

# CEMETERIES AND CREMATORIES

## Laws, Rules and Regulations of the New York State Cemetery Board

### **Contents**

#### FOREWORD

#### NOT-FOR-PROFIT CORPORATION LAW ARTICLE 15

§ 1501. Declaration of policy

§ 1502. Definitions

- (a) The term “cemetery corporation”
- (b) The term “lot owner” or “owner of a lot”
- (c) The term “cemetery board”
- (d) A public mausoleum, crematory or columbarium
- (e) The sale of a lot, plot or part thereof, grave, niche or crypt
- (f) The term “monuments”
- (g) The term “interment”
- (h) The term “cremation”
- (i) The term “cremains”
- (j) The term “alternative container” or “external wrappings”
- (k) The term “casket”
- (l) The term “crematory”
- (m) The term “holding facility” or “temporary storage facility”
- (n) The term “cremation permit”
- (o) The term “cremation authorization”
- (p) The term “authorizing agent”
- (q) The term “pet cremated remains”
- (r) The term “nonsectarian burial society”
- (s) The term “religious burial society”

§ 1503. Application

- (a) Except as otherwise provided
- (b) All crematories shall be subject to inspection by the division of cemeteries.

§ 1504. Cemetery board and general administration

- (a) A cemetery board
- (b) Director of the division of cemeteries.

(c) Powers and duties of the cemetery board

(d) Judicial review

§ 1505. Special requirements of incorporation

(a) Certificate of incorporation; additional contents

(b) Cemetery board endorsement

(c) Type of corporation

(d) Lot owners in unincorporated cemeteries may incorporate

§ 1505-a. Additional requirements for incorporation of crematories

(a) Approval

(b) Further information

(c) Determination

(d) Notification

§ 1506. Cemetery lands

(a) Purchase of land; notice to cemetery board

(b) Consent of local authorities

(c) Cemeteries in Kings, Queens, Rockland, Westchester, Nassau, Suffolk, Putnam and Erie counties

(d) Limitation on the acquisition of land by rural cemetery corporations

(e) Limitations on the acquisition of land for cemetery purposes in certain counties

(f) Conveyance by religious corporations or by trustees

(g) Certain conveyances to cemetery corporations authorized

(h) Acquisition of property by condemnation

(i) Sale or disposition of cemetery lands

(j) Conveyance by cemetery corporation to city or village

(k) Streets or highways not to be laid out through certain cemetery lands

(l) Exclusive right of cemetery corporation to provide annual care services

§ 1506-a. Cemetery corporations; restrictions

(b) Only the provisions of subdivisions one and two of paragraph (a) of this section shall apply to cemetery corporations

(c) For the purposes of this section, “funeral entity”

§ 1506-b. Transfer of lands of Valley View Rural Cemetery

§ 1506-c. Abandoned cemetery maintenance by cemetery corporations

(a) Upon application and approval by the cemetery board

(b) A cemetery corporation assuming management and maintenance of an abandoned cemetery

(c) Monies disbursed under such assumption

(d) Any residual funds disbursed to a cemetery corporation

(e) Within ninety days of its receipt of disbursements

§ 1507. Trust funds

- (a) Maintenance and preservation; permanent maintenance fund
- (b) Perpetual care of lots
- (c) Perpetual care fund
- (d) Perpetual care fund; allocation of income and cost of care and maintenance
- (e) Designation of fiduciary corporation by directors or trustees
- (e-1) Monument maintenance fund
- (f) Acquisition of property for special purposes and in trust
- (g) Trust for the care of burial ground
- (h) Vandalism, abandonment and monument repair or removal.

§ 1507-a. State cemetery board citizens advisory council

- (a) There is hereby created a state cemetery board citizens advisory council
- (b) The advisory council shall be composed of a member designated by the secretary of state
- (c) The members of the advisory council shall
- (d) The advisory council shall meet
- (e) The advisory council may request and shall receive

§ 1508. Reports by cemeteries

- a) Annual report.
- (b) Additional reports.
- (c) Cemetery payment for administration
- (d) Failure to file report.

§ 1509. Cemetery rules and regulations; charges and lot tax assessments

- (a) Rules and regulations.
- (b) Charges for services.
- (c) Cemetery board approval
- (d) Services not in list of charges
- (e) Amendment and modification.
- (f) Lot tax assessment.
- (g) Purchases through office of general services

§ 1510. Cemetery duties

- (a) Posting and distribution of rules, regulations, charges and prices.
- (b) Surveys and maps of cemetery.
- (c) Record of burials or cremations
- (d) When burial not to be refused
- (e) Removals
- (f) Expenses of improving vacant lot

- (g) Removal or correction of dangerous conditions in cemetery lots
- (h) Repair or notice as to non-dangerous damage or defacement
- (i) Record of inscriptions to be filed
- (j) Grave markers
- (k) Notice and restoration as to damage and defacement due to vandalism
- (l) Removal of monument
- (m) Use of construction and demolition debris for burial
- (n) Interment of pet cremated remains

§ 1510-a. Repair or removal of monuments

- (a) Cemetery corporations may repair or remove any monuments
- (b) In the event that the last known owner cannot be found
- (c) Any monument or other marker that is removed as provided for in this section
- (d) Nothing contained herein shall be construed as establishing any right of damages

§ 1510-b. Availability for interment on six-day basis

§ 1511. Cemetery indebtedness

- (a) Certificates of indebtedness
- (b) Application of proceeds of sales of lots
  - (c) Certificates of stock formerly issued
  - (d) Retirement of certificates of stock of certain cemetery corporations
  - (e) Purchase, retirement and exchange of stock
  - (f) Exchange of certificates for shares

§ 1512. Rights of lot owners

- (a) Lots; indivisible and inalienable
- (b) Interest of deceased lot owner
- (c) Purchase for burial of decedent
- (d) Right of interment
- (e) More than one person entitled to possession and control
- (f) Designation of persons who may be interred
- (g) Lot owner voting
- (h) Plots owned by religious corporations, unincorporated associations, or other entities

§ 1513. Sale of burial rights

- (a) Conveyance of lots
- (b) Prices for burial rights and instruments of conveyance
- (c) Resale by lot owner
- (d) Lots held in inalienable form

§ 1513-a. Reacquisition of a lot, plot or part thereof by a cemetery corporation

- (a) (i)1 If the records of the corporation demonstrate that the lot, plot or part thereof
- (b) If (i) the circumstances described in paragraph (a) of this section exist except
- (c) If the owner or owners of a lot, plot or part thereof can be identified
- (d) Upon the sale of a lot, plot or part thereof reacquired by the corporation
- (e) If the owner of the lot, plot or part thereof is subsequently identified
- (f) The provisions of this section shall not apply to a lot, plot or part thereof
- (g) The provisions of this section shall not violate the burial requirements
- (h) Monuments to be erected on a lot, plot or parts thereof
- (i) A cemetery corporation may, upon application and approval by the cemetery board
- (j) If a cemetery corporation has decided to commence the process of reacquiring graves
- (k) The cemetery corporation shall delay the sale of ten percent
- (l) At the time the graves that have been reacquired by a cemetery corporation

§ 1514. Misdemeanor; general penalty

§ 1515. Actions affecting cemetery corporations

§ 1516. Sale of monuments

- (a) No cemetery corporation shall engage in the sale of monuments
- (b) No cemetery corporation shall authorize or permit any employee or director
- (c) With regard to the sale of flush granite markers

§ 1517. Crematory operations

- (a) Maintenance and privacy
- (b) Cremation process
- (c) Identification of deceased human beings
- (d) Opening of container holding the remains of the deceased human being
- (e) Ceremonial casket cremation disclosure
- (f) Transferring remains
- (h) Processing of cremains
- (i) Disposition of cremains
- (j) Crematory operation certification

#### NOT-FOR-PROFIT CORPORATION LAW; OTHER PROVISIONS

§ 202. General and special powers (excerpt)

§ 204. Limitation on activities

§ 404. Approvals, notices and consents (excerpt)

§ 508. Income from corporate activities

§ 519. Annual report of directors (excerpt)

§ 520. Reports of corporation

§ 521. Liability for failure to disclose required information (excerpt)

- § 553. Appropriation for expenditure or accumulation of endowment fund; rules of construction (excerpt)
- § 603. Meetings of members (excerpt)
- § 605. Notice of meeting of members
- § 607. List or record of members at meetings
- § 715. Related party transactions.
- § 715-a. Conflict of interest policy
- § 715-b. Whistleblower policy
  - (d) Nothing in this section shall be interpreted to relieve any corporation
- § 725. Other provisions affecting indemnification of directors and officers (excerpt)
- § 726. Insurance for indemnification of directors and officers (excerpt)
- § 1401. Private and family cemetery corporations

#### PUBLIC HEALTH LAW

- § 3441. Funeral firms; operation by licensed persons (excerpt)
- § 4144. Deaths; burial and removal permits; transportation of remains (excerpt)
- § 4145. Deaths; burial and removal permits; disposition of remains
- § 4147. Deaths; confidentiality of records
- § 4201. Disposition of remains; responsibility therefor
- § 4202. Cremated remains; disposition
- § 4210-a. Unlawful dissection of the body of a human being
- § 4216. Body stealing
- § 4217. Receiving stolen body of a human being
- § 4218. Opening graves
- § 4219. Arresting or attaching a dead body of a human being
- § 4220. Disturbing funerals
- § 4307. Prohibition of sales and purchases of human organs (excerpt)

#### 10 NYCRR PART 13—EXCERPT FROM STATE SANITARY CODE

- § 13.1. Transportation of dead human bodies by common carrier
- § 13.2. Transportation of dead human bodies by other than common carrier
- § 13.3. Disinterments

#### 10 NYCRR PART 77—EXCERPTS FROM PRACTICE OF FUNERAL DIRECTING

- Section 77.7. Funeral directing (excerpt)

#### REAL PROPERTY LAW

- § 450. Lands used for cemetery purposes not to be sold or mortgaged
- § 451. Acquisition of lands for cemetery purposes in certain counties

#### REAL PROPERTY TAX LAW

- § 446. Cemeteries

## GENERAL BUSINESS LAW ARTICLE 28-A

- § 450. Unlawful acts relating to sales of cemetery property
- § 450-a. Unauthorized sale of cemetery markers and flag holders
- § 451. Cemetery to state true location
- § 452. Unauthorized charges in connection with permits for burials or erection of monuments
- § 453. Moneys paid in connection with agreements for funeral merchandise or services in advance of need to be kept on deposit pending use or repayment
- § 454. Sale of monuments and memorials
- § 454-a. Unsolicited offers for monuments or memorials

## ESTATES, POWERS AND TRUSTS LAW

- § 1-2.10 Issue
- § 4-1.1 Descent and distribution of a decedent's estate
- § 11-2.2 Power to invest
- § 11-2.3 Prudent investor act

## STATE FINANCE LAW

- § 97-r. State cemetery vandalism restoration, monument repair or removal and administration fund

## GENERAL MUNICIPAL LAW

- § 162. Conveyance by unincorporated cemetery association to city, town or village
- § 164. Abandonment of cemeteries in cities of less than one million
- § 165. Maintenance and cleanup of abandoned cemeteries
- § 165-a. Voluntary municipal assistance to public cemetery corporations
- § 166. Cemetery and funeral home combinations

## COUNTY LAW

- § 222. Cemeteries

## TOWN LAW

- § 291. Burial grounds
- § 292. Transfer of burial grounds to cemetery corporation
- § 292-a. Cemetery and funeral home combinations
- § 296. Abandonment of cemeteries

## VILLAGE LAW

- § 15-1500 Acquisition of lands for cemeteries
- § 15-1510 Cemetery and funeral home combinations

## RELIGIOUS CORPORATIONS LAW

- § 2. Definitions (excerpt)
- § 7. Acquisition of property by religious corporations for cemetery purposes; management thereof
- § 7-a. Deeds for cemetery purposes; presumption

§ 8. Lot owners' rights

§ 9. Removal of human remains from one cemetery of a religious corporation to another cemetery owned by it

#### GENERAL OBLIGATIONS LAW

§ 3-112. Liability of parents and legal guardians having custody of an infant for certain damages caused by such infant

#### PENAL LAW

§ 145.22 Cemetery desecration in the second degree

§ 145.23 Cemetery desecration in the first degree

§ 145.26 Aggravated cemetery desecration in the second degree

§ 145.27 Aggravated cemetery desecration in the first degree

§ 60.29 Authorized disposition; cemetery desecration

§ 65.10 Conditions of probation and of conditional discharge (excerpt)

§ 80.00 Fine for felony (excerpt)

#### 19 NYCRR

#### PART 200 RULES OF PROCEDURE OF STATE CEMETERY BOARD

§ 200.1. Administration

§ 200.2. Applications for orders or determinations

§ 200.3. Filing of financial reports by cemeteries

§ 200.4. CPA financial reports

§ 200.5. Additional information and reports

§ 200.6. Commercial crime insurance coverage

§ 200.7. Location of offices

Section 200.8. Repealed

§ 200.9. Application for extension of time

§ 200.10. Serving of notices by Cemetery Board or division

§ 200.11. State cemetery vandalism restoration, monument repair or removal and administration fund

#### PART 201. CEMETERY OPERATIONS

§ 201.1. Offer of resale of cemetery lots to cemetery corporations

§ 201.3. Burial in a path or walk

§ 201.4. Foreign cemetery corporations

§ 201.5. Repealed

§ 201.6. Sale of outer containers

§ 201.7. Posting of sign at cemetery

§ 201.8. Availability for interment on six-day basis

§ 201.9. Maintenance of maps and directional signs

- § 201.10. Community or public mausoleums and columbariums
- § 201.11. Procedure for approval for construction of a mausoleum
- § 201.12. Holiday burials
- § 201.13. Liquidation of burial societies within an incorporated cemetery
- § 201.14. Repair or notice as to nondangerous damage or defacement
- § 201.15. Authorization to inter
- § 201.16. Cemetery renovation
- § 201.17. Lawn crypts
- § 201.18. Management services contracts
- § 201.19. Disposition of cremains at pet cemeteries
- § 201.20. Permanent maintenance fund collections and contributions

#### PART 202. VOLUNTEER CEMETERY MAINTENANCE

- § 202.1. Volunteer cemetery maintenance and cleanup programs

#### PART 203. CREMATORIES

- § 203.1. Definitions
- § 203.2. Maintenance and privacy
- § 203.3. Crematory access
- § 203.4. Identification of deceased human beings
- § 203.5. Suitable container
- § 203.6. Opening container or removing or transferring remains
- § 203.7. Commingling human remains
- § 203.8. Cleaning of retort
- § 203.9. Final processing
- § 203.10. Container size
- § 203.11. Identity label
- § 203.12. Disposing of cremains
- § 203.13. Crematory records
- § 203.14. Disposing of cremated remains--Repealed
- § 203.15. Availability of records--Repealed

#### PART 204. CREMATION CERTIFICATION COURSE

- § 204.1. Purpose
- § 204.2. General requirements
- § 204.3. Approved entities
- § 204.4. Request for approval of course of study
- § 204.5. Subjects of study for crematory operator certification course
- § 204.6. Computation of instruction time

- § 204.7. Attendance and examinations
- § 204.8. Facilities
- § 204.9. Examination requirement and record retention
- § 204.10. Change in approved course of study
- § 204.11. Auditing
- § 204.12. Suspensions and denials of course approval
- § 204.13. Certificate of completion
- § 204.14. Fees

# FOREWORD

The basic law governing the operation of cemeteries in New York State is set forth in Article 15 of the Not-for-Profit Corporation Law. The intent of the law is to ensure that cemeteries remain financially self-sustaining in perpetuity and that they be operated on a nonprofit basis in the public interest. The State Cemetery Board, consisting of the Secretary of State as Chair, the Attorney General and the Commissioner of Health, has the duty of ensuring that cemeteries subject to its jurisdiction are operated in compliance with applicable law, and promulgating necessary rules and regulations for the proper administration of the law. The Division of Cemeteries administers the law and the rules and regulations promulgated by the Cemetery Board.

This booklet has been prepared to assist the dedicated citizens who have taken on responsibility for the management and administration of cemeteries, as well as the general public. It contains the provisions of Article 15 of the Not-for-Profit Corporation Law, rules and regulations of the Cemetery Board, and other laws that pertain to the operation of cemeteries. The laws reproduced herein are current through the 2004 session of the New York State Legislature. This booklet should be used for general guidance and not as a substitute for seeking qualified legal advice when necessary.

Cemetery corporations are also subject to the general provisions of the Not-for-Profit Corporation Law, which are not included in this booklet.

The Cemetery Board exists to serve the public by ensuring the proper operation and administration of the cemeteries under its jurisdiction. It carries out this function in a spirit of cooperation with the individuals who directly manage and operate the cemeteries. With that goal in mind, staff of the Division of Cemeteries regularly meet with representatives of the cemeteries and advise the Cemetery Board on matters that need to be addressed.

