

Legal Memorandum CE01
CEMETERY REGULATION IN NEW YORK STATE

New York is the most populous of the six states (including, Connecticut, Massachusetts, Maine, New Jersey, and Wyoming) in which cemeteries are required to be operated only on a non-profit basis. New York State's historical not for profit cemetery structure "for the mutual benefit of plot owners therein" is based upon the following aims:

1. to protect the well-being of its citizens;
2. to promote the public welfare;
3. to prevent cemeteries from falling into disrepair and dilapidation; and
4. to prevent cemeteries from becoming a burden upon the community. "for the mutual benefit of plot owners therein." Not-for-Profit Corporation Law (N-PCL) §1501.

In 1847 New York passed its first general law "authorizing the incorporation of rural cemetery associations." Over the next 100 years, many provisions were added relative to cemetery associations or corporations, resulting in the Membership Corporations Law (MCL) Article 9 (sections 70-105). This portion of the MCL was repealed and replaced with no change in form or substance by N-PCL §1401, effective in 1970. In 1977 N-PCL §1401, with all its myriad subdivisions, was enacted into current N-PCL Article 15 (sections 1501-1515).

The New York State Cemetery Board was created by statute in 1949 following a 1949 Report of the Attorney General, which was a study of operations and financial activities harmful to cemeteries. The Board is comprised of the Secretary of State, the Department of Law and the Department of Health, or their designees. N-PCL §1504(a). The Cemetery Board and its administrative arm, the Division of Cemeteries within the Department of State, regulate more than 1900 not-for-profit "cemetery corporations" formed under N-PCL Article 15 or the former Membership Corporations Law. N-PCL §1504(b). There are approximately 6000 cemeteries in New York State. In addition to the 1900+ cemeteries regulated by the Cemetery Board, the remaining 4000+ cemeteries are municipal, religious, family and private cemeteries, and are generally not subject to regulation by the Cemetery Board or the Department of State. N-PCL §1503. The following discussion is devoted to the State-regulated cemetery corporations.

A cemetery corporation derives its operating income from the sale of gravesites, from interment fees, and from investment income. As cemeteries age and become full, the income from the sale of gravesites and interments declines. The cemetery must nevertheless be kept open, tended and avoid becoming the responsibility or liability of a municipality. The increase in cremations, use of mausoleums, shifts in aging population away from New York State, and aging of the volunteer caretakers of New York's cemeteries have altered the financial and operational impacts upon cemeteries.

When a burial lot is sold to a member of the public, the cemetery must allot 25% of the gross proceeds to the following two funds: 10% to the Permanent Maintenance Fund (PMF), a trust fund to maintain and preserve the cemetery in the future, and 15% to the Current Maintenance Fund (CMF) for current operational expenses. The remainder may be used for current expenses or to retire indebtedness created when the cemetery was formed or enlarged. As a trust fund, the principal of the PMF must be invested in accordance with State law and may not be utilized for current expenses except with the permission of a judge of the Supreme Court of New York State. This money will be utilized to care for the cemetery after all lots have been sold and interments have ceased. However, the income earned from the PMF may be utilized for current expenses. N-PCL §1507(a).

As a not-for-profit corporation, the cemetery is governed in accordance with N-PCL Article 15, 19 NYCRR Parts 200-203, its Certificate of Incorporation filed with the Department of State, its adopted Bylaws, and its "reasonable rules and regulations" approved by the Cemetery Board [N-PCL §1509(a)]. The corporation's members, who must be lot owners [N-PCL §1512(g)], elect a board of directors at the annual meeting. The directors in turn appoint the officers to run the corporation on a daily basis.

The directors determine the price of lots or crypts to be sold and must post a schedule of such prices at the cemetery and file the schedule with the Cemetery Board. N-PCL §1513(b). Approval by the Cemetery Board is not required.

Each cemetery collects fees from lot owners for the provision of various services, including interment, entombment, disinterment, annual care and perpetual care, and the sale of items such as flat bronze markers. Following a review of these charges by the Division, the Cemetery Board meets to approve or deny such charges or an increase in such charges pursuant to N-PCL §1509. In its deliberation, the Cemetery Board considers "the propriety and the fair and reasonable costs and expense of rendering the services or performing the work for which such charges are made." N-PCL §1509(e).

Many other aspects of cemetery operations and maintenance fall under the regulation of the State Cemetery Board. These matters include:

- incorporation of new cemeteries;
- filing of financial and operational reports;
- vandalism fund;
- trust funds and perpetual care funds;
- public mausoleums;
- lawn crypts;
- crematories; and
- rights of lot owners and burial rights.

The cemetery must post in its office its applicable rules, regulations, charges and prices. For a violation of this or any other problem with a cemetery, it is first advised that the cemetery be contacted. If a resolution is not achieved, the Division of Cemeteries may be contacted by writing to 41 State Street, Albany, New York, 12231-0001 or by telephoning at (518) 474-6226.

The State Cemetery Board meets on a monthly basis, most often in Albany, but also two times a year in New York City. The public session of the meeting is open to the public; the executive portion of the meeting, at which confidential matters are discussed, is closed to the public. The Division of Cemeteries may be for the date, time and place of the next meeting.

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