

Eric Weinstock: Yes, that's correct.

Warren Racusin: And cemeteries are going to have or are supposed to have clear contracts, disclose relevant information to consumers at the time of the sale. Obviously, that's because this is a very difficult time or can be a very difficult time for people who are purchasing the plot. And so, the rules of the road say that the cemetery has got to be very clear and open, so there's no question about being taken advantage of when they're purchasing a plot.

So again, we've talked about it a little bit already, Rich, it includes maintaining the cemetery's grounds and pathways and facilities in good condition. Is that right?

Richard Moylan: Yes, but again, in New York, perpetual care is for specific plots.

Warren Racusin: Is for specific plots?

Richard Moylan: Right. The Permanent Maintenance Fund is for the general care of the cemetery, and Green-Wood for instance, has what we call a general fund. A general fund is basically accumulated earnings, and that allows us, we hope to keep growing that general fund and that care is for the care and maintenance of the cemetery.

Warren Racusin: Right. As to burial practices, particularly the state regulations ensure that the burial practices follow safety and environmental health standards. Of course, there are such standards, obviously, I guess. Rich, there are rules about how far apart caskets can be, plot spacing, that kind of thing?

Richard Moylan: Yeah, it's really not that specific. I mean, in the metropolitan area, many cemeteries bury three deep. That's unusual outside of New York City and outside of New York State, many cemeteries only go two deep, but we basically go nine, seven and five feet deep. That's maximum. People don't need to use that. Sometimes it's just one per grave.

Warren Racusin: Wait, does that mean that there's somebody buried three feet down, five feet down and seven feet down in the same plot?

Richard Moylan: Correct.

Warren Racusin: Oh, I learned something today. And I guess that's because to sort of maximize the amount of space that's available as a brutally practical matter?

Richard Moylan: Exactly.

Warren Racusin: And there are also, not to go into too much detail, but for cemeteries that offer cremation services, there are rules in the New York State public health law that govern those standards for crematory operations for people who have a burning desire to understand those. Sorry, sometimes it's just too easy. I'm sorry.

Eric, this is when you don't think an awful lot about every day, but there are also regulations for moving somebody's remains, right?

Eric Weinstock: That's correct. I actually had an experience in New Jersey about 20 years ago. A client came to our firm. The client was the grandson of his grandfather and grandmother who were deceased and buried in a Catholic cemetery in New Jersey, and he wanted us to get an injunction against one of his cousins, another grandchild, who had taken it upon himself to buy a used mausoleum, chisel off the old family name and have his family name carved into the outside. And he was in the process of moving the remains of grandma and grandpa from the existing plots into the mausoleum. PS: Without the approval of the cemetery or anyone else. He basically muscled his way into the cemetery. He bribed someone to look the other way as backhoes were brought in.

Needless to say, we were successful in representing our client and stopping this from happening. But there are complex rules permitting, depending upon which state you're in, requirements about when you're allowed to disinter, where you can reinter, the procedures involved as you can imagine, it's a pretty sacrosanct area.

Warren Racusin: So, on that jolly note, just a few fun facts about cemeteries before we move on to Rich. Did you know that early American settlers would often have their feet pointed east when they're buried in a cemetery? That's because they believed that if they were reborn, they would face the rising sun of a new day. You really can't make this stuff up, but true.

And there's a difference I learned between a cemetery and a graveyard. A cemetery is a place where dead people are buried. A graveyard is a cemetery on the grounds of a church. Eric, one more fun fact that will get lots of people's attention.

Eric Weinstock: In the old days, with medical practices not being quite what they are today, folks were concerned that they might be buried but actually still be alive. And so, there were things called safety coffins. A safety coffin had a string inside with a bell. So, if the person who was placed in the coffin woke up and realized they were being buried alive, they could ring the bell so someone would know to lift the coffin back out and let them out.

Warren Racusin: Like I said, you can't make this stuff up. Rich, any safety coffins in Green-Wood?

Richard Moylan: Perhaps a little before my time, but not since then.

Warren Racusin: What we want to hear about is Green-Wood itself, and you probably know as much if not more about it than anybody around, which is why we're really happy you're with us today. Tell us about the history of it, how it got started, how it's gotten to be what it is today, and how important it is. And then we'll talk about some of the interesting folks who are buried there and maybe a story or two, but how did Green-Wood get to be Green-Wood?