## **NOT-FOR-PROFIT CORPORATION LAW ARTICLE 15**

### **§ 1501. Declaration of policy**

The people of this state have a vital interest in the establishment, maintenance and preservation of public burial grounds and the proper operation of the corporations which own and manage the same. This article is determined an exercise of the police powers of this state to protect the well-being of our citizens, to promote the public welfare and to prevent cemeteries from falling into disrepair and dilapidation and becoming a burden upon the community, and in furtherance of the public policy of this state that cemeteries shall be conducted on a non-profit basis for the mutual benefit of plot owners therein.

### **§ 1502. Definitions**

As used in this article:

- (a) The term “cemetery corporation” means any corporation formed under a general or special law for the disposal or burial of deceased human beings, by cremation or in a grave, mausoleum, vault, columbarium or other receptacle but does not include a family cemetery corporation or a private cemetery corporation.
- (b) The term “lot owner” or “owner of a lot” means any person having a lawful title to the use of a niche, crypt, lot, plot or part thereof, in a cemetery, mausoleum or columbarium.
- (c) The term “cemetery board” means the cemetery board in the division of cemeteries in the department of state.
- (d) A public mausoleum, crematory or columbarium shall be included within the term “cemetery”.
- (e) The sale of a lot, plot or part thereof, grave, niche or crypt shall mean the sale of the right of use thereof for burial purposes.
- (f) The term “monuments” means a memorial erected in a cemetery on a lot, plot or part thereof, except private mausoleums.
- (g) The term “interment” means the permanent disposition of human remains by inurnment, entombment or ground burial.
- (h) The term “cremation” means the technical process, using heat and flame, that reduces human remains to ashes and other residue. “Cremation” shall include the processing, and may include the pulverization, of such ashes and other residue.
- (i) The term “cremains” means ashes and other residue recovered after the completion of cremation, which may include residue of foreign matter that may have been cremated with the human remains.
- (j) The term “alternative container” or “external wrappings” means a nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of cardboard, pressed wood, composite materials (with or without an outside covering), or pouches of canvas or other material.
- (k) The term “casket” means a rigid container that is designed for the encasement of human remains and customarily ornamented and lined with fabric.
- (l) The term “crematory” means a facility or portion of a building in which the remains of deceased human beings are processed by cremation.
- (m) The term “holding facility” or “temporary storage facility” means an area that (i) is designated for the retention of human remains prior to cremation; (ii) complies with all applicable public health laws, (iii) preserves the health and safety of the crematory personnel; and (iv) is secure from access by anyone other than authorized persons. The interior of such facility shall not be visible from any area accessible to the general public.
- (n) The term “cremation permit” means the burial and removal permit required pursuant to section forty-one hundred forty-five of the public health law that is annotated for disposition of the remains of a deceased human being by cremation.

(o) The term “cremation authorization” means the crematory form authorizing a cremation which is signed by the next of kin or authorizing agent. This crematory form must be a separate document and cannot be a part of another form or document.

(p) The term “authorizing agent” shall mean the person with the right to control the disposition of the decedent pursuant to section forty-two hundred one of the public health law.

(q) The term “pet cremated remains” means ashes and/or other residue recovered after the completion of cremation of any domestic animal that has been adapted or tamed to live in intimate association with people where such cremation has occurred at a pet crematorium as defined in section seven hundred fifty-a of the general business law.

(r) The term “nonsectarian burial society” means a corporation or unincorporated association or society having among its activities or its former activities the provision of burial benefits for its members and not supervised or controlled by a religious corporation.

(s) The term “religious burial society” means a corporation or unincorporated association or society having among its activities or its former activities the provision of burial benefits for its members and supervised or controlled by a religious corporation.

### **§ 1503. Application**

(a) Except as otherwise provided in paragraph (b) of this section, paragraph (c) of section fifteen hundred seven, and paragraph (m) of section fifteen hundred ten, this article does not apply to (1) a religious corporation, (2) a municipal corporation, (3) a cemetery corporation owning a cemetery operated, supervised or controlled by or in connection with a religious corporation or (4) a cemetery belonging to a religious or a municipal corporation, or operated, supervised or controlled by or in connection with a religious corporation unless any officer, member or employee of any such corporation shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, other than reasonable compensation for services in effecting one or more of the purposes of such corporation or as proper beneficiaries of its strictly charitable purposes or unless the organization of any such corporation for any of its avowed purposes be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation, or for any of its officers, members or employees, and unless any such corporation is not, in good faith, organized or conducted exclusively for one or more of its stated purposes.

(b) All crematories shall be subject to inspection by the division of cemeteries. Upon inspection, the crematory may be asked to produce any and all records for the operation and maintenance of the crematory. These records may include but not be limited to cremation authorizations, rules and regulations of the crematory, procedures as set forth in section fifteen hundred seventeen of this article, and the written procedure of the identification of remains.

### **§ 1504. Cemetery board and general administration**

(a) A cemetery board is hereby created within the division of cemeteries in the department of state, subject to the following requirements: (1) The members of such board shall be the secretary of state, the attorney general and the commissioner of health, who shall serve without additional compensation. (2) The secretary of state, attorney general and commissioner of health may each, by official order filed in the office of his respective department and in the office of the board, designate a deputy or other representative in his department to perform any or all of the duties under this section of the department head making such designation, as may be provided in such order. Such designation shall be deemed temporary only and shall not affect the civil service or retirement rights of any person so designated. Such designees shall serve without additional compensation. (3) The secretary of state shall be chairman of such board, provided that in his absence at any meeting of the board the attorney general or the commissioner of health, in such order, if either or both be present, shall act as chairman. When designees of such officers, in the absence of all such officers, are present at any meeting of the board, the designee of the secretary of state, if present, and in his absence one of the other designees present, in the same order of preference as provided for the officer appointing him, shall act as chairman. (4) Technical, legal or other services shall be performed in so far as practicable by personnel of the departments of state, law and health without additional compensation but the board may employ and compensate within appropriations available therefor such assistants and employees as may be necessary to carry out the provisions of this section and may prescribe their powers and duties. (5) Two members of the board shall constitute a quorum to transact the business of the board at both regular and special meetings. (6) The board shall meet at least once a month, shall keep a record of all its proceedings and shall determine the rules of its own proceedings. (7) Special meetings may be called

by the chairman upon his initiative, and must be called by him upon receipt of a written request therefor signed by another member of the board. Written notice of the time and place of such special meeting shall be delivered to the office of each member of the board. (8) The board shall have the duty of administering the provisions of this chapter which deal with cemetery corporations other than the cemeteries and cemetery corporations enumerated in section fifteen hundred three and shall have all the powers herein provided and such other powers and duties as may be otherwise prescribed by law.

(b) Director of the division of cemeteries. The cemetery board shall appoint a director of the division of cemeteries who shall hold his office for a term of six years. He shall receive an annual salary to be fixed by the board within the appropriations available to the board. Subject to the supervision, direction and control of the board, the director of the division of cemeteries shall be responsible for the administration of this article and he shall exercise and perform such duties and functions of the board as it may assign or delegate to him from time to time.

(c) Powers and duties of the cemetery board. With respect to any cemetery or cemetery corporation, the cemetery board shall have the following duties and powers: (1) To adopt such reasonable rules and regulations as the cemetery board shall deem necessary for the proper administration of this article. (2) To order any cemetery corporation to do such acts as may be necessary to comply with the provisions of this article or any rule or regulation adopted by the cemetery board or to refrain from doing any act in violation thereof. (2-a) To adopt reasonable rules and regulations to exempt those cemetery corporations from the provisions of paragraph (h) of section fifteen hundred ten of this chapter which because of a limited number of paid employees or appropriate resources are unable to carry out such provisions. (2-b) To adopt reasonable rules and regulations to extend the time period mandated by the provisions of paragraph (h) of section fifteen hundred ten of this chapter when necessary because compliance by a cemetery corporation within such time period is impossible. (3) To enforce its orders by mandamus or injunction in a summary proceeding or otherwise. In connection with such action or proceeding, the attorney general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules. (4) To impose a civil penalty upon a cemetery corporation not exceeding one thousand dollars, after conducting an adjudicatory hearing pursuant to the provisions of the state administrative procedure act, for a violation of or a failure to comply with any provisions contained in this article or any regulation, directive or order of the board, and without the need to maintain a civil action pursuant to subdivision five of this paragraph. (5) To maintain a civil action in the name of the people of the state to recover a judgment for a money penalty imposed under the provisions of this article.

(d) Judicial review. Any order or determination of the cemetery board made pursuant to this article shall be subject to review by the supreme court in the manner provided by article seventy-eight of the civil practice law and rules; provided, however, that an application for review of such order or determination must be made within one hundred twenty days from the date of the filing of such order or determination, and provided further that no stay shall be granted pending the determination of the matter except on notice to the cemetery board and for a period not exceeding thirty days. Proceedings to review such order shall be entitled to a preference.

#### **§ 1505. Special requirements of incorporation**

(a) Certificate of incorporation; additional contents. In addition to the requirements of section four hundred two (Certificate of incorporation; contents), the certificate of incorporation of a cemetery corporation shall be filed in the office of the clerk of each county in which any part of the cemetery is proposed to be, or is, situated, and shall state: (1) each city, village or town, and county, in which any part of the cemetery is or is proposed to be situated; and (2) the time of the annual meeting.

(b) Cemetery board endorsement. Every certificate of incorporation of a cemetery corporation, except those within the exclusionary provisions of section fifteen hundred three, shall have endorsed thereon or annexed thereto the approval of the cemetery board as required in subdivision (e) of section four hundred four of this chapter.

(c) Type of corporation. A cemetery corporation is a charitable corporation under this chapter.

(d) Lot owners in unincorporated cemeteries may incorporate. (1) Not less than three owners of lots in an unincorporated cemetery may cause a notice to be posted in at least six conspicuous places in the city, town or village in which such cemetery is located, and to be published once in each week for three successive weeks in a newspaper, if any, published in such municipality, stating that at a time and place specified, a meeting of the lot owners will be held to determine whether such cemetery shall be incorporated, pursuant to this chapter. (2) The meeting shall be held at a convenient

place in the city, town or village in which the cemetery is located, not less than twenty-five nor more than thirty days after the first posting and publication of the notice of the meeting. At such meeting every lot owner shall be entitled to one vote in person or by proxy for each lot owned by him. The persons entitled to vote at such meeting shall select a chairman and secretary, and determine by ballot whether or not the lot owners shall incorporate pursuant to this chapter. (3) If a majority of the ballots are in favor of incorporation, the persons entitled to vote at such meeting shall select three lot owners to incorporate and the provisions of this chapter shall be applicable, except that three persons may incorporate, and the corporation shall not be required to have more than three directors. Upon such incorporation, the lot owners shall be members of the corporation, and it shall be vested with the title to such cemetery and the personal property appertaining thereto. If the title to the cemetery has prior to such incorporation vested in the town, pursuant to section two hundred and ninety-one of the town law of section one of title seven of chapter eleven of part one of the revised statute, the supervisor of such town shall on request of the directors of such corporation, execute to it a deed of such cemetery lands releasing all interest of the town therein, and thereafter the title shall be vested in the corporation.

**§ 1505-a. Additional requirements for incorporation of crematories**

(a) Approval. A cemetery corporation seeking the approval to operate a crematory must submit for approval by the cemetery board the following: (1) a list of the directors, employees, and certificate holders of the cemetery corporation; (2) a certified survey of the site and location within the county it will be situated; (3) a business plan for the operation of the crematory to include, but not be limited to, number of expected cremations per year, number of cremation units, manufacture, capital costs, financing, anticipated number of employees, types of services provided, pricing thereof; (4) a description of the impact of the proposed crematory on other crematories within the county or whether the crematory will have an adverse impact on the surrounding community; (5) plans, designs, and costs of any structures to be erected or retrofitted for the crematory use; (6) a description of any approvals or permits required by state or local law. No crematory shall be approved until such other approvals or permits have been obtained. Any board approval of a crematory shall be so conditioned.

(b) Further information. Within thirty-five days following receipt of the information required by paragraph (a) of this section, the cemetery board or the division of cemeteries may request from the cemetery corporation any additional information or documentation and technical assistance deemed necessary to review such information. Such information shall not be deemed complete until the requested additional information has been received. If no such request is made, the submission shall be deemed complete on the thirty-fifth day after its receipt by the division.

(c) Determination. The cemetery board shall approve or deny the proposed crematory within ninety days of the completed submission.

(d) Notification. The cemetery board shall provide written notice of its determination to the cemetery corporation. If a negative determination is made, such notice shall state the reasons therefor. Notice shall be made by registered or certified mail addressed to the corporation at its principal office.

**§ 1506. Cemetery lands**

(a) Purchase of land; notice to cemetery board. No cemetery corporation, in purchasing real property hereafter, shall pay or agree to pay more than the fair and reasonable market value thereof. The terms of the purchase, including the price to be paid and the method of payment, shall be subject to notice and approval of the cemetery board. In determining the fair and reasonable market value, the cemetery board may take into consideration the method by which the purchase price is to be paid.

(b) Consent of local authorities. (1) No cemetery shall hereafter be located in any city or village without the consent of the local legislative body of such city, or the board of trustees of such village. (2) No cemetery shall hereafter be located in any town, outside of an incorporated village in Suffolk county, without the consent of the town board of such town.

(c) Cemeteries in Kings, Queens, Rockland, Westchester, Nassau, Suffolk, Putnam and Erie counties. A cemetery corporation shall not take by deed, devise or otherwise any land in the counties of Kings, Queens, Rockland, Westchester, Nassau, Suffolk, Putnam or Erie for cemetery purposes, or set apart any ground therefor in any of such counties, unless the consent of the board of supervisors or legislative body thereof, or of the city council of the city of New York, in respect to Kings or Queens county, be first obtained. Such consent may be granted upon such conditions and under such regulations and restrictions as the public health and welfare may require. Notice of application for such consent shall be published, once a week for six weeks, in the newspapers designated to publish the session laws and in

such other newspapers published in the county as such board or body may direct, stating the time when the application will be made, a brief description of the lands proposed to be acquired, their location and the area thereof. Any person interested therein may be heard on such presentation. If such consent is granted the corporation may take and hold the lands designated therein. The consent shall not authorize any one corporation to take or hold more than two hundred and fifty acres of land. Nothing contained in this subdivision shall prevent any religious corporation in existence on April fifteenth, eighteen hundred fifty-four, in any of said counties from using as heretofore any burial ground then belonging to it within such county. Such board or body, from time to time, may make such regulation as to burials in any cemetery in the county as the public health may require.

(d) Limitation on the acquisition of land by rural cemetery corporations. It shall not be lawful for any rural cemetery corporation hereafter to acquire or take by deed, devise or otherwise, any land in any county within the state of New York, having a population of between one hundred and seventy-five thousand and two hundred thousand, according to the federal census of nineteen hundred, or set apart any ground for cemetery purposes therein, where there has already been set apart in any such county, five hundred acres of land for rural cemetery purposes, and the consent of the board of supervisors of any such county shall not be granted where there has already been granted five hundred acres of land, or upwards, within such county, to rural cemetery corporations. But nothing herein contained shall affect any lawful consent or grant hitherto made by the board of supervisors of any such county.

(e) Limitations on the acquisition of land for cemetery purposes in certain counties.

(1) It shall not be lawful for any corporation, association or person hereafter to set aside or use for cemetery purposes any lands in any county within the state erected on and after January first, eighteen hundred ninety, adjoining a city of the first class and having a population of between eighty thousand and eighty-five thousand according to the federal census of nineteen hundred ten; but nothing herein contained shall prevent cemetery corporations formed prior to January first, nineteen hundred seventeen, which own in such county a cemetery in which burials have been made prior to such date, from setting apart and using for burial purposes lands lying contiguous or adjacent to such cemetery which lands have been heretofore acquired by a recorded deed of conveyance made to such a cemetery corporation either for burial purposes, or for the purposes of the convenient transaction of its general business, which lands shall have been acquired with the consent of the board of supervisors; nor to prohibit the dedication or use of land within such county for a family cemetery as provided in subdivision (c) of section fourteen hundred one of this chapter.

(2) The provisions of this paragraph shall not operate to prevent any such cemetery corporation located in Nassau county from using for burial purposes contiguous or adjacent land acquired by it provided that such use shall be consented to by the Nassau county legislature.

(f) Conveyance by religious corporations or by trustees. A cemetery corporation may accept a conveyance of real property held by a religious corporation for burial purposes, or by trustees for such purposes if all such trustees living and residing in this state unite in the conveyance, subject to all trusts, restrictions and conditions upon the title or use. Lots previously sold and grants for burial purposes shall not be affected by any such conveyance; nor shall any grave, monument or other erection, or any remains, be disturbed or removed without the consent of the lot owner, or if there be no such owner, without the consent of the heirs of the persons whose remains are buried in such grave.

(g) Certain conveyances to cemetery corporations authorized. Upon approval of the cemetery board first having been obtained, a cemetery corporation which maintains and operates a cemetery may accept a conveyance of title to the fee of or to burial rights in lands within the confines of said cemetery and it shall be lawful for any cemetery or business corporation to make such conveyances. Lots previously sold and grants previously made for burial purposes shall not be affected by such conveyance. The cemetery corporation, in consideration of the conveyance to it of burial rights in lands within the confines of said cemetery, may, with the approval of the cemetery board, issue participating certificates of the kind and nature provided for in paragraph three of subdivision (e) of section fifteen hundred eleven of this article. In making its determination the cemetery board shall consider and may condition its approval on the purposes of this section.

(h) Acquisition of property by condemnation. If the certificate of incorporation or by-laws of a cemetery corporation do not exclude any person, on equal terms with other persons, from the privilege of purchasing a lot or of burial in its cemetery, such corporation may, from time to time, acquire by condemnation, exclusively for the purposes of a cemetery, not more than two hundred acres of land in the aggregate, forming one continuous tract, wholly or partly

within the county in which its certificate of incorporation is filed or recorded, except as in this section otherwise provided as to the counties of Erie, Nassau, Suffolk, Putnam, Kings, Queens, Rockland and Westchester. A cemetery corporation may acquire by condemnation, exclusively for the purposes of a cemetery, any real property or any interest therein necessary to supply water for the uses of such cemetery, and the right to lay, relay, repair and maintain conduits and water pipes with connections and fixtures, in, through or over the lands of others and the right to intercept and divert the flow of waters from the lands of riparian owners, and from persons owning or interested in any waters. But no such cemetery corporation shall have power to take or use water from any of the canals of this state, or any canal reservoirs as feeders, or any streams which have been taken by the state for the purpose of supplying the canals with water. A cemetery corporation may acquire, otherwise than by condemnation, real property as aforesaid and additional real property, not exceeding in value two hundred thousand dollars, for the purposes of the convenient transactions of its business, no portion of which shall be used for the purposes of a cemetery.

(i) Sale or disposition of cemetery lands.

(1) No cemetery corporation may sell or dispose of the fee of all or any part of its lands dedicated to cemetery use, unless it shall prove to the satisfaction of the supreme court in the district where any portion of the cemetery lands is located or the cemetery board, that either: (A) all bodies have been removed from each and every part of the cemetery, that all the lots in the entire cemetery have been reconveyed to the corporation and are not used for burial purposes, and that it has no debts and liabilities, or (B) the land to be sold or disposed of is not used or is not physically adaptable for burial purposes and that the sale or disposition will benefit the cemetery corporation and the owners of plots and graves in the cemetery, and (C) the sale or disposition is not to a funeral entity as defined in paragraph (c) of section fifteen hundred six-a of this article.

(2) If the sale or disposition is made pursuant to subparagraph (A) of subdivision one of this paragraph, the cemetery shall satisfy the court or the cemetery board that it is in the public interest to dispose of such cemetery land in the manner proposed; that the subject land is not suitable for cemetery purposes or is no longer needed by the community for such cemetery uses or purposes; and that the subject land is being sold for its current market value.

(3) If the sale or disposition of the land is made pursuant to subparagraph (B) of subdivision one of this paragraph, the court or cemetery board shall order that the consideration received by the cemetery corporation, less the necessary expenses incurred, shall be deposited into the permanent maintenance fund established by the cemetery corporation pursuant to paragraph (a) of section fifteen hundred seven of this article.

(4) Notice of any application hereunder shall be given in addition to the cemetery board, to the holders of certificates of indebtedness and land shares of the cemetery corporation, to any person having informed the cemetery board by petition or notice of interest in the proceeding and to any person interested in the proceeding pursuant to section five hundred eleven of this chapter (Petition for leave of court).

(j) Conveyance by cemetery corporation to city or village. A cemetery corporation may convey and transfer its real property held for burial purposes, together with its other assets, to a city having a population of less than one million inhabitants in which such real property is located, or to a village, provided such real property is located within such village or wholly within three miles of the boundaries thereof, or to a town, in which such real property is located, if all the directors and trustees of such cemetery corporation living and residing in the state of New York unite in the conveyance and transfer. Such conveyance and transfer shall be subject to all agreements as to lots sold and all trusts, restrictions and conditions upon the title or use of such real property and assets. Lots previously sold and grants previously made for burial purposes shall not be affected by such conveyance, nor shall any grave, monument or other erection be disturbed or removed except in accordance with law. No such conveyance shall be effective unless and until the legislative body of such city, town or village shall by ordinance or resolution accept the same subject to the conditions and restrictions hereinabove imposed, which ordinance or resolution said legislative body is hereby authorized and empowered to adopt by a majority vote of such body. Upon such conveyance and transfer such property shall be and become a municipal cemetery of such city, town or village and such property and assets so conveyed and transferred shall be administered as any other municipal cemetery of such city, town or village and the said cemetery corporation shall be dissolved by the recording of such conveyance and transfer.

(k) Streets or highways not to be laid out through certain cemetery lands. So long as the lands of a rural cemetery corporation organized under the act entitled "An act authorizing the incorporation of rural cemetery associations,"

constituting chapter one hundred thirty-three of the laws of eighteen hundred forty-seven, and the acts amendatory thereof, shall remain dedicated to the purpose of a cemetery, no street, road, avenue or public thoroughfare shall be laid out through such cemetery, or any part of the lands held by such association for the purposes aforesaid, without the consent of the trustees of such association and the cemetery board.

(1) Exclusive right of cemetery corporation to provide annual care services. Notwithstanding any provision of this article to the contrary, it shall be the right of each cemetery corporation, at its option, to exclusively provide all annual care services to be performed for consideration on all or any part of its lands at rates to be reviewed by the cemetery board. In the event that the cemetery board determines that an excessive, unauthorized or improper charge has been made for such services or that the services have not been properly performed, he or she may direct the cemetery corporation to pay to the person from whom such charge was collected a sum equivalent to three times the excess as determined by the cemetery board, or in the case of work not properly performed, it may direct the cemetery corporation to perform the work properly. Every cemetery corporation that chooses to provide, on an exclusive basis, such annual care services shall include in any contract for the sale of any part of its lands the following notice, in at least ten point bold type:

Notice

The \_\_\_\_\_ (name of cemetery corporation), pursuant to state law, provides annual care services on an exclusive basis. Therefore, the purchaser of the plot or lot being transferred by this agreement may not contract with any outside party for such annual care services. For purposes of this paragraph, the term "annual care" shall mean the maintenance of a lot, plot or part thereof, and may include care of lawns, trees, shrubs, monuments and markers within the plot. The provisions of this paragraph shall not be construed to prohibit a lot owner from placing, or arranging to place, floral or similar arrangements on such cemetery lots or plots.

**§ 1506-a. Cemetery corporations; restrictions**

(a) No cemetery corporation shall, directly or indirectly:

- (1) sell, or have, enter into or perform a lease of any of its real property to a funeral entity, or use any of its property for location of a funeral entity;
- (2) commingle its funds with a funeral entity;
- (3) direct or carry on its business or affairs with a funeral entity;
- (4) authorize control of its business or affairs by a funeral entity;
- (5) engage in any sale or cross-marketing of goods or services with a funeral entity;
- (6) have or enter into or perform a management or service contract for cemetery operations with a funeral entity; or
- (7) have, enter into or perform a management contract with any entity other than a not-for-profit cemetery corporation.

(b) Only the provisions of subdivisions one and two of paragraph (a) of this section shall apply to cemetery corporations with thirty acres or less of real property dedicated to cemetery purposes, and only to the extent the sale or lease is of real property dedicated to cemetery purposes, and such cemeteries shall not engage in the sale of funeral home goods or services, except if such goods and services are otherwise permitted to be sold by cemeteries, nor shall a majority of the members of the board of directors or trustees of such cemeteries be made up of the representatives of a funeral entity.

(c) For the purposes of this section, "funeral entity" means a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services, or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or an officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

**§ 1506-b. Transfer of lands of Valley View Rural Cemetery**

Notwithstanding any other provision of law to the contrary, the board of trustees of the Valley View Rural Cemetery Association in the town of Dover Plains, New York, may by resolution of such board, sell, lease or transfer any portion of the lands of Valley View Rural Cemetery to the parish of St. Charles Borromeo in the town of Dover Plains, New York, for cemetery purposes for the adjoining and contiguous cemetery of the parish of St. Charles Borromeo.

**§ 1506-c. Abandoned cemetery maintenance by cemetery corporations**

(a) Upon application and approval by the cemetery board, a cemetery corporation may assume management and maintenance of an abandoned cemetery. For the purposes of this section, abandoned cemetery means a cemetery which was previously owned by a cemetery corporation organized pursuant to this chapter or existing by virtue of the membership corporation law, for which there no longer exists any corporate board or body to maintain it, and for which there is no sufficient trust fund or endowment to provide ordinary and necessary care and maintenance. Provided, however, that in no event shall the cemetery board approve the assumption of the management and maintenance of an abandoned cemetery under this section if the abandoned cemetery was affiliated with any religious denomination or tradition or if the majority of the persons whose bodies were interred in such cemetery were affiliated with any religious denomination or tradition unless the cemetery assuming the management and maintenance of such abandoned cemetery follows the customs and practices of the same religious denomination or tradition.

(b) A cemetery corporation assuming management and maintenance of an abandoned cemetery shall make application for funds pursuant to paragraph (h) of section fifteen hundred seven of this article and section ninety-seven-r of the state finance law for maintenance of abandoned cemeteries. Within sixty days of submission of a completed application, the cemetery board shall approve or deny such application.

(c) Monies disbursed under such assumption shall be used exclusively for the purpose of the management and maintenance of an abandoned cemetery such as the ordinary and necessary care of a cemetery, including the removal of grass and weeds, the refilling of graves, and the preservation, care, and fencing of a cemetery, and also including the care of crypts, niches, grave sites, monuments, and memorials paid for by means of the general fund or special fund or the income applied from the permanent maintenance fund, perpetual care fund, monument maintenance fund, general fund, or a special fund of the abandoned cemetery.

(d) Any residual funds disbursed to a cemetery corporation after the maintenance of an abandoned cemetery has been performed must be returned to the cemetery board for redeposit into the state cemetery vandalism restoration, monument repair or removal and administration fund established by section ninety-seven-r of the state finance law.

(e) Within ninety days of its receipt of disbursements, the cemetery corporation shall make a report to the cemetery board setting forth details of the maintenance and clean-up undertaken and the amount of funds, if any, to be redeposited into the fund. If the maintenance and clean-up have not been completed, or necessary equipment has not been purchased, the reasons therefor shall be set forth, and the anticipated date for a subsequent, final report shall be disclosed.

**§ 1507. Trust funds**

(a) Maintenance and preservation; permanent maintenance fund; current maintenance fund. Subject to rules and regulations of the cemetery board: (1) Every cemetery corporation shall maintain and preserve the cemetery, including all lots, plots and parts thereof. For the sole purpose of such maintenance and preservation, every cemetery corporation shall establish and maintain (A) a permanent maintenance fund, and (B) a current maintenance fund. At the time of making the sale of a lot, plot or part thereof, the cemetery corporation shall deposit not less than ten per centum of the gross proceeds of the sale into the permanent maintenance fund. An additional fifteen per centum of the gross proceeds of the sale shall be deposited in the current maintenance fund. In addition to the foregoing, at the time the cemetery corporation receives payment for the performance of an interment or inurnment, the cemetery corporation shall collect and deposit into the permanent maintenance fund the sum of thirty-five dollars. (2) The permanent maintenance fund is hereby declared to be and shall be held by the corporation as a trust fund, for the purpose of maintaining and preserving the cemetery, including all lots, crypts, niches, plots, and parts thereof. The principal of such fund shall be invested in such securities as are permitted for the investment of trust funds by section 11-2.3 of the estates, powers and trusts law. The income in the form of interest and ordinary dividends therefrom shall be used solely for the maintenance and preservation of the cemetery grounds. In addition, the governing board of the corporation may appropriate for expenditure solely for the maintenance and preservation of the cemetery grounds a portion of the net appreciation, in the fair market value of the principal of the trust, as is prudent under the standard established by article five-A of this chapter, the prudent management of institutional funds act. In the event that a cemetery corporation seeks to appropriate any percentage of its net appreciation in its permanent maintenance fund in accordance with this subparagraph, the cemetery corporation shall provide notice of such proposed appropriation by certified mail to the cemetery board not less than sixty days in advance of such proposed appropriation and shall disclose such appropriation as part of and in addition to their annual reporting requirements as defined in section fifteen hundred eight of this article, setting forth the

amount of funds to be appropriated for such expenditure and its effect on the permanent maintenance fund. Such proposed appropriation shall become effective sixty days after receipt of such notice, unless the cemetery board within such sixty-day period notifies the cemetery corporation that the board objects to the proposed appropriation. Notwithstanding the foregoing provisions of this subparagraph, all principal of the permanent maintenance fund shall remain inviolate, except that, upon application to the supreme court in a district where a portion of the cemetery grounds is located, the court may make an order permitting the principal or a part thereof to be used for the purpose of current maintenance and preservation of the cemetery or otherwise. Such application may be made by the cemetery board on notice to the corporation or by the corporation on notice to the cemetery board. Unless the cemetery can clearly demonstrate that it lacks sufficient future revenue to make repayment, any such allowance from the permanent maintenance fund shall be in the form of a loan, and the court shall determine the method for repayment of such a loan by the cemetery to the fund. (3) The current maintenance fund shall be used and applied for the sole purpose of ordinary and necessary expenses of the care and maintenance of the cemetery. When all burial rights in the cemetery have been conveyed, the fund remaining on deposit or to the credit of the current maintenance fund shall be transferred into the permanent maintenance fund. (4) The percentage of the proceeds of sales required to be deposited in the permanent maintenance fund or current maintenance fund by a particular cemetery corporation may be increased or diminished by order of the supreme court in a district where any portion of the cemetery is located. Such application may be made by the cemetery board on notice to the corporation or by the corporation on notice to the cemetery board.

(b) Perpetual care of lots.

(1) Upon the application of a prospective purchaser of any lot, plot or part thereof and upon payment of the purchase price and the amount fixed as a reasonable charge for the perpetual care of any lot, plot or part thereof, every cemetery corporation shall include with the deed of conveyance an agreement perpetually to care for such lot, plot, or part thereof, to the extent that the income derived by the corporation from such amount will permit.

(2) Such corporation also, upon the application of an owner or of the executor or administrator of a deceased owner of any lot and upon the payment of the amount fixed as a reasonable charge for the perpetual care of such lot, shall, and upon the application of any other person and the payment of such amount, may enter into a like agreement with him. Such agreement shall be executed and may be recorded in the same manner as a deed.

(3) Any corporation organized under or subject to the provisions of this section may enter into an agreement in writing with any executor or executors, trustee or trustees, under a last will and testament to whom there has heretofore been, or may hereafter be, bequeathed a sum for the perpetual care of any lot, plot or part thereof in any such cemetery or with any administrator or administrators with the will annexed under any such will perpetually to care for such lot, plot or part thereof under the provisions of the terms of such last will and testament, and subject in all cases to the approval of the surrogate's court having jurisdiction over such trust estate. Such approval may be evidenced by the written endorsement of the surrogate on a duplicate original of such agreement filed in the surrogate's court. In case the surrogate shall approve such agreement any such executor, trustee or administrator with the will annexed thereupon shall pay over to the treasurer of such perpetual care fund of such cemetery corporation any moneys remaining or being in his hands belonging to such trust, and upon making such payment and accounting therefore to the surrogate's court may be discharged from said trust as such executor, trustee or administrator with the will annexed.

(c) Perpetual care fund.

(1) Every cemetery corporation and every religious corporation having charge and control of a cemetery which heretofore has been or which hereafter may be used for burials, shall keep separate and apart from its other funds, all moneys and property received by it, whether by contract, in trust or otherwise, for the perpetual care and maintenance of any lot, plot or part thereof in its cemetery, and all such moneys or property so received by any such corporation are hereby declared to be, and shall be held by the corporation as trust funds. Any moneys and property so received, unless otherwise provided in the instrument under which such moneys or property were received, shall be kept in a separate fund to be known as the perpetual care fund.

(2) The principal of such funds, whether kept in the perpetual care fund or otherwise, and unless already so invested when received, shall be invested within a reasonable time after receipt thereof, and kept invested, in such securities as are permitted for the investment of trust funds by sections 11-2.2 and 11-2.3 of the estates, powers and trusts law. The income arising therefrom shall be used solely for the perpetual care and maintenance of the lot or plots or parts thereof

for which such income has been provided. In addition, the governing board of the corporation may appropriate for expenditure solely for the perpetual care and maintenance of the lot or plots or parts thereof for which such income has been provided, a portion of the net appreciation in the fair market value of the principal of the trust as is prudent under the standard established by article five-A of this chapter, the prudent management of institutional funds act. In the event that a cemetery corporation seeks to appropriate any percentage of its net appreciation in its perpetual care fund in accordance with this subparagraph, the cemetery corporation shall provide notice of such appropriation to the cemetery board not less than sixty days in advance of such proposed appropriation and shall disclose such appropriation as part of and in addition to their annual reporting requirements as defined in section fifteen hundred eight of this article setting forth the amount of funds appropriated for such expenditure and its effect on the perpetual care funds. Such proposed appropriation shall become effective sixty days after receipt of such notice, unless the cemetery board within such sixty day period notifies the cemetery corporation that the board objects to the proposed appropriation.

