



New York State
DEPARTMENT OF STATE

DIVISION OF CEMETERIES
41 State Street, Suite 1110
Albany, NY 12231-0001

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No. 4

CEMETERY BULLETIN

Director's Notes C

I am pleased to present our fourth edition of the *Cemetery Bulletin*. This edition is concerned with a constant problem confronting every one of you. No issue is more contentious than burial rights. Both you and the Division spend an enormous amount of time trying to resolve family disputes. It is important to read the article closely to be sure you are complying with New York State laws.

There has also been a change that is especially important to those of you whose cemetery funds total between \$400,000 and \$1 million. Those cemeteries are no longer required to file an *audited CPA financial report* with our office. Instead, you are now required to file a *CPA review* which will provide similar information but will not be as costly.

As always, let us know what problems you are having or if there is a special issue you would like us to address in an upcoming *Bulletin*.

Cemetery Bulletin INDEX

- 1 / July 1998 (*mutual funds; pricing graves; assessment vs. vandalism fees*)
- 2 / March 1999 (*legislation: prohibition of combinations and management agreements; exclusive right of cemetery corporation to provide annual care*)
- 3 / September 1999 (*cemetery classifications; new Annual Financial Report requirements for medium-sized cemeteries; legislation: sale of cemetery lands clarified*)
- 4 / March 2000 (*transfer of burial rights: inalienability, consanguinity and irrevocable designations*)

Transfer of Burial Rights

Inalienability, consanguinity and *irrevocable designation* are three terms that often confuse cemeterymen and regulators alike. These terms are associated with the transfer of burial rights. Let's try to simplify some of the legalese.

A cemetery *lot* is any single parcel of property, containing one or more graves, a crypt or niche spaces. Cemetery "property" is owned by the cemetery corporation. Regardless of the language on a lot "owner's" deed, the real property is never actually "sold" to a lot owner. Instead, the lot owner receives only three privileges: 1) the right of burial, 2) the right to memorialize, and 3) the right to vote at the cemetery's annual lot owners' meetings.

What happens when a lot owner moves away, or otherwise has no need for a cemetery lot? State law prohibits anyone other than a cemetery employee from selling lots. So, the lot owner may not sell or transfer a lot to anyone unless certain conditions are met:

- First, the lot must be *inalienable*. That simply means that no bodies or cremated remains may already occupy the lot.
- Second, the lot owner must offer to sell the lot back to the cemetery at the original purchase price plus 4 percent simple interest per annum. The cemetery may try to offer less, and if the final price is acceptable to both parties, the repurchase can go ahead without notifying the Division of Cemeteries.

If the cemetery is not willing to pay the purchase price plus 4 percent, and the lot owner is not satisfied with the cemetery's offer, the cemetery should issue a letter of refusal. The lot owner is then free to find a buyer. The Division of Cemeteries provides an application to the lot owner who must list the name and address of the new purchaser. Once we have determined that it is not being sold for the purpose of resale, we will approve the sale and notify the seller. The seller must present the authorization to the cemetery, which usually prepares a new deed for the new lot owner.

Now, let us suppose there are bodies or cremated remains already interred or entombed in a lot: can such a lot be transferred? Here is where the term *consanguinity* comes into play. Consanguinity simply means *related by blood, or blood kin*. State law allows people to transfer a lot containing burials to persons within the third and fourth degree of consanguinity, or blood kinship. That runs the gamut from parents to great-great grandparents, from children to great-great grandchildren, to grandnieces/nephews, first cousins and great uncles/aunts. But not to a spouse *alone*, because a spouse is not *blood kin*.

If there are no blood relatives, there is another alternative. Graves not needed do not have to go unused. A lot owner can allow a person or persons to be buried

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or entombed in a lot by giving the cemetery association a document called an *irrevocable designation*. This document gives the recipient(s) the right of burial and memorialization, while lot control and voting rights remain with the original owner. Irrevocable designation provides only for the *use* of a lot; it is not a conveyance.

Lot ownership is determined by the name(s) on the original deed or purchase order. For example, let us say an owner is listed only as John Doe and he is married and has two children when he dies and is buried in the lot, as is his right.

If John Doe dies without *specifically* bequeathing the lot to Mrs. Doe (or anyone else) in his Will, or if he dies without a Will, the lot becomes “owned” by his wife and two children, jointly. His widow does not *exclusively own* the lot unless he bequeaths it to her or dies without any

surviving children or grandchildren. Although in our example Mrs. Doe does not exclusively own the lot, she absolutely has the right of burial there, whether John Doe’s children want that or not.

Naturally, this could only apply when there is room for Mrs. Doe. If all the grave spaces in a lot are occupied, bodies cannot be removed to “make room.” When there is only one vacant grave and several “co-owners,” the logical policy is “first-come/first-served.” Our division often finds itself embroiled in family disputes where “ownership” of a single (remaining) grave is challenged. The only way these issues can be resolved to the satisfaction of a complainant is for him or her to “pass away” and fill the grave before anyone else in the family. When informed about the laws of ownership and the first-come/first-served nature of lot ownership, these complaints are quickly withdrawn!



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Call us at (518) 474-6226 if you have any questions about transfer of burial rights. We will be happy to help you resolve these problems.

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