Richard Moylan: Thanks for that question. We were founded in 1838, modeled after cemeteries such as Père Lachaise in Paris, which was founded in 1804. The first garden cemetery here was Mount Auburn in 1831. Our founders visited both of those cemeteries and decided New York needed one. Actually, Brooklyn needed one. Brooklyn was its own city then, but we were the suburbs in a sense.

There were cemeteries in Manhattan were mostly church graveyards. And they were filling up and Manhattan real estate was becoming more and more valuable. So, the founders of Green-Wood, mostly wealthy Brooklyn businessmen, last names that you know of today, Henry Pierpont, names like that, collected land. First, they didn't donate land. They sold land to the cemetery. In a year they realized that it being a for-profit was not going to work. So, a year later, 1839, they were a very early not-for-profit. They turned in their certificates of ownership and it became a not-for-profit corporation.

We were originally about 270 acres. By the early 1900s, we grew to our current 478, much larger than Mount Auburn. And we looked at Mount Auburn and said, "We're going to do it bigger and better," as New Yorkers often do. That was how we grew. There were no parks then. So Green-Wood became the early park. There was no Prospect Park, there was no Central Park. People asked me, "Did any of the famous landscape architects designed Green-Wood?" And I said, "No. There were no landscape architects when Green-Wood was founded, we were actually designed by an engineer, David Bates Douglas." And it became the park. You mentioned, we talked about food earlier. People came here for picnics because there was no place else to go.

So, we've been 478 for a while. We have no place to go now. We are building a visitor center across the street from the cemetery that should open next year. Because we are running out of space. We think we have maybe five years left, maximum of new burial space to go. We'll still be burying. We will always be a cemetery, but no new stay.

So, cremation has been good for us, although most people still keep mom and dad on the shelf. We would hope they'd want to do something more permanent with them in a beautiful place like Green-Wood, and we're ready for that. We also have a crematory here, but it's not a big number. We do about 3,700 cremations a year. We keep about 10% of them.

Warren Racusin: And so, you touched on something that I was going to ask you about. What does it actually look like? And you said for people who haven't seen it, it actually looks like a park. It looks like there's rolling hills and landscaping. It's certainly beautiful and it's not what a lot of people would have expected a cemetery to look like, right?

Richard Moylan: Yes. We are a level three arboretum, which is the second-highest level, and there are only about 25 in the country. We have 8,000 trees. And while I love Prospect Park, I've always found Green-Wood more interesting because in addition to the beauty of the horticulture, you can get a history lesson. So, I'm a little prejudiced there.

Warren Racusin: Because there are monuments, right? And architecturally interesting stuff there, right?

Richard Moylan: Many monuments in themselves are works of art, and over the last 20 years or so we've been working on adding to our sculpture collection, some related to the deceased and others not. We have a new sculpture inspired by George Catlin, the painter of American Indians. We have a life-size bear that's on the grave of artist William Holbrook Beard, who painted animals, primarily bears.

We have a new one that's not dedicated to anyone by a living Mexican artist, Javier Marin. It's called The Blower. It's a woman pursing her lips and blowing at the wind. So yeah, I mean there's plenty to see here.

Warren Racusin: Tell us about some of the interesting famous and maybe infamous people who have made Green-Wood their final resting place?

Richard Moylan: Everybody probably knows the most famous ones. Leonard Bernstein, Jean-Michel Basquiat. Tiffany, you mentioned, Steinway. The piano in the mausoleum before Steinway family is here, no piano. Samuel Morse, Peter Cooper, hundreds of artists. Our new visitor center is going to have many works by those artists. We've been collecting them for years. We've identified over 400 artists buried here, and we have paintings by more than 200 of them.

More recently, I guess we're talking to a lot of lawyers here. Just last week we buried Arthur Frommer, a lawyer, the travel person. The artist Chuck Close, Pete Hamill, and someone that was a neighbor of mine, the great author, Paul Auster. He actually bought his plot the day he spoke in our historic chapel when one of his books came out years ago.

Warren Racusin: Can anybody buy a plot at Green-Wood?

Richard Moylan: Anybody can buy a plot. We are non-sectarian. We have not buried a lot of Jewish people. Obviously, we won't get conservative or Orthodox, but we've been burying more and more. Actually, Leopold Eidlitz, the architect of the State Capitol in Albany and many other buildings is buried here. He was one of our early Jewish burials. So, we welcome everyone, vertically and horizontally.

Warren Racusin: And in layers sometimes also.

Richard Moylan: Yes.

Eric Weinstock: So Rich, I'm curious, Green-Wood is such an old cemetery and such a well-known cemetery, has it figured in movies that folks would've seen or TV shows, that kind of thing?