(3) The corporation may, for the purpose of investing and reinvesting such funds, add the same to any similar trust fund or funds and apportion shares or interest to each trust fund, showing upon its records at all times every share or interest.

(4) The corporation may accept in trust for the perpetual care of a lot, plot or part thereof in its cemetery, property not made eligible for the investment of trust funds under the foregoing provisions of this subdivision and may retain such property in the form in which received, separate and apart from the perpetual care fund, if directed so to do by the instrument under which such property is received, so long as such property remains in the form in which it was received; but whenever such property is sold or otherwise disposed of, the proceeds of such sale or other disposition shall be invested in the manner heretofore provided in this subdivision for the investment of trust funds. The exchange of stock or evidences of indebtedness issued by a corporation for stock or evidences of indebtedness of the same corporation, or for stock, evidences of indebtedness, warrants or script received as a result of merger, consolidation or reorganization of such corporation, or the receipt of additional stock or evidences of indebtedness of such corporation, as a distribution by such corporation, shall not be deemed to be a disposition of the property originally received in trust, and such exchanged or additional property may be retained in place and stead of the property originally received, and under the same conditions. The corporation shall keep accurate accounts of all funds for the perpetual care and maintenance of cemetery lots, plots or parts thereof, separate and apart from its other funds. A copy of the record pertaining to each such perpetual care fund shall be at all times available at the office of the corporation during usual business hours, for inspection and copy by any owner of an endowed lot or his representative.

(d) Perpetual care fund; allocation of income and cost of care and maintenance. On or before the fifteenth day of March in each calendar year the officers of every cemetery corporation shall fix and determine that portion of the income on the investment of the principal of the perpetual care fund during the calendar or fiscal year immediately preceding, to be apportioned to each separate lot or part thereof for which a perpetual care agreement has been made. The cost during such previous calendar or fiscal year of the care of each lot or part thereof shall be allocated and charged against the income so apportioned to it. Any excess of the income so apportioned over and above the allocated cost of the care and maintenance of such lot or part thereof shall be credited to such lot or part thereof, to be used in any future years to make up the deficiency if the income apportioned to such lot or part thereof should, in any year since September first, nineteen hundred forty-nine, or in any future year, fall, or have fallen, below the cost of care thereof.

(e) Designation of fiduciary corporation by directors or trustees of cemetery corporation to act as custodians of funds. Notwithstanding the provisions of any other law, the directors or trustees of cemetery corporations are hereby authorized to designate a bank or trust company to act as custodian and trustee of any or all of the respective funds of such cemetery corporation received by it for the perpetual care of lots in the cemetery thereof pursuant to paragraph (b), of this section, the permanent maintenance of such cemetery pursuant to paragraph (a) of this section, and for special purposes pursuant to paragraph (f) of this section. Such corporate trustee shall be designated by a resolution duly adopted by the board of directors or trustees and approved by a justice of the supreme court of the judicial district in which the cemetery of said corporation is located or the cemetery board; and the directors or trustees of such cemetery corporation may, with the approval of the justice of the supreme court, revoke such trust, and either take over such trust fund or name another trustee to handle the same, but if not so revoked, such trust shall be perpetual. Any bank or trust company accepting any such cemetery fund shall keep the same separate from all other funds, except that it may, irrespective of any provision contained in this article invest the same in a legal common trust fund or in shares of a mutual trust investment company organized under the banking law, and shall pay over the net income to the directors or trustees of the cemetery

corporation by whom it shall be expended and applied to the purpose for which such trust fund was paid to the cemetery corporations and accounted for in accordance with such paragraphs (a), (b) and (f) of this section.

(e-1) Monument maintenance fund.

(1) A cemetery corporation may, subject to the approval of the cemetery board, establish and maintain a monument maintenance fund. Such a fund is hereby declared to be and shall be held by the cemetery corporation as a trust fund, for the purpose of providing notice if such monuments are damaged or defaced by an act of vandalism and for the restoration of such monuments. Two or more cemetery corporations may establish a joint monument maintenance fund.

(2) The principal of the fund shall be invested in securities permitted for the investment of trust funds by sections 11-2.2 and 11-2.3 of the estates, powers and trusts law. The principal of such fund shall remain inviolate, except that upon application to the cemetery board, which may make an order permitting the principal or a part thereof to be used for the purpose of restoring monuments damaged or defaced by an act of vandalism. The income arising from such investment shall be used solely for the costs and expenses resulting from an act of vandalism against monuments in such cemetery.

(3) The fund shall be financed by a charge levied at the time of each interment at a rate established by each cemetery creating such a fund, subject to cemetery board approval pursuant to section fifteen hundred nine of this article. Such a charge shall be levied in addition to the approved rates for interment. The fund may also accept gifts, donations and bequests.

(4) Each cemetery creating such a fund shall promulgate rules and regulations to administer the fund, subject to cemetery board approval pursuant to section fifteen hundred nine of this article. Such rules shall include the conditions under which the income from such fund may be properly expended.

(5) The cemetery corporation shall keep accurate accounts of all moneys for the fund, separate and apart from its other funds.

(f) Acquisition of property for special purposes and in trust.

(1) A cemetery corporation may acquire, otherwise than by condemnation, real or personal property, absolutely or in trust, in perpetuity or otherwise, and shall use the same or the income therefrom in pursuance of the terms of the instrument by which it was acquired, for the following purposes only: (i) The improvement or embellishment, but not the enlargement, of its cemetery; (ii) The construction, preservation or replacement of any building, structure, fence, wall, or walk therein; (iii) The erection, renewal or preservation of any tomb, monument, stone, fence, wall, railing or other erection or structure on or around its cemetery or any lot or plot therein; (iv) The planting or cultivation of trees, grass, shrubs, flowers or plants in or about its cemetery or any lot or plot therein; (v) The construction, operation, maintenance, repair and replacement of a crematory or columbarium or both in its cemetery; (vi) The care, keeping in order and embellishment of any lot, plot or part thereof or the structures thereon, in its cemetery, as prescribed in the instrument transferring such property to the cemetery corporation, or by the person or persons from time to time having possession, care and control of such lot, plot or part thereof, as the case may be.

(2) All moneys and property received by a cemetery corporation in trust under this subdivision, unless otherwise provided in the instrument under which such moneys or property were received and unless already so invested when received, shall be invested within a reasonable time after the receipt thereof, and kept invested in such securities as are permitted for the investment of trust funds by sections 11-2.2 and 11-2.3 of the estates, powers and trusts law. The corporation may, for the purpose of investing and reinvesting such funds, add the same to any similar trust fund or funds and apportion shares or interests to each trust fund, showing upon its records at all times every share or interest. The cemetery corporation shall maintain a record for each such trust fund. Such record shall be at all times available at the office of the corporation during usual business hours, for inspection and copy by any owner of an endowed lot or his representative.

(g) Trust for the care of burial ground. A cemetery corporation, incorporated under or by a general or special law, may receive tangible property, securities or funds in trust, and hold and invest the same and apply the principal or income thereof, in accordance with the terms of the trust, for the purpose of repairing, maintaining, improving or embellishing a burial ground, not constituting a part of the cemetery of such cemetery corporation, and located outside of a city of more than one million inhabitants and within ten miles of the cemetery of the corporation accepting such trust. The directors

of such corporation, or a majority of them and the treasurer, shall annually within sixty days after the close of each calendar or fiscal year, make, sign and shall file at the office of the corporation a detailed accounting and report of such trust funds held under this subdivision and the use made of such funds or of the income thereof for the preceding calendar or fiscal year, which shall include among other things, properly itemized, the securities in which the same is then invested, and any purchases, sales or other changes made therein during the period covered by such report. Such accounting and report shall be at all times available at the office of the corporation, during usual business hours, for inspection and copy by any lot owner or any contributor to such trust fund.

(h) Vandalism, abandonment and monument repair or removal.

(1) Cemeteries incorporated under this article shall contribute to a fund created pursuant to section ninety-seven-r of the state finance law for the maintenance of abandoned cemeteries, including the construction of cemetery fences, placement of cemetery lights and replacement of cemetery doors and locks, for the restoration of property damaged by acts of vandalism, and for the repair or removal of monuments or other markers not owned by the cemetery corporation that have fallen into disrepair or dilapidation so as to create a dangerous condition. Such fund shall be administered by a board of trustees comprised of the secretary of state, the attorney general and the commissioner of health, or their designees, who shall serve without additional compensation.

(2) The fund shall be financed by contributions by the cemetery corporations of not more than five dollars (\$5.00) per interment or cremation in a manner to be determined by the New York state cemetery board. No contributions shall be collected upon the interment of the remains of a deceased person where a contribution was collected upon cremations.

(3) The moneys of the fund shall be expended equally for the maintenance of abandoned cemeteries previously owned by a corporation incorporated pursuant to this chapter or the membership corporations law and the repair of cemetery vandalism damage and the repair or removal of monuments or other markers not owned by the cemetery corporation, provided, however, that the cemetery board may determine that circumstances necessitate an unequal distribution due to specific needs and may provide for such distribution. For purposes of this section, the maintenance of abandoned cemeteries may include the construction of cemetery fences, placement of cemetery lights and replacement of cemetery doors and locks.

(4) Authorization for payments by the fund for maintenance of an abandoned cemetery shall be made by the secretary of state only upon approval by the cemetery board of an application by a municipality or other solvent not-for-profit cemetery corporation for fair and reasonable expenses required to be made by the municipality or other solvent not-for-profit cemetery corporation for maintenance of an abandoned cemetery; provided, however, that the cemetery board shall not approve any such application unless the municipality or other solvent not-for-profit cemetery corporation acknowledges that the responsibility for restoration and future care, preservation, and maintenance of such cemetery has been assumed by the municipality or other solvent not-for-profit cemetery corporation. For the purposes of this paragraph, such cemetery shall always be deemed an abandoned cemetery.

(5) Authorization for payments by the fund for the repair of vandalism damage shall be made by the secretary of state only on approval by the New York state cemetery board which shall determine:

(i) that an act of vandalism to the extent described by the cemetery corporation did take place;

(ii) that either a written report of the vandalism was filed with the local police or sheriff's department, or, that the cemetery, upon consent of the division, made a determination not to file the report because the publicity generated by filing the report would have adverse consequences for the cemetery;

(iii) that the cost of repairs is fair and reasonable; and

(iv) that the cemetery corporation has been unable to obtain funds from the lot owner, his spouse, devisees or descendants within a reasonable period of time nor are there adequate funds in the cemetery corporations monument maintenance fund, if such a fund has been established by the cemetery.

(6) Authorization for payments by the fund for the repair or removal of monuments or other markers not owned by the cemetery corporation shall be made by the secretary of state only on approval by the New York state cemetery board on application by the cemetery corporation showing:

- (i) that the monuments or markers are so badly out of repair or dilapidated as to create a dangerous condition;
- (ii) that the cost of remedying the condition is fair and reasonable;
- (iii) that the cemetery corporation has given not less than sixty days notice to the last known owner to repair or remove the monument or other marker and the said owner has failed to do so within the time prescribed in said notice.

(7) The New York state cemetery board shall promulgate rules defining standards of maintenance, as well as what type of vandalism or out of repair or dilapidated monuments or other markers shall qualify for payment of repair or removal by the fund and the method and amount of payment of contributions described in subparagraph two of this paragraph upon the recommendation of the state cemetery board citizens advisory council created by section fifteen hundred seven-a of this article (State cemetery board citizens advisory council).

(8) Nothing contained in this paragraph is to be construed as giving a cemetery corporation an “insurable interest” in monuments or other embellishments on a plot, lot or part thereof, nor is it meant to imply that the cemetery corporation has any responsibility for repairing vandalism damage not covered by this fund, nor for repairing or removing out of repair or dilapidated monuments or other markers not owned by the cemetery corporation, nor shall it constitute the doing of an insurance business.

**§ 1507-a. State cemetery board citizens advisory council**

(a) There is hereby created a state cemetery board citizens advisory council, to study, investigate, monitor and make recommendations with respect to the maintenance and operation of the state cemetery vandalism restoration, monument repair or removal and administration fund. Such advisory council shall study and investigate incidents of cemetery abandonment, vandalism and desecration, monitor the administration of such fund and recommend changes to improve the management of and expenditures from the state cemetery vandalism restoration, monument repair or removal and administration fund.

(b) The advisory council shall be composed of a member designated by the secretary of state, a member designated by the attorney general, a member designated by the commissioner of health, a member designated by the comptroller and a member designated by the commissioner of taxation and finance. The appointees to the advisory council shall not be employees of the department of state, department of law, department of health, department of audit and control or department of taxation and finance. Each of the members shall serve for a term of two years, provided, however, that the first appointments by the comptroller and commissioner of taxation and finance shall serve for a term of one year. Vacancies occurring other than by expiration of term shall be filled in the same manner as the original appointments for the balance of the unexpired term. Persons designated or appointed to the advisory council shall have demonstrated a long-standing interest, knowledge and experience in the care and preservation of gravesites. One member shall be elected chairman of the advisory council by a majority vote of the members of such council.

(c) The members of the advisory council shall receive no compensation for their services but shall be reimbursed for travel expenses incurred in the performance of their duties.

(d) The advisory council shall meet at least quarterly at the call of the chairman.

(e) The advisory council may request and shall receive from any department, division, board, bureau, commission, agency, public authority of the state or any political subdivision thereof such assistance and data as will enable it properly to carry out its activities hereunder and effectuate the purposes set forth herein.

**§ 1508. Reports by cemeteries**

a) Annual report. Each cemetery corporation shall, on or before the fifteenth day of March after the end of its calendar year, or if on a fiscal year the seventy-fifth day after the close of such year, file with the cemetery board (1) a statement as to the condition of the permanent maintenance trust fund and a schedule of the assets of such fund. (2) a statement as to the condition of the perpetual care fund and a schedule of the assets of such fund. (3) a statement as to the condition of the moneys and properties received by the cemetery corporation in trust under the provisions of subdivisions (f) and (g) of section fifteen hundred seven of this article. (4) a statement of the gross proceeds of the sale of plots, lots and parts thereof, graves, niches and crypts showing the disposition of such proceeds and (5) a statement of changes in the number and amount of certificates of indebtedness in accordance with the provisions of paragraph three of subdivision (a) of

section fifteen hundred eleven of this article. (6) a statement as to the condition of the monument maintenance fund, if any, and a schedule of the assets of such fund.

(b) Additional reports. The cemetery board may address to any cemetery corporations or its officers or any person any inquiry in relation to the transactions or conditions of the cemetery corporation or any matter connected therewith, and may require that a reply be verified. Failure to submit such reply within the time designated by the cemetery board shall subject the corporation, officer or person so addressed to the penalties provided in subdivision (d) hereof.

(c) Cemetery payment for administration. To defray the expenses of examination and administration, each cemetery corporation shall not later than March fifteenth in each calendar year, pay to the cemetery board the sum of three dollars per interment and cremation in excess of fifteen interments or cremations for the preceding calendar year. No contribution shall be collected upon the interment of the remains of a deceased person where a contribution was collected upon cremation.

(d) Failure to file report. Any cemetery corporation or individual failing to file any report or any schedule of rules, regulations and charges required by this article shall forfeit to the people of the state the sum of one hundred dollars for each day that each such report shall be delayed or withheld, except that the cemetery board may extend the time for filing any such report and may waive payment of any penalty or part thereof provided herein.

**§ 1509. Cemetery rules and regulations; charges and lot tax assessments**

(a) Rules and regulations. The directors of a cemetery corporation shall make reasonable rules and regulations for the use, care, management and protection of the property of the corporation and of all lots, plots and parts thereof; for regulating the dividing marks between the lots, plots and parts thereof; for prohibiting or regulating the erection of structures upon such lots, plots or parts thereof; for preventing unsightly monuments, effigies and structures within the cemetery grounds, and for the removal thereof; for regulating the introduction and care of plants, trees and shrubs within such grounds; for the prevention of the burial in a lot, plot or part thereof, of a body not entitled to burial therein; for regulating or preventing disinterments; for regulating the conduct of persons while within the cemetery grounds; for excluding improper persons and preventing improper assemblages therein. The directors may prescribe penalties for the violation of any such rule or regulation, not exceeding twenty-five dollars for each violation, which shall be recoverable by the corporation in a civil action.

(b) Charges for services. The directors of a cemetery corporation shall fix and make reasonable charges for any acts and services ordered by the owner and rendered by the corporation in connection with the use, care, including perpetual, annual and special care, management and protection of lots, plots and parts thereof. In determining said charges the directors shall consider the propriety and the fair and reasonable cost and expense of rendering the services or performing the work for which such charges are made.

(c) Cemetery board approval. (1) A cemetery corporation's rules, regulations and original charges shall not become effective unless and until approved by the cemetery board as hereinafter provided. (2) The directors of any cemetery corporation, organized on or before August thirty-first, nineteen hundred forty-nine, shall file in the office of the cemetery board the name and address of the corporation together with its rules, regulations and charges, and a statement showing the basis upon which they were made, within ninety days after the time this section as hereby amended takes effect. The directors of any cemetery corporation organized on or after September first, nineteen hundred forty-nine, shall file in the office of the cemetery board the name and address of the corporation together with its rules, regulations and charges, and a statement showing the basis on which they were made, within ninety days after the date of the filing of the certificate of incorporation in the department of state. (3) Within six months after the date of such filing, the cemetery board shall make and file in its office an order approving, disapproving or amending such rules, regulations and original charges in whole or part. Such rules, regulations and charges, if approved with or without amendment, shall become effective as approved upon the filing of such order by the cemetery board in its office. The cemetery board shall notify the directors of the action taken by it and its reasons therefor by registered mail addressed to the corporation at its principal office. In making its determination as to the schedule of charges the cemetery board shall consider the propriety and the fair and reasonable cost and expense of rendering the services or performing the work for which such charges are made. In passing upon the rules and regulations, the cemetery board shall consider the interests of the members of the corporation and the public interest in the proper maintenance and operation of burial grounds. (4) The rules, regulations and charges of any cemetery corporation existing on or before August thirty-first, nineteen hundred forty-nine, shall remain in effect until the cemetery board files in its office an order pursuant to the provisions of

subdivision three hereof. A cemetery corporation organized on or after September first, nineteen hundred forty-nine, may enforce the rules, regulations and charges filed by it in the office of the cemetery board until the cemetery board files in its office an order pursuant to the provisions of subdivision three hereof.

(d) Services not in list of charges. In the event that a cemetery corporation provides any services not included in the list of charges, and for which a charge cannot reasonably be fixed in advance, the charges made therefor shall be reviewable by the cemetery board. In the event that the cemetery board determines that an excessive, unauthorized or improper charge has been made for such services or that the services have not been properly performed, it may direct the cemetery corporation to pay to the person from whom such charge was collected a sum equivalent to three times the amount of the excess as determined by the cemetery board, or in the case of work not properly performed, it may direct the cemetery corporation to perform the work properly.

(e) Amendment and modification.

(1) The rules and regulations of a cemetery corporation may be amended or added to by the corporation by filing such proposed amendments or additions in the office of the cemetery board but no such amendment or addition shall be effective unless and until an order approving such amendments or additions is made by the cemetery board and filed in its office in the same manner as that applicable to the original filing of the rules, regulations and charges of the cemetery corporation.

(2) The charges of a cemetery corporation may be amended or added to by the corporation by filing an application containing such proposed amendment or addition in the office of the division of cemeteries and shall be processed in accordance with subparagraph three of this paragraph. The cemetery board shall consider the propriety and the fair and reasonable costs and expense of rendering the services or performing the work for which such charges are made. The effective rules, regulations or charges of a cemetery corporation may be amended, modified or vacated by the cemetery board at any time. The cemetery board shall notify the directors of the action taken by it and its reasons therefor by registered or certified mail addressed to the corporation at its principal office. In amending, modifying or vacating any rule, regulation or charge, the cemetery board shall be guided by the standards set forth in subparagraph three of paragraph (c) of this section.

(3) Any application setting forth the proposed amendment of, or addition to, the charges of a cemetery corporation as provided for by subparagraph two of this paragraph shall be processed in accordance either with clauses A, B and C of this subparagraph or in accordance with clause D of this subdivision.

A. Within thirty-five days following receipt of the application, the board or the division may request from the cemetery corporation any additional information or documentation deemed necessary to complete such application, and such application shall not be complete for the purposes of compliance with this subparagraph until the requested information has been received. If no such request is made, the application shall be deemed to be complete on the thirty-fifth day after its receipt by the division.

B. An application setting forth the proposed amendment of, or addition to, the charges of a cemetery corporation shall be deemed to be approved for any cemetery corporation holding, including unrestricted funds, cash and investments totalling less than four hundred thousand dollars, if the board does not object to the proposed charges within sixty days following: (i) the date on which the application shall have been deemed to be complete or (ii) the date on which the requested information necessary to complete the application shall have been received, whichever is later. If the board objects to the proposed charges, it shall notify the directors in writing with the reasons therefor, such notice to be mailed by registered or certified mail to the corporation at its principal office, not less than three business days before the end of such sixty day period. If the board approves such amendment of or addition to the charges, it shall do so by order.

C. An application setting forth the proposed amendment of, or addition to, the charges of a cemetery corporation shall be deemed to be approved for any cemetery corporation holding, including unrestricted funds, cash and investments totalling more than four hundred thousand dollars, if the board does not object to the proposed charges within ninety days following: (i) the date on which the application shall have been deemed to be complete or (ii) the date on which the requested information necessary to complete the application shall have been received, whichever is later. If the board objects to the proposed charges, it shall notify the directors in writing with the reasons therefor, such notice to be mailed by registered or certified mail to the corporation at its principal office, not less than three business days before the end of such ninety day period. If the board approves such amendment of or addition to the charges, it shall do so by order.

D. A cemetery may apply to the cemetery board for an increase in any or all of its approved charges by submitting a schedule to the cemetery board showing its currently approved charges and the proposed charges after applying the employment cost index to said charges as it appears in the United States Department of Labor, Bureau of Labor Statistics, Series ECU10001A, not seasonally adjusted, total compensation, civilian, twelve month percent change for all workers schedule or any subsequent schedule that may be adopted by the United States Department of Labor, Bureau of Labor Statistics, as a replacement for the aforementioned schedule. Any application by a cemetery under this subparagraph will prohibit application under subparagraph two of this paragraph for one year from the effective date of the approved increase under this subparagraph. An application setting forth the proposed changes in charges shall be deemed to be approved if the board does not object to the proposed charges within sixty-days following the date on which the application is submitted by a cemetery. If the board objects to the proposed charges, it shall notify the directors in writing with the reasons therefore, such notice to be mailed to the corporation at its principal office, not less than three business days before the end of such sixty day period. If the board approves such amendment of or addition to the charges, it shall do so by order. The cemetery board shall not approve application by a cemetery under this subparagraph if (i) the proposed percentage increases exceed the employment cost index percentages as provided in this subparagraph; (ii) there have been invasions of the permanent maintenance fund by the cemetery that have not been repaid or are not currently being repaid; (iii) the cemetery is currently not in compliance with any court order or any cemetery board order that is not under judicial review under paragraph (d) of section 1504; (iv) the cemetery has not filed in a timely manner its annual reports with the division of cemeteries as required under section 1508 (Reports by cemeteries); (v) all assessments as required under paragraph (c) of section 1508 (Reports by cemeteries) and vandalism fund payments as required under subparagraph two of paragraph (h) of section 1507 (Trust funds) have not been paid.

(f) Lot tax assessment.

(1) If the funds of a cemetery corporation applicable to the improvement and care of its cemetery, or applicable to the construction of a receiving vault therein for the common use of lot owners, be insufficient for such purposes, the directors of the corporation, not oftener than once in any year and for such purposes only, may, upon the prior approval of the cemetery board, which shall determine the necessity and propriety thereof, levy a tax on some basis to be determined by the directors of such corporation, but no such tax shall exceed two dollars on any one lot, except that with the written consent of two-thirds of the lot owners or by the vote of a majority of the lot owners present at an annual meeting, or at a special meeting duly called for such purpose, such tax may be for an amount which shall not exceed a total of five dollars per annum per lot, and the tax on any one lot shall not exceed five dollars per annum but the taxes may be levied upon each lot in the first instance for a sum sufficient for the improvement and care of the lot, but no greater sum than five dollars shall be collected in any one year. The whole tax levied may be collected in sums of five dollars in successive years in the manner herein provided.

(2) Notice of such tax shall be served on the lot owners or where two or more persons are owners of the same lot, on one of them, either personally, or by leaving it at his residence, with a person of mature age and discretion, or by mail, if he resides in a city, town or village where the office of the corporation is not located, or in case the residence or whereabouts of the owner cannot be ascertained, by publication once a week for four successive weeks in a newspaper published in the town where such cemetery is located, or if no newspaper is published in such town then in some newspaper published in the county where such cemetery is located.

(3) If such tax remain unpaid for more than thirty days after the service of such notice, the president and secretary of the corporation may issue a warrant to the treasurer of the corporation, requiring him to collect such tax in the same manner as school collectors are required to collect school taxes; and such treasurer shall have the same power and be subject to the same liabilities in executing such warrant as a collector of school taxes has or is subject to by law in executing a warrant for the collection of school taxes.

(4) If the taxes so levied remain unpaid for five years after the levying of such tax the amount thereof with interest shall be a lien on the unused portion of the lot which is subject to such tax, and no portion of the lot so taxed shall be used by the owner thereof for burial purposes, while any such tax remains unpaid.

(5) If at the expiration of five years from the date of the service of the first notice of assessment as herein provided, any such assessment or the interest thereon shall remain unpaid, the corporation may sell the unused portion of such lot at public auction upon the cemetery grounds, in the following manner: If the person owning such lot resides within the state, a written notice, under the seal of such cemetery corporation, if it have a seal, and the hand of the president or

secretary thereof, stating the amount of such tax or taxes unpaid and that such unused portion of such lot will be sold at a time therein to be specified, not less than twenty days from the date of the service of such notice, shall be personally served upon such owner; if such owner is not a resident of the state, or if the place of his residence cannot with due diligence be ascertained, or if, for any other reason satisfactory to the court, personal service cannot with due diligence be made upon such owner, such cemetery corporation, or any of its officers, may present a duly verified petition stating the facts to the county court of the county in which such cemetery lands are situated, or to the supreme court, and such court may upon satisfactory proof, by its order, direct the service of such notice in the manner provided by the civil practice law and rules for the substituted service of a summons. The president or secretary of such corporation, or any suitable and proper person appointed by it or by the court, upon filing proof of publication and service of such notice as provided by section three hundred fourteen of the surrogate's court procedure act may make such sale, and such sale may be adjourned from time to time for the accommodation of the parties or for other proper reasons. Previous notice of such sale shall be posted at the main entrance of the cemetery. Prior to such sale such corporation shall cause such lot to be resurveyed and replotted showing the part thereof not used for burial purposes and only such unused portion shall be sold. The cemetery corporation may at any such sale purchase any such lots or parts of lots. The surplus remaining after paying all assessments, interest, cost and charges shall be set aside by the corporation, as a fund for the care and improvement of the portion of such lot that has been used for burial purposes. In case the proceeds of such sale shall amount to more than thirty dollars the person making it shall make his report, under oath, to the court, of the proceedings and shall state the amount for which such lot was sold and that it was sold to the highest responsible bidder, together with the names of the purchasers, and the court may and in a proper case shall, by order, confirm the sale; in all other cases the person making such sale shall file in the office of the county clerk of the county in which the cemetery lands are situated a like report duly verified; on the filing of such order of confirmation or such report, as the case may be, the ownership of the unoccupied portion of such lot shall vest in the purchaser thereof.

(6) The directors of any such corporation may make a contract with a lot owner which shall provide for the payment by him of an agreed gross sum in lieu of further taxes and assessments and that upon the payment of such gross sum the lot of such owner shall be thereafter exempt from taxes and assessments.

(g) Purchases through office of general services. Notwithstanding the provisions of any general, special or local law, any officer or agent of a cemetery corporation subject to the provisions of this article authorized to make purchases of commodities and services may make such purchases through the office of general services subject to such rules as may be established from time to time pursuant to section one hundred sixty-three of the state finance law; provided that any such purchase shall exceed five hundred dollars and that the cemetery corporation for which such officer or agent acts shall accept sole responsibility for any payment due the vendor. All purchases shall be subject to audit and inspection by the cemetery corporation for which made. Two or more cemetery corporations may join in making purchases pursuant to this section and, for the purposes of this section, such groups shall be deemed a cemetery corporation.

#### **§ 1510. Cemetery duties**

(a) Posting and distribution of rules, regulations, charges and prices. The rules, regulations, charges, and prices of lots, plots or parts thereof shall be suitably printed and shall be conspicuously posted by the corporation in each of its offices. A printed copy of prices of lots, plots or parts thereof shall be made available upon request by any person for up to the actual price of the printing of the copy. For each day in which the corporation fails to post the rules, regulations, charges and prices the corporation shall be subject to a penalty of twenty-five dollars which may be recovered in a civil action by the cemetery board. For each instance in which the corporation fails to make available a copy of the prices of lots, plots, or parts thereof, to a person who request\* such copy, the corporation shall be subject to a penalty of twenty-five dollars which may be recovered in a civil action by the cemetery board. The cemetery board may waive the payment of the penalty or any part thereof.

(b) Surveys and maps of cemetery.

(1) Every cemetery corporation, from time to time, as land in its cemetery may be required for burial purposes, shall survey and subdivide such lands and make and file in the office of the corporation a map thereof, open to public inspection, delineating the lots or plots, avenues, paths, alleys and walks and their respective designations; a true copy thereof shall upon its written request, be filed with the cemetery board. Any unsold lots, plots or parts thereof, in which there are no remains, by order of the directors, may be resurveyed and altered in shape or size, and properly designated on such map.

(2) Every cemetery corporation shall provide reasonable access to every lot, plot and grave. This provision shall not be applicable where on September first, nineteen hundred forty-nine such access cannot be provided without the disinterment of a body or bodies. A cemetery corporation shall not permit or allow a body to be interred hereafter in a path, alley, avenue or walk shown on the cemetery maps or actually in existence. Nothing herein contained, however, shall prevent a cemetery corporation in special cases from enlarging a lot by selling to the owner thereof the access space next to such lot, and permitting interments therein, provided reasonable access to such lot and to adjoining lots is not thereby eliminated, and provided the approval of the cemetery board shall have first been obtained.

(c) Record of burials or cremations. A record shall be kept of every burial in the cemetery of a cemetery corporation, showing the date of burial, the name, age, and place of birth of the person buried, when these particulars can be conveniently obtained, and the lot, plot, or part thereof, in which such burial was made. A copy of such record, duly certified by the secretary of such corporation, shall be furnished on demand and payment of such fees therefor as are allowed the county clerk for certified copies of records. Notwithstanding any other provision of this section, all cemetery corporations which conduct cremations shall maintain permanent records of the name of the deceased human being, the funeral home from which the remains were received, the receipt of delivery of the deceased human remains, the authorizing agent for the cremation, and the manner of disposition of the cremains. Such records may be reviewed by the division of cemeteries at any time.

(d) When burial not to be refused. No cemetery corporation shall refuse or deny the right of burial and the privileges incidental thereto in any lot, plot or part thereof to those otherwise lawfully entitled to be buried therein, for any reason except for the non-payment of interment charges and the purchase price of the lot, plot or part thereof, in accordance with the terms of the contract of purchase or except as provided in subdivision (f) of section fifteen hundred nine of this article.

(e) Removals. A body interred in a lot in a cemetery owned or operated by a corporation incorporated by or under a general or special law may be removed therefrom, with the consent of the corporation, and the written consent of the owners of the lot, and of the surviving wife, husband, children, if of full age, and parents of the deceased. If the consent of any such person or of the corporation can not be obtained, permission by the county court of the county, or by the supreme court in the district, where the cemetery is situated, shall be sufficient. Notice of application for such permission must be given, at least eight days prior thereto, personally, or, at least sixteen days prior thereto, by mail, to the corporation or to the persons not consenting, and to every other person or corporation on whom service of notice may be required by the court.

(f) Expenses of improving vacant lot. Whenever a person having a lot in a cemetery shall vacate the same by a removal of all the bodies therefrom, and leave such lot in an unsightly condition for one month, the corporation may grade, cut, fill or otherwise change the surface thereof, without reducing the area of the lot. The expense, not exceeding ten dollars, shall be chargeable to the lot. If the owners of such lot, within six months after such expense has been incurred, shall not repay such expense, the corporation may sell the lot at public auction upon the cemetery grounds, previous notice of such sale having been posted at the main entrance of the cemetery, and mailed to the owners of such lot at their last-known post office address, at least ten days prior to the day of sale, and shall pay the surplus, if any, on demand to the owners of such lot.

(g) Removal or correction of dangerous conditions in cemetery lots. Any plant life, fencing or embellishment or structure other than a mausoleum, monument or mound, in a lot, plot or part thereof which becomes so worn, neglected, broken or deteriorated that its continued existence is a danger to persons or property within the cemetery grounds may be removed, repaired or corrected by the cemetery corporation at its own cost and expense, provided it first gives not less than fifteen days notice by registered or certified mail to the last known owner at his last known address to repair or remove such object and the said owner shall fail to repair or remove the object within the time provided in said notice. In the event of such removal, correction or repair by the cemetery corporation it shall, within twenty days thereafter, notify the lot owner, by registered or certified mail addressed to him at his last known address, of the action taken by the cemetery corporation. Nothing herein contained shall be construed to affect, supersede or impair any contract, rule or regulation duly approved by the cemetery board, or right or obligation of the cemetery corporation, nor shall it be construed as placing any legal duty or obligation to exercise any right authorized by this subdivision.

(h) Repair or notice as to non-dangerous damage or defacement. Except as otherwise provided by rule or regulation of the cemetery board pursuant to subparagraph two-a of paragraph (c) of section fifteen hundred four of this article, in the

event a lot, plot or part thereof is substantially damaged or defaced which does not present a dangerous condition to persons or property, or in the event a mausoleum, monument or mound in a lot, plot or part thereof is substantially damaged or defaced, and the correction of such condition is not subject to the provisions of paragraph (g) of this section or section fifteen hundred ten-a of this article, the cemetery corporation within thirty days of the discovery of this condition may at its own cost and expense repair the damage or defacement, or if it determines not to do so, the corporation shall within such thirty day period notify the owner, his or her distributee or the person filing an affidavit with such corporation pursuant to the provisions of paragraph (e) of section fifteen hundred twelve of this article of such condition at the last address of such owner, distributee or person appearing on the books and records of the corporation. The notice shall be sent by first class mail and a certificate of mailing shall be obtained. Nothing herein contained shall be construed as establishing any right of damages not otherwise provided by law, rule or contract in any person against the cemetery corporation for failure to repair any condition described or give notice thereof as provided for in this paragraph.

(i) Record of inscriptions to be filed. Whenever, under any general or special law, any cemetery is abandoned or is taken for a public use, the town board of the town or the governing body of the city in which such cemetery is located, shall cause to be made, at the time of the removal of the bodies interred therein, an exact copy of all inscriptions on each headstone, monument, slab or marker erected on each lot or plot in such cemetery and shall cause the same to be duly certified and shall file one copy thereof in the office of the town or city clerk of the town or city in which such cemetery was located and one copy in the office of the state historian and chief of the division of history in the department of education at Albany. In addition to such inscriptions, such certificate shall state the name and location of the cemetery so abandoned or taken for a public use, the cemetery in which each such body was so interred and the disposition of each such headstone, monument, slab or marker.

(j) Grave markers. No cemetery corporation, which provides for the burial of persons of the Jewish faith, shall promulgate any rule or regulation prohibiting the use of cement beds as a means of demarcating a specific grave area. Such cemetery corporations shall provide this service to all persons of the Jewish faith requesting this method of marking a grave when such grave area is provided through the agency of a membership or religious corporation or unincorporated association or society which provides burial benefits for the members. Subject to the rules and regulations promulgated by the cemetery board, such cemetery corporations shall establish the schedule of charges to be assessed for installation and maintenance of cement beds. The schedule of charges shall be filed with and approved by the cemetery board. Such regulation may require the payment of the cost of perpetual care as a condition to such installation and maintenance. The charges assessed shall be paid by the person requesting the service. The provisions of this paragraph shall only be applicable within the counties contained within the first, second, tenth and eleventh judicial districts as such districts are arranged pursuant to section one hundred forty of the judiciary law.

(k) Notice and restoration as to damage and defacement due to vandalism. In the event a monument is damaged or defaced by an act of vandalism, the cemetery corporation shall, within thirty days of the discovery of such damage, notify the owner, his distributee or the person filing an affidavit with such corporation pursuant to the provisions of paragraph one of subdivision (e) of section fifteen hundred twelve of this article of such damage in the manner provided in subdivision (h) of this section. The cost and expense of such notice may be provided from the fund where such fund exists. If a fund has been established, the cemetery corporation shall restore the monument with moneys from such fund. If such a fund has not been established or where such fund is inadequate to restore the monument, the cemetery corporation may restore such monument at its own cost and expense. Nothing herein contained shall be construed as establishing any right of damages not otherwise provided by law, rule or contract in any person against the cemetery corporation for failure to restore any monument if no monument maintenance fund exists or if such fund is inadequate to restore such monument.

(l) Removal of monument. No person or organization shall remove a monument without authorization in the form of a court order from a court of competent jurisdiction, or without the written authorization of the owner of a burial plot, or the lineal descendants of the deceased, if such owner or lineal descendants are known, and without obtaining written approval from a duly incorporated cemetery association, which association shall keep a record of all such written approvals. The provisions of this section shall not prohibit the removal, in accordance with rules and regulations promulgated by the secretary of state, of a monument for the purpose of repair, nonpayment or adding inscriptions as authorized by a cemetery association or as permitted in this article. A violation of any provision of this paragraph shall be punishable by a fine not to exceed five hundred dollars.

(m) Use of construction and demolition debris for burial. No cemetery corporation or religious corporation having charge and control of a cemetery which heretofore has been or which hereafter may be used for burials, shall use construction and demolition debris, as that term is defined in 6 NYCRR 360-1.2, for the purpose of burying human remains.

(n) Interment of pet cremated remains. The interment of pet cremated remains in a cemetery corporation shall be available to a lot owner only in those circumstances where the interment is incidental to the burial of human remains and where authorization has been provided in a written statement from the cemetery corporation. The cemetery corporation shall provide a list of approved charges for the interment of such remains. All payments received for interment of such remains shall be deposited in the cemetery corporation's permanent maintenance fund. Pet cremated remains must be disposed of by placing them in a grave, crypt, or niche. Nothing in this section shall obligate a cemetery corporation to allow interment of such cremated pet remains where prior approval at the time of sale or in advance of need has not been received. The provisions of this section shall not apply to an incorporated or unincorporated cemetery operated, supervised or controlled by a religious corporation or a lot, plot or part thereof whose record owner is an incorporated or unincorporated religious association or society.

\*So in original ("request" should be "requests").

**§ 1510-a. Repair or removal of monuments**

(a) Cemetery corporations may repair or remove any monuments or other markers not owned by the cemetery corporation that have fallen into disrepair or dilapidation so as to create a dangerous condition, provided that the cemetery corporation has given not less than sixty days notice by registered or certified mail to the last known owner at that person's last known address to repair or remove the monument or other marker and the said owner has failed to do so within the time provided in said notice.

(b) In the event that the last known owner cannot be found, the notice may be given by publishing the same once each week for three consecutive weeks in a newspaper published or circulated in the county in which the cemetery is located. Such notice shall be addressed to the last known owner and to all persons having or claiming any interest in or to the burial lot on which the monument or other marker is located. The notice shall date from the date of mailing such notice by registered or certified mail, or the date of the third publication in the newspaper.

(c) Any monument or other marker that is removed as provided for in this section shall be replaced with a flush bronze or granite marker suitably inscribed if replacement is appropriate for identification purposes.

(d) Nothing contained herein shall be construed as establishing any right of damages not otherwise provided by law, rule or contract in any person against the cemetery corporation for failure to repair or remedy any condition described or give notice thereof as provided for in this section.

**§ 1510-b. Availability for interment on six-day basis**

Every cemetery corporation shall be available for interments at least six days per week, excluding legal holidays, as set forth in the cemetery's regulations or in accordance with its practices. Any cemetery which maintains and designates a burial section for persons of a particular religious belief must remain available for grave openings and interments Sunday through Friday or other six-day period in accordance with the religious and/or ethnic traditions of the persons interred in said religious section. Nothing in this section shall require a cemetery to provide grave openings and/or interments if they are otherwise unable to do so as to direct consequence of severe weather conditions or other similar conditions.

**§ 1511. Cemetery indebtedness**

(a) Certificates of indebtedness.

(1) If a cemetery corporation be indebted for lands purchased for cemetery purposes, or for services rendered or materials furnished in connection with the necessary and proper preservation or improvement of its cemetery or for moneys borrowed exclusively for payment of such services or materials, the directors, by the concurring vote of a majority of their whole number, with the consent of the creditor to whom such indebtedness is owing, may issue certificates under the corporate seal, signed by the president and secretary, for such amount, payable at the times and at the rate of interest agreed upon but not to exceed six per centum per annum; provided, however, that there be first obtained from the cemetery board an order approving the issuance of such certificates. In the case of certificates of

indebtedness issued for moneys borrowed exclusively for payment for services rendered or materials furnished in connection with the necessary and proper preservation or improvement of its cemetery the consent of the creditor to whom such indebtedness is owing shall not be required.

(2) Such approval shall be given by the cemetery board only if it determines that the amount of the certificates proposed to be issued does not exceed the fair and reasonable value of the services rendered or materials furnished or the purchase price of real property as fixed in accordance with subdivision (b) of this section. No certificate issued shall be valid or enforceable unless there has first been issued by the cemetery board an order of approval as herein provided. No certificate shall be for less than one hundred dollars. The certificate shall be transferable by delivery, unless therein otherwise provided.

(3) The directors shall keep an account of the number and amount of such certificates, the persons to whom issued, the date of maturity, the rate of interest and the purpose for which the same were issued. Each cemetery corporation shall file with the cemetery board a verified statement setting forth all changes in such account during the previous calendar or fiscal year. (4) The directors shall set aside from the proceeds of sales of lots, plots and parts thereof such sums to pay such certificates at maturity as they deem necessary. Until the certificates are paid the holders thereof shall be entitled at all meetings of the corporation, to one vote for each one hundred dollars of indebtedness remaining unpaid, except that those certificates of indebtedness issued for moneys borrowed exclusively for payment of services or materials shall have no voting power. The certificates shall not be a lien upon any lot, plot or part thereof belonging to a lot owner.

(b) Application of proceeds of sales of lots.

(1) At least one-half of the proceeds of sales of lots or the use thereof remaining after the deductions for the portion thereof required to be deposited in the permanent maintenance fund and current maintenance fund together with the expenses of sale shall be applied by a cemetery corporation to the payment of the purchase price of the real property acquired by it. The remainder of such proceeds shall be applied by the corporation to preserving, improving and embellishing the cemetery grounds and the avenues and roads leading thereto, and to defraying its expenses and discharging its liabilities. After the payment of such purchase price, and the expense of surveying and laying out the cemetery, all the proceeds of such sales shall be applied to the improvement, preservation and embellishment of the cemetery and to such expenses and liabilities.

(2) Where a corporation has agreed with a person from whom any such lands were purchased to pay therefor a specified share not exceeding one-half of the proceeds of sales of lots therein or the use thereof, such corporation may continue to make payments as so agreed, provided however that there be first deducted from said proceeds of sales the amount required to be deposited in the permanent maintenance fund and current maintenance fund as aforesaid together with the expenses of sale. The balance of such proceeds shall continue to be applied by the corporation to the preservation, improvement and embellishment of the cemetery, and the expenses and liabilities of the corporation. Where the corporation has heretofore agreed to pay a specified share of the proceeds as aforesaid in payment of the purchase price of land, the prices of lots or the use thereof in force when such purchase was made, shall not be changed, while the purchase price remains unpaid, without the written consent of a majority in interest of the persons from whom the lands were purchased or their legal representatives.

(3) A corporation which has heretofore issued certificates of land shares which entitle the owner to a specified share in the proceeds of the sale of lots, may purchase such certificates with its surplus or reserve funds and hold such certificates for the benefit of its surplus or reserve funds, but such certificates may not thereafter be sold or reissued.

(c) Certificates of stock formerly issued. If a cemetery corporation, incorporated under a law repealed by the membership corporations law, prior to September first, eighteen hundred ninety-five, converted its outstanding indebtedness or certificates of indebtedness into certificates of stock, in pursuance of law, no interest shall accrue to the holders of such stock, but they shall receive annually or semi-annually a dividend thereon for their proportional part of the entire surplus or net receipts of the corporation over and above current expenses; or if the proportion of the net receipts or surplus which stockholders shall be entitled to receive shall have been fixed by agreement at the time of issuing such stock, such stockholders shall be entitled to receive dividends in accordance with such agreement. Such certificates of stock shall be transferable only on the books of the corporation on the surrender of the certificate, unless otherwise provided on the face thereof, and on every such surrender a new certificate of stock shall be issued to the person to whom the same has been transferred; and the holders of such stock shall be entitled, in person or by proxy, to

one vote for every share thereof, at each meeting of the corporation. A register of the stock issued by the corporation shall be kept by its directors showing the date of issue, the number of shares, the par value thereof, the name of each person to whom issued, the number of the certificates therefor; and all transfers of such stock shall be noted and entered in such register, and the certificates surrendered shall be deemed canceled by the issue of a new certificate, and the surrendered certificate shall be destroyed. Any director may become the holder or transferee of such stock for his own individual use or benefit. No such stock shall be a lien on the lot of any individual lot owner within the cemetery limits; and no other or greater liability of the corporation issuing such stock shall be created or deemed to exist than may be necessary to enforce the faithful application of the surplus or net receipts of the corporation to and among the holders of the stock in the manner hereinbefore specified. A cemetery which has heretofore issued such certificates of stock is a membership corporation and not a stock corporation.

(d) Retirement of certificates of stock of certain cemetery corporations. If a cemetery association, incorporated under a law repealed by chapter five hundred fifty-nine of the laws of eighteen hundred ninety-five has changed certificates of indebtedness into certificates of stock, pursuant to chapter one hundred seven of the laws of eighteen hundred seventy-nine, and such stock remains unimpaired, such association may retire such stock and issue in exchange therefor certificates of indebtedness representing the par value of such stock, such certificates of indebtedness to bear interest at a rate not exceeding six per centum per annum from the date of the last preceding dividend payment; provided, however, the exchange of such stock for certificates of indebtedness shall be authorized at a duly called meeting of such association by the affirmative vote of at least two-thirds of the stock issued and outstanding and of at least two-thirds of all votes cast at such meeting in favor of such exchange. Any holder of such stock not voting in favor of the exchange of such stock for certificates of indebtedness may at any time prior to the vote upon such exchange, or if notice of the meeting to vote upon such exchange was not mailed to him at least twenty days prior to the taking of such vote, then within twenty days after the mailing of such notice, object to such exchange and demand payment for his stock and thereupon such stockholder or the corporation shall have the right, subject to the same conditions and provisions contained in section six hundred twenty-three of the business corporation law, to have such stock appraised and paid for as provided in such section. Such objection and demand must be in writing and filed with the corporation. The provisions of this section relating to certificates of indebtedness and the rights of the holders thereof shall apply to certificates of indebtedness issued as provided in this subdivision. The stocks so retired shall not be reissued by such association and it shall have no right thereafter to issue any certificates of stock.

(e) Purchase, retirement and exchange of stock.

(1) A cemetery corporation which has issued certificates of stock, pursuant to chapter one hundred seven of the laws of eighteen hundred seventy-nine, or chapter two hundred sixty-seven of the laws of eighteen hundred ninety-four, may purchase such certificates of stock with its surplus or reserve funds, and hold such certificates for the benefit of its surplus or reserve funds, but such certificates of stock so purchased may not thereafter be sold or reissued.

(2) A cemetery corporation which has issued certificates of stock may also effect the retirement of such stock as follows: The board of directors of such corporation shall adopt by vote of a majority of the entire number of such directors a plan for such retirement which shall include the fixing of a price which the corporation will pay for all shares of stock then outstanding, which price shall, in the opinion of such directors, represent the fair value of such stock. The said plan shall be submitted to a duly called meeting of the members of such corporation and, if approved by the affirmative vote of at least two-thirds of all votes cast at such meeting, including the affirmative vote of the holders of record of at least two-thirds of all shares of stock issued and then outstanding exclusive of any shares of stock held by the corporation, shall become binding upon all stockholders, and they shall proceed to transfer and surrender to the corporation their certificates of stock and to receive payment therefor in accordance with the terms of such plan. Any holder of shares of such stock not voting in favor of such plan may at any time prior to the vote approving such plan, or if notice of the meeting to vote upon such plan was not mailed to him at least twenty days prior to the taking of such vote, then within twenty days after the mailing of such notice, but in any event within ten days after the taking of such vote, by written notice filed with such corporation, object to such plan and demand appraisal of his shares. Thereupon, such stockholder or the corporation shall have the right, subject to the same conditions and provisions contained in section six hundred twenty-three of the business corporation law, to have such stock appraised and paid for as provided in such section.

(3) A cemetery corporation which has issued certificates of stock may also effect the exchange of such stock as follows: The board of directors of such corporation shall adopt by a vote of a majority of the entire number of such directors a

plan for the exchange of all shares of stock then outstanding for a like number of participating certificates. Such participating certificates shall entitle the owners to a specified share not exceeding, collectively, one-half of the proceeds of sales of lots therein or the use thereof after first deducting from such proceeds of sale the amount required to be deposited in the permanent maintenance fund and current maintenance fund as provided in and pursuant to subdivision (a) of section fifteen hundred seven of this article, together with the expenses of sale. Such plan shall then be submitted to the cemetery board for its approval. In making its determination the cemetery board shall consider and may condition its approval on the purposes of this section. Thereafter, if the cemetery board approves such plan, or in the event the cemetery board conditioned its approval and the conditions imposed have been accepted by a vote of a majority of the entire board of directors of the corporation, such plan shall be submitted to a duly called meeting of the members of such corporation, and, if approved by the affirmative vote of at least two-thirds of all votes cast at such meeting, including the affirmative vote of the holders of record of at least ninety per centum of all shares of stock issued and then outstanding exclusive of any shares of stock held by the corporation, shall become binding upon all stockholders. The stockholders shall then proceed to transfer and surrender to the corporation their shares of stock and to receive in exchange therefor participating certificates in accordance with the terms of such plan. Any holder of shares of such stock not voting in favor of such plan may at any time prior to the vote approving such plan, or if notice of the meeting to vote upon such plan was not mailed to him at least twenty days prior to the taking of such vote, then within twenty days after the mailing of such notice, but in any event within ten days after the taking of such vote, by written notice filed with such corporation, object to such plan and demand appraisal of his shares. Thereupon, such stockholder or the corporation shall have the right, subject to the same conditions and provisions contained in section six hundred twenty-three of the business corporation law, to have such stock appraised and paid for as provided in such section. Each such participating certificate issued in exchange for a share of stock shall entitle the holder thereof to one vote for each certificate at all meetings of the corporation. The prices of lots or the use thereof at the time when such exchange is made shall not be changed, while such participating certificates remain outstanding, without the written consent of a majority in interest of the holders thereof except as now or hereafter authorized by law. The shares of stock so exchanged shall not be reissued by such corporation and it shall have no right thereafter to issue any shares of stock.

(f) Exchange of certificates for shares. The directors of a cemetery corporation, which has issued certificates for shares, from time to time by resolution, may fix the value of each of such shares and authorize the acceptance by the corporation of such certificates at the value so fixed in payment for land. All certificates so accepted shall be immediately cancelled and shall not be again issued.

**§ 1512. Rights of lot owners**

(a) Lots; indivisible and inalienable. All lots, plots or parts thereof, the use of which has been conveyed as a separate lot, shall be indivisible, except with the consent of the lot owner or lot owners and the corporation, or as in this section provided. After a burial therein, the same shall be inalienable, except as otherwise provided.

(b) Interest of deceased lot owner. Upon the death of an owner or co-owner of any lot, plot or part thereof, unless the same shall be held in joint tenancy, or tenancy by the entirety, the interest of the deceased lot owner shall pass to the devisees of such lot owner, but, if such interest be not effectually devised, then to his or her descendants then surviving, and if there be none, then to the surviving spouse, and if there be none, then to those entitled to take the real and personal property of the deceased lot owner pursuant to article four of the estates, powers and trust law provided, however, that no interest in any lot, plot or part thereof shall pass by any residuary or other general clause in a will and such interest shall pass by will only if the lot, plot or part thereof sought to be devised is specifically referred to in such will. The surviving spouse of a deceased lot owner during his or her life and the owners from time to time of the deceased lot owner's lot, plot or part thereof, shall have in common the possession, care and control of such lot, plot or part thereof.

(c) Purchase for burial of decedent. Whenever a lot, plot or part thereof shall be purchased by the executor, administrator or representative of a decedent from estate funds for the burial of the decedent, the surviving spouse of the decedent shall have the right of interment therein, and the deed shall run to the names of the distributees, other than the surviving spouse, of the decedent, or to "The distributees, other than the surviving spouse, of ....., deceased", if there be such surviving spouse, otherwise to "The distributees of ....., deceased." If the deed shall run to "The distributees, other than the surviving spouse of ....., deceased," or to "The distributees of ....., deceased," the executor, administrator or representative shall, at the time of delivery of the deed to such lot, plot or part thereof, file with the corporation an affidavit setting forth the names and places of residence of all the decedent's distributees, and the corporation shall be entitled to rely upon the truth of the statements contained in such affidavit.

(d) Right of interment. A deceased person shall have the right of interment in any lot, plot or part thereof of which he or she was the owner or co-owner at the time of his or her death, or in any tomb erected thereon. The surviving spouse shall have the right of interment for his or her body in a lot or tomb in which the deceased spouse was an owner or co-owner at the time of his or her death, except where all the available burial spaces in a lot or tomb have been designated for the interment of persons other than the surviving spouse, pursuant to subdivision (f) of this section, and a right to have his or her body remain permanently interred or entombed therein, except, that such body may be removed therefrom as provided in subdivision (e) of section fifteen hundred ten of this article. Such right may be enforced and protected by his or her personal representatives. The remains of a spouse, parent or child of a person who is an owner or co-owner thereof may be interred in such lot or tomb without the consent of any person claiming any interest therein, subject, however, to the following rules and exceptions: (A) The place of interment in such lot shall be subject to the reasonable determination by a majority of the co-owners or in the absence of such determination by the cemetery corporation or its officer or agent having immediate charge of interments. (B) Any husband or wife living separate from the other and owning a lot in which the other, but for this section, would have no right of burial, at least thirty days before the death of the other, may file with the cemetery corporation a written objection to the interment of the other, and thereupon there shall be no right of interment under this subdivision. (C) A parent or child owning a lot in which the other would have no right of burial but for this section, at least thirty days before the death of the other, may file with the cemetery corporation a written objection to the interment of the other, and thereupon there shall be no right of interment under this subdivision. In such case, if the parent or child so excluded from burial in such lot shall die without having any place of interment, then the person filing such objection shall at once provide for the other a suitable place of burial in a convenient cemetery. The cost of such place of interment shall be chargeable to the decedent's estate, if any. (D) This section shall not permit a burial in any ground or place contrary to or in violation of any precept, rule, regulation or usage of any church or religious society, association or corporation restricting burial therein. This subdivision shall not limit any existing right of burial under other provisions of law, nor shall it limit or curtail the right of alienation, under the rules of the cemetery corporation wherein such lot is situated, by the owner of a lot before the death of the person for whose remains the right of burial is provided herein, and there shall be no right of burial in any lot sold by its owner, before the death of the person for whose remains the right of burial is provided herein.

(e) More than one person entitled to possession and control.

(1) At any time when more than one person is entitled to the possession, care and control of such lot, any of the persons so entitled thereto may file with the corporation an affidavit setting forth the names and places of residence of all the persons entitled to the possession, care and control of such lot, and the corporation shall be entitled to rely upon the truth of the statements contained in such affidavit. The corporation shall be entitled to collect a reasonable fee for filing and recording such affidavit and other documents filed in its office.

(2) At any time when more than one person is entitled to the possession, care or control of such lot, plot or part thereof, the persons so entitled thereto shall file with the corporation a designation of a person who shall represent the lot, plot or part thereof, and so long as they shall fail to designate, the corporation may make such designation. A distributee may release his or her interest in a lot, plot or part thereof, to the other distributees, and a joint owner may release or devise to the other joint owners, his or her right in the lot, plot or part thereof, on conditions specified in the release or will, the original or certified copy of which shall be filed in the office of the corporation. The surviving spouse not excluded from the right of burial under the provisions of subdivision (d) of this section, at any time may release his or her right in such lot, plot or part thereof, but no conveyance or devise by any other person shall deprive him or her of such right.

(f) Designation of persons who may be interred. At any time all the owners of a lot, and any surviving spouse having a right of interment therein, may execute, acknowledge and file with the corporation an instrument, and the sole owner of a lot may, in a testamentary instrument admitted to probate, make a provision, which may (A) designate the person or persons or class of persons who may thereafter be interred in said lot or in a tomb in such lot and the places of their interment; (B) direct that upon the interment of certain named persons, the lot or tomb in such lot shall be closed to further interments; (C) direct that the title of the lot shall upon the death of any one or more of the owners, descend in perpetuity to his, her or their distributees, unaffected by any devise. In any case in which an irrevocable designation of a person, persons or class of persons who may be interred in any lot or tomb has been made pursuant to this subdivision and in which the designated person or persons, or all of the known class of designated persons, have died and have not been buried in the places designated in said lot or tomb, or have by a written instrument duly signed and acknowledged and filed with the corporation, renounced the right of interment pursuant to such designation, then, and in any such event, the then owner or owners of said lot or tomb and any surviving spouse having the right of interment therein, may designate another person or persons or class of persons who may thereafter be interred in said lot or in a tomb in said lot, and the places of their interment, unless the original designation clearly indicated not only that it was irrevocable, but also that no further designations were to be made. Any designation provided for by this subdivision except a designation by testamentary instrument, shall be deemed revocable unless such instrument provides otherwise. In the event an owner or co-owner of a lot is under the age of eighteen years, any designation provided for by this subdivision, except a designation by testamentary instrument, may be executed and acknowledged by the parent or general or testamentary guardian for and on behalf of such owner or co-owner, provided, however, that no such designation may be made unless a place of interment shall remain available in said lot or in a tomb in such lot for the interment of each owner or co-owner of the lot under the age of eighteen years, and any designation so made may be revoked by the owner or co-owner upon reaching the age of eighteen years except with respect to burials effected before that time. A designation made by a parent or guardian on behalf of an infant owner or co-owner who is over the age of fourteen years must contain the written consent of such infant owner or co-owner.

(g) Lot owner voting. Each owner of full age of a lot in the cemetery of the corporation, as shown in the records of the cemetery at the time of the purchase of the lot from the corporation, or if there be two or more owners, then one of them designated in writing by a majority of them, may cast, in person or by proxy, one vote at meetings of the corporation in respect to each such lot so owned. At such meetings, each owner of a certificate of stock heretofore lawfully issued shall be entitled to one vote for each share of stock owned by him and each owner of a certificate of indebtedness shall be entitled to one vote for each one hundred dollars of such indebtedness remaining unpaid. No lot owner shall be entitled to vote unless all assessments against the lot of such owner shall have been paid. A quorum for the transaction of business, unless the certificate of incorporation or by-laws otherwise provide, shall be five members entitled to vote at the meeting. In the event a lot owner has executed a proxy which has been in effect for five or more years, the cemetery corporation shall not honor such proxy unless it is presented with proof that the lot owner has been sent a written notice at the address listed in the records of the corporation at least thirty days prior to the meeting at which the proxy is to be exercised advising the lot owner that the proxy is still effective. The notice shall identify the date, time and place of such meeting, and the name of the person holding the proxy and shall state that it may, unless the proxy provides otherwise, be terminated at any time. Such notice need not be mailed more frequently than every fifth year.

(h) Plots owned by religious corporations, unincorporated associations, or other entities that provide burial benefits for its members. With respect to any lot, plot or part thereof owned by a membership or religious corporation or unincorporated association or other entity that provides burial benefits for its members, and requires the cemetery to obtain a burial authorization from the membership, religious corporation, unincorporated association, or other entity, the following rules shall apply:

(1) If a cemetery receives a request to bury an individual who was a member of a membership, religious corporation, unincorporated association, or other entity that owns the lot, plot or part thereof in which the burial would be made, and despite reasonable efforts on the part of the family of the deceased, the funeral home, and/or the cemetery, no representative of the membership, religious corporation, unincorporated association, or other entity that owns the lot, plot or part thereof in which the burial would be made can be located to authorize the burial, the cemetery may, at its discretion, proceed with the interment provided that documentary evidence indicating a specific grave reservation in the lot, plot or part thereof, for the deceased individual is provided to the cemetery and further that the cemetery has recorded such reservation on its books and in its records;

(2) If the decedent is within the first degree of consanguinity to an individual already interred in the lot, plot or part thereof, or the spouse of the decedent is already interred in the lot, plot or part thereof, the cemetery may, at its discretion, proceed with the interment, provided some form of documentary evidence is provided to the cemetery as to the decedent's right of burial in the lot, plot or part thereof;

(3) The right of memorialization shall, under the circumstances described in this paragraph, pass to the person with the right of possession of the body at the time of burial; and

(4) Neither the cemetery nor the funeral director shall be liable for any claims, in law or equity, relating to the failure to obtain authorization from the membership, religious corporation, unincorporated association, or other entity for the use of the plot, lot, or portion thereof provided that the requirements of this paragraph have been met.

### **§ 1513. Sale of burial rights**

(a) Conveyance of lots.

(1) Except as otherwise provided in this subdivision the right to use any lot, plot or part thereof may be sold or conveyed only by the cemetery corporation.

(2) It shall be unlawful for any person, firm or corporation to purchase or for a cemetery corporation to sell a lot, plot or part thereof for the purpose of resale. This provision, however, shall not prohibit the sale to its members of lots, plots or parts thereof, or the right to use any lot, plot or part thereof, by a membership or religious corporation or unincorporated association or society which provides burial benefits for its members.

(3) It shall be unlawful for a cemetery corporation to pay or offer to pay, or for any person, firm or corporation to receive, directly or indirectly, a commission, bonus, rebate or other things of value for, or in connection with, the sale of any lot, plot or part thereof, or the sale of space in a public mausoleum, or the furnishing by or through the cemetery corporation of any service, merchandise, wares, goods or articles. The provisions of this paragraph shall not apply to a person regularly employed and supervised by the cemetery corporation.

(4) A violation of this subdivision shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars or not more than six months imprisonment or both. Each violation shall constitute a separate offense.

(b) Prices for burial rights and instruments of conveyance.

(1) The directors must fix and determine the prices of the burial lots, plots or parts thereof, and keep a plainly printed copy of the schedules of such prices conspicuously posted in each of the offices of the corporation, open at all reasonable times to inspection, and shall file a schedule of such prices in the office of the cemetery board.

(2) Unless its certificate of incorporation or by-laws otherwise provide, and subject to its rules and regulations, the corporation shall sell and convey to any person the use of the lots, plots or parts thereof designated on the map filed in the office of the corporation, on payment of the prices so fixed and determined, but need not sell and convey more than one lot, plot or part thereof to any one person. Conveyances of lots, plots and parts thereof shall be signed by the president or vice-president and treasurer or assistant treasurer of the corporation. A written contract for the sale or use of

a lot, plot or part thereof shall have attached thereto and made a part thereof a copy of the rules and regulations of the cemetery corporation or such parts of such rules and regulations as relate to the size and placement of monuments, restrictions on plot usage, warranties, obligations of the cemetery corporation and financial obligations and duties of the lot owner. If a lot, plot or part thereof is sold without a written contract, the corporation shall, before any part of the purchase price is paid by the purchaser, deliver to the purchaser a copy of the rules and regulations or such parts thereof as would be required to be attached to a written contract. Nothing in this subdivision shall prevent the subsequent amendment of such rules and regulations to increase the charges for services rendered by the corporation or in other particulars by or with the consent of the cemetery board under section fifteen hundred nine of this article.

(3) A cemetery corporation that shall sell a lot, plot or part thereof, in excess of the price shown on the schedule filed in the office of the cemetery board, and any person acting for or on behalf of the cemetery corporation in connection with such sale, shall each forfeit to the people of the state of New York a sum equivalent to three times the excess amount so paid. Such penalty may be recovered in a civil action by the cemetery board.

(4) The instrument of conveyance of any burial lot, plot or part thereof shall include the actual amount paid therefor and a description showing the dimensions of the property conveyed, and the plot number, section and block number as they appear on the cemetery map.

(c) Resale by lot owner. Before any burial shall have been made in any such lot, plot or part thereof, or, if all the bodies therein have been lawfully removed, the lot owner may sell or convey such lot, plot or part thereof upon notice to the cemetery. Such sale shall only occur in those instances where the owner of such lot, plot or part thereof shall have offered it to the cemetery corporation within one year prior to the sale, in writing by registered or certified mail, at the price paid therefor by said lot owner, together with simple interest at the rate of four per centum per annum, and the cemetery corporation shall have failed to accept such offer within thirty days after the making thereof. Subsequent to the receipt of notice of sale of such lot, plot or part thereof, the secretary of the cemetery corporation shall file and record in its books all instruments of transfer. An owner may convey or devise to the corporation his right and title in and to any such lot, plot or part thereof.

(d) Lots held in inalienable form.

(1) No portion of the cemetery of a cemetery corporation which any person other than the corporation is entitled to use for burial purposes, or in which bodies have been buried and not removed, shall be sold, mortgaged or leased by the corporation. A cemetery corporation may convey any lot so that upon such conveyance, or after an interment therein, such lot shall be forever inalienable, and upon the death of the lot owner shall pass to such person or persons as may be designated in the conveyance or if no such designation be made, shall descend as provided in section fifteen hundred twelve of this article. Any one or more of the owners of such a lot may release or devise to any other owner of the lot his interest therein on such conditions as shall be specified in the release or will.

(2) Any person who is the sole owner of the burial rights in a cemetery lot, plot or any part thereof, in which a burial has been made, may give his entire interest, or, if not prohibited by the rules and regulations of the cemetery corporation, any portion thereof to any person within the third degree of consanguinity to the owner, or, in the event that no such person exists, within the fourth degree of consanguinity to such owner. Such conveyance shall be made subject to the right of interment of the spouse of any deceased owner, which right said spouse may release at any time, but no conveyance or devise by any other person shall deprive the surviving spouse of such right. Burial rights shall not be conveyed pursuant to the provisions of this subparagraph more frequently than once in any ten-year period.

(3) A cemetery corporation may take and hold any lot conveyed or devised to it by the lot owner so that thereafter it will be inalienable, and the interments therein shall be restricted to such person or class of persons as may be designated in the conveyance or devise.

(4) The title of a lot owner shall not be affected by the dissolution of the corporation, by non-user of its corporate rights and franchises by any act of forfeiture on its part, by any alienation of its property or by incumbrance thereon made or suffered by it.