Richard Moylan: It has. Our prior management wanted to stay under the radar, so they would always say no to everything. I mean, that great scene in The Godfather, I loved where they wound up, but they actually talked to us early. Dog Day Afternoon, they wanted to land a helicopter here because that was filmed two blocks from our Prospect Park West entrance, but once it actually made it here, The Departed, Martin Scorsese, all the cemetery scenes in that movie were here. It's supposed to be Boston. There were Boston State police cars from the '60s all lined up here, but filmed right here in Brooklyn.

The most recent one, Spike Lee has filmed here. We've done a lot of filming. Law & Order, I got a Law & Order story for you. Law & Order came here a lot, actually. Chris Maloni's wife's burial place is here, in the movie, in Law & Order: SVU. A Walk Among the Tombstones, Liam Neeson, who's filmed here. That was a great scene that's clearly identifiable as Green-Wood, the body of water.

But yeah, we continue to film here. It helps our income. I mean, when we stop selling burial space, we're going to need income to keep this place looking as good as it does now, so it's an important factor.

Warren Racusin: And we understand that you have more than one interesting or embarrassing or something like it - stories about lawyers, which everybody loves to hear. So why don't you share one or two of those with us?

Richard Moylan: Well, I was hoping you'd be able to talk about things in people that people don't hear every day when you look up Green-Wood, and there it is. If you watch SVU a lot when they get to the courtroom scene, often an issue comes up regarding the Molineux rule. What is the Molineux rule? It's whether past prior acts can be admitted in a courtroom, and it inevitably comes up, and there's often a hearing. And New York law is very tough on that, most recently learned in the Harvey Weinstein case. His case was overturned because of the Molineux rule. The prior bad acts that he had committed were deemed to be inadmissible, which is getting him a new trial. So, my point is guess where Molineux was buried? At Green-Wood.

And one thing over the years, going back to cemetery law, trust in the state's attorneys should not need to know cemetery law. I get that. It's really obscure. It's not very well drafted. I'm sure the division of cemeteries director is not going to like me saying that, but it's true. But there's one thing in the cemetery law regarding people leaving their cemetery property. You can't leave it by a residuary clause. So, I would get a call from a lawyer saying, "Joe disowned his family. He didn't want to leave anything to his kids. He left everything to his niece. So, the niece owns the cemetery property." I said, "Did he devise it specifically in his will?" "No, he did not." "Well, sorry, doesn't count."

Warren Racusin: So, when you say in a will that everything else goes to whomever it goes to, everything else doesn't include the cemetery plot. You have to say specifically, "My plot goes to fill in the blank." Is that right?

Richard Moylan: That's correct. And you have to list the number of the plot too.

Eric Weinstock: Yep. You have to list the plot. You have to identify the recipient, and it's important for folks to know what happens if you don't do that. If you don't do that, if you don't specifically leave ownership of your plot in a bequest like that in your testamentary instrument, state law provides an order for who inherits your plot, and first comes your children, not your spouse. So particularly in modern day blended family situations, if I'm in a second marriage, and I want to make sure that my widow inherits a plot that I own, I better devise it specifically in my will because if I don't, my children from my first marriage can end up inheriting the plot that I thought my wife was going to be buried in.

Warren Racusin: So, when the litigation about who owns the cemetery plot comes, which it sure sounds like it's going to, Rich, you're going to be our expert witness.

Warren Racusin: And I guess Boss Tweed also to go to the other end of the spectrum.

Richard Moylan: Boss Tweed. I toured many years ago, Pete Hamill asked to go on a tour with his lovely wife, Akiko, and we were driving around the golf cart, and Pete said, "Rich, I really need to buy a plot in the Green-Wood," as he always called it. And I said, "Pete, if we drive around, you see a spot you like, let me know, and we'll try to find something for you there." We got to Boss Tweed's plot, and he said, "Rich, stop. There. Can you find me something there?" I said, "We'll try." Called him back a few weeks later, we found him a spot, and unfortunately, he's there now, but he's where he wanted to be.

Warren Racusin: What better place for Pete Hamill to be for eternity than next to Boss Tweed?

Warren Racusin: Well, I hope everybody who's listening now understands that there is a lot more to cemeteries than might meet the eye, and I certainly know a lot more than I did when we got started with this. So, thank you so much to Rich Moylan and thanks to Eric Weinstock. Thanks to everybody at Lowenstein and Too Good to be Social, to make this possible. We will see you next time. Until then, as we say in these parts, have a good one.

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