**§ 1513-a. Reacquisition of a lot, plot or part thereof by a cemetery corporation**

A cemetery corporation may, upon application and approval by the cemetery board, reacquire, resubdivide, and resell a lot, plot or part thereof under the following circumstances:

(a) (i) If the records of the corporation demonstrate that the lot, plot or part thereof was purchased more than seventy-five years prior to the application of the corporation; and (ii) if no burials have been made in the lot, plot or part thereof or all the bodies therein have been lawfully removed; and (iii) if neither the owner or owners of the lot, plot or part thereof nor any person having a credible claim to ownership who has visited, made payments in respect of or engaged in any other proprietary activities with respect to the lot, plot or part thereof can be identified after a reasonable search conducted by the cemetery corporation, it shall be conclusively presumed that the owner or owners of the lot, plot or part thereof have abandoned their burial rights. A reasonable search consists of a search of: (1) all cemetery records to determine the name of the owner or owners of the lot, plot or part thereof, their last known addresses and all information available to the cemetery relating to any person buried in the lot, plot or part thereof and the names and last known addresses of any persons making inquiry about or visiting the lot, plot or part thereof; (2) a search for the death certificates and the probated wills of the owner or owners of the lot, plot or part thereof; (3) the posting of notice by the cemetery at the entrance to the cemetery and in the cemetery office, if any, of its intention to declare the lot, plot or part thereof abandoned; (4) the mailing of such notice certified mail with return receipt requested to the owner or owners of the lot, plot or part thereof and each person identified during the reasonable search at their last known addresses; (5) publication of such notice once in each week for three successive weeks, in two newspapers of regular commercial circulation by subscription and/or newsstand sale, to be designated by the county clerk of the county where the cemetery is located which in his or her judgement, given the ethnic, religious, geographic or other related demographic characteristics of the owner or owners of the lot, plot or part thereof and each person identified through the reasonable search and the predominant readership of such newspapers are best calculated to inform the owner or owners of the lot, plot or part thereof and each person identified through the reasonable search of any application pursuant to the provisions of this section; and (6) the preparation of an affidavit describing the steps taken by the cemetery corporation to ascertain the identity of and to contact the current owner or owners of the lot, plot or part thereof or next-of-kin thereof or any other persons identified in the course of the reasonable search who might have relevant information and the results of such steps. After the filing with the cemetery board of proof of compliance with the above requirements in form and substance reasonably satisfactory to such board and upon approval by the cemetery board, the lot, plot or part thereof may be resold by the cemetery to any party in compliance with the cemetery rules and regulations provided, however, that any monument subsequently placed on such lot, plot or part thereof shall conform to the general appearance of any existing monuments in said section of lots, plots or parts thereof, if any.

(b) If (i) the circumstances described in paragraph (a) of this section exist except that one or more burials have been made in a lot, and the last burial was made more than seventy-five years prior to the application, (ii) the lot, plot or part thereof can be subdivided to create new graves, (iii) the bodies have not been lawfully removed, and (iv) the cemetery submits an application to the cemetery board which complies with the requirements set forth in paragraph (a) of this section, it shall be conclusively presumed that the lot owner has abandoned the right to make further burials in the lot, the lot may be subdivided, and the resubdivided lot, plot or parts thereof which do not contain the remains of the deceased persons may be resold by the cemetery corporation as provided in this section. Nothing in this section shall permit a cemetery corporation to declare abandoned a lot, plot or part thereof, where such lot, plot or part thereof was purchased for multiple depth burials and where one or more burials has occurred or authorized a cemetery corporation to remove a monument or other embellishment to facilitate the resale of such lot, plot or part thereof, except as provided by section fifteen hundred ten of this article.

(c) If the owner or owners of a lot, plot or part thereof can be identified, the cemetery corporation, with the consent of the owner or owners of the lot, plot or part thereof, the lot, plot or part thereof may be resubdivided, and the resubdivided lot, plot or part thereof which does not contain the remains of deceased persons may be resold by the cemetery corporation, provided, however, if no burial has been made in the lot, plot or part thereof, in the twenty-five year period preceding such application, the owner of a lot, plot or part thereof has notified his or her parents, spouse, issue, brothers, sisters, grandparents, and grandchildren, if any, of the application to the cemetery board, and provided further, however, if a burial has been made in this lot, plot or part thereof during such twenty-five year period, the spouse and issue of such deceased person are also notified, and provided further, in either case the owner of the lot, plot or part thereof satisfies the cemetery board that none of the persons notified have agreed within forty-five days of notification to purchase the lot, plot or part thereof at the price provided under paragraph (c) of section fifteen hundred thirteen of this article.

(d) Upon the sale of a lot, plot or part thereof reacquired by the corporation under the provisions of paragraph (a), (b), or (c) of this section, thirty-five percent of the net proceeds shall be placed in the permanent maintenance fund and sixty-

five percent shall be placed in the current maintenance fund. Provided, however, that if their property was reacquired under paragraph (i) of this section, thirty-five percent of the net proceeds shall be placed in the permanent maintenance fund, fifty percent shall be placed in the current maintenance fund and fifteen percent shall be placed in a perpetual care fund which the cemetery shall establish in the name of the defunct society for the exclusive purpose of maintenance of the grounds on which the graves were reacquired.

(e) If the owner of the lot, plot or part thereof is subsequently identified, the cemetery corporation shall: (i) return all unsold lots, plots or parts thereof if any, to the owner if so requested; and (ii) with respect to any lots, plots or parts thereof that have been sold pursuant to this section, at the option of the owner of the lot, plot or part thereof; either (1) provide the owner, at no cost to the owner, with a lot, plot or part thereof comparable to any lot, plot or part thereof that was sold by the cemetery corporation or (2) provide the owner with the proceeds from the sale of the lot, plot or part thereof reacquired under this section with interest thereon from the date of the sale at six percent per annum.

(f) The provisions of this section shall not apply to a lot, plot or part thereof whose record owner is a religious burial society.

(g) The provisions of this section shall not violate the burial requirements of sectarian sections of cemetery corporations.

(h) Monuments to be erected on a lot, plot or parts thereof, following the resale of a lot, plot or part thereof, shall conform to the rules and regulations or other requirements of the cemetery corporation and shall conform to the size, style and type of monuments in the section of the cemetery where such resale occurs.

(i) A cemetery corporation may, upon application and approval by the cemetery board, reacquire, resubdivide, and resell a lot, plot or part thereof formerly owned by a nonsectarian burial society under the following circumstances:

(1) If the cemetery corporation has received a request to make a burial on the grounds of a nonsectarian burial society and the provisions of paragraph (h) of section fifteen hundred twelve of this article had to be invoked to make the burial then the cemetery corporation may, at its discretion, commence the process of reacquiring the unused graves on the grounds of the nonsectarian burial society, except that any graves that have been reserved for individuals where such reservations have been recorded on the books and records of the cemetery corporation shall be exempt from reclamation; or

(2) If routine mailings or proxy mailings are sent to the officers of record of a nonsectarian burial society and such mailings are returned by the post office, the cemetery corporation may, at its discretion, make a second mailing by certified mail return receipt requested to each officer of record of the nonsectarian burial society as recorded on the cemetery's books and records and, if each of these mailings is returned by the post office, the cemetery corporation may, at its discretion, commence the process of reacquiring the unused graves on the grounds of the nonsectarian burial society, except that any graves that have been reserved for individuals where such reservations have been recorded on the books and records of the cemetery corporation shall be exempt from reacquisition.

(j) If a cemetery corporation has decided to commence the process of reacquiring graves owned by a nonsectarian burial society it shall:

(1) send by certified mail return receipt requested to each individual who has engaged in proprietary activities in connection with graves on the grounds of a nonsectarian burial society, seeking the names and addresses of any current officers of the nonsectarian burial society and informing those individuals of the cemetery corporation's intentions of reacquiring the unused graves on the grounds of the nonsectarian burial society;

(2) send by certified mail return receipt requested to each individual who has a grave reserved or deeded to them a letter seeking the names and addresses of any current officers of the nonsectarian burial society and informing such individuals of the cemetery corporation's intentions or reacquiring the unused graves on the grounds of the nonsectarian burial society;

(3) post a notice as provided in clause three of subparagraph (iii) of paragraph (a) of this section;

(4) publish a notice as provided in clause five of subparagraph (iii) of paragraph (a) of this section;

(5) prepare and submit an affidavit as provided in clause six of subparagraph (iii) of paragraph (a) of this section; and

(6) upon the sale of any grave or graves on the grounds of the nonsectarian burial society which have been reacquired by the cemetery corporation, the cemetery corporation shall distribute the net proceeds of the sale as provided in paragraph (d) of this section.

(k) The cemetery corporation shall delay the sale of ten percent of the graves it reacquires from the nonsectarian burial society for twenty years as a reserve in the event an individual or individuals are identified who have a valid claim for burial on the grounds of the nonsectarian burial society.

(l) At the time the graves that have been reacquired by a cemetery corporation from a nonsectarian burial society are sold, the contract of sale shall contain a clause in bold type which specifies that the monuments to be erected on such lot, plot or part thereof, shall conform to the size, style and type of monuments in the section of the cemetery where such graves are located.

**§ 1514. Misdemeanor; general penalty**

Wherever under the provisions of this article a person violating any part thereof is deemed to be guilty of a misdemeanor and no specific penalty is provided, the penalty for each separate violation shall be imprisonment for not more than six months or a fine of not more than five hundred dollars, or both.

**§ 1515. Actions affecting cemetery corporations**

In any action or proceeding affecting or instituted by any cemetery corporation the cemetery board shall be served with notice thereof in the same manner as any necessary party and shall take such steps in the action or proceeding as it may deem necessary to protect the public interest.

**§ 1516. Sale of monuments**

(a) No cemetery corporation shall engage in the sale of monuments, not including flush bronze markers, nor shall such monuments be displayed for sale on the property of a cemetery corporation.

(b) No cemetery corporation shall authorize or permit any employee or director thereof to advertise or make known his or her relationship to such corporation while engaged in the sale of monuments outside of his or her employment by the cemetery corporation.

(c) With regard to the sale of flush granite markers, the cemetery board shall adopt reasonable rules and regulations to exempt cemetery corporations from the provisions of paragraph (a) of this section where a practice for the sale of such flush granite markers was established with the knowledge and approval of the cemetery board prior to the effective date of this section.

**§ 1517. Crematory operations**

Crematory corporations that operate a crematory shall have the following duties and obligations:

(a) Maintenance and privacy.

(1) A crematory facility shall be maintained in a clean, orderly, and sanitary manner, with adequate ventilation and shall have a temporary storage area available to store the remains of deceased human beings pending disposition by cremation, the interior of which shall not be accessible to the general public.

(2) Entrances and windows of the crematory facility shall be maintained at all times to secure privacy, including (i) doors shall be tightly closed and rigid; (ii) windows shall be covered; and (iii) entrances shall be locked and secured when not actively attended by authorized crematory personnel.

(b) Cremation process.

(1) The cremation process shall be conducted in privacy. No person except authorized persons shall be admitted into the retort area, holding facility, or the temporary storage facility while the remains of deceased human beings are being cremated. Authorized persons, on admittance, shall comply with all rules of the crematory corporation and not infringe upon the privacy of the remains of deceased human beings.

(2) The following are authorized persons: (i) licensed, registered funeral directors, registered residents, and enrolled students of mortuary science; (ii) officers and trustees of the cemetery corporation; (iii) authorized employees or their authorized agents of the cemetery corporation; (iv) public officers acting in the discharge of their duties; (v) authorized instructors of funeral directing schools; (vi) licensed physicians or nurses; and (vii) members of the immediate family of the deceased and their authorized agents and designated representatives.

(c) Identification of deceased human beings.

(1) No crematory shall cremate the remains of any deceased human being without the accompanying cremation permit, required pursuant to section four thousand one hundred forty-five of the public health law which permit shall constitute presumptive evidence of the identity of the said remains. In addition, all crematories situated outside the city of New York, must comply with paragraph (b) of subdivision two of section four thousand one hundred forty-five of the public health law pertaining to the receipt for the deceased human being. From the time of such delivery to the crematory, until the time the crematory delivers the cremains as directed, the crematory shall be responsible for the remains of the deceased human being. Further, a cremation authorization form must accompany the permit required in section four thousand one hundred forty-five of the public health law. This form, provided or approved by the crematory, must be signed by the next of kin or authorizing agent attesting to the permission for the cremation of the deceased, and disclosing to the crematory that such body does not contain a battery, battery pack, power cell, radioactive implant, or radioactive device, if any, and that these materials were removed prior to the cremation process.

(2) Upon good cause being shown rebutting the presumption of the identity of such remains, the cremation shall not commence until reasonable confirmation of the identity of the deceased human being is made. This proof may be in the form of, but not limited to, a signed affidavit from a licensed physician, a member of the family of the deceased human being, the authorizing agent or a court order from the state supreme court within the county of the cemetery corporation. Such proof shall be provided by the authorizing agent.

(3) The crematory shall have a written plan to assure that the identification established by the cremation permit accompanies the remains of the deceased human being through the cremation process and until the identity of the deceased is accurately and legibly inscribed on the container in which the cremains are placed.

(d) Opening of container holding the remains of the deceased human being.

(1) The casket, alternative container, or external wrappings holding the remains of the deceased human being shall not be opened after delivery to the crematory unless there exists good cause to confirm the identity of the deceased, or to assure that no material is enclosed which might cause injury to employees or damage to crematory property, or upon reasonable demand by members of the immediate family or the authorized agent.

(2) In such instances in which the casket, alternative container, or wrappings are opened after delivery to the crematory, such action shall only be conducted by the licensed funeral director or registered resident delivering the remains of the deceased human being and if necessary, with the assistance of crematory personnel and a record shall be made, which shall include the reason for such action, the signature of the person authorizing the opening thereof, and the names of the person opening the container and the witness thereto, which shall be retained in the permanent file of the crematory. The opening of the container shall be conducted in the presence of the witness and shall comply with all rules and regulations intended to protect the health and safety of crematory personnel.

(e) Ceremonial casket cremation disclosure. In those instances in which the remains of deceased human beings are to be delivered to a crematory in a casket that is not to be cremated with the deceased, timely disclosure thereof must be made by the person making the funeral arrangements to the crematory that prior to cremation the remains of the deceased human being shall be transferred to an alternative container. Such signed acknowledgement of the authorizing person, that the timely disclosure has been made, shall be retained by the crematory in its permanent records.

(f) Transferring remains.

(1) The remains of a deceased human being shall not be removed from the casket, alternative container, or external wrappings in which it is delivered to the crematory unless explicit, signed authorization is provided by the person making funeral arrangements or by a public officer discharging his or her statutory duty, which signed authorization shall be retained by the crematory in its permanent records.

(2) When the remains of a deceased human being are to be transferred to an alternative container, the transfer shall be conducted in privacy with dignity and respect and by the licensed funeral director or registered resident who delivered those remains and if necessary, with the assistance of crematory personnel. The transferring operation shall comply with all rules and regulations intended to protect the health and safety of crematory personnel.

(g) Commingling human remains. The cremation of remains of more than one deceased human being in a retort at any one time is unlawful, except upon the explicit, signed authorization provided by the persons making funeral arrangements and the signed approval of the crematory, which shall be retained by the crematory in its permanent records.

(h) Processing of cremains.

(1) Upon the completion of the cremation of the remains of a deceased human being, the interior of the retort shall be thoroughly swept so as to render the retort reasonably free of all matter. The contents thereof shall be placed into an individual container and not commingled with other cremains. The cremation permit shall be attached to the individual container preparatory to final processing.

(2) A magnet and sieve, or other appropriate method of separation, may be used to divide the cremains from unrecognizable incidental or foreign material.

(3) The incidental and foreign material of the cremation process shall be disposed of in a safe manner in compliance with all sanitary rules and regulations as byproducts.

(4) The cremains shall be pulverized until no single fragment is recognizable as skeletal tissue.

(5) The pulverized cremains shall be transferred to a sealable container or containers whose inside dimension shall be of suitable size to contain the entire cremains of the person who was cremated.

(6) The prescribed sealable container or containers shall be accurately and legibly labeled with the identification of the human being whose cremains are contained therein, in a manner acceptable to the division of cemeteries.

(i) Disposition of cremains. The authorizing agent shall be responsible for the final disposition of the cremains. Cremains must be disposed of by placing them in a grave, crypt, or niche, by scattering them in a designated scattering garden or area, or in any manner whatever on the private property of a consenting owner or by delivery to the authorizing agent or a person specifically designated by the authorizing agent. Upon completion of the cremation process, if the cemetery corporation has not been instructed to arrange for the interment, entombment, inurnment or scattering of the cremains, the cemetery corporation shall deliver the cremains to the individual specified on the cremation authorization form or the funeral firm of record. The delivery may be made in person or by registered mail. Upon receipt of the cremains, the individual receiving them may transport them in any manner in the state without a permit, and may dispose of them in accordance with this section. After delivery, the cemetery corporation shall be discharged from any legal obligation or liability concerning the cremains. If, after a period of one hundred twenty days from the date of the cremation, the authorizing agent has not instructed the cemetery corporation to arrange for the final disposition of the cremains or claimed the cremains, the cemetery corporation may dispose of the cremains in any manner permitted by this section. The cemetery corporation, however, shall keep a permanent record identifying the site of final disposition. The authorizing agent shall be responsible for reimbursing the cemetery corporation for all reasonable expenses incurred in disposing of the cremains. Upon disposing of the cremains, the cemetery corporation shall be discharged from any legal obligation or liability concerning the cremains. Except with the express written permission of the authorizing agent, no person shall:

(1) dispose of cremains in a manner or in a location so that the cremains are commingled with those of another person. This prohibition shall not apply to the scattering of cremains at sea, by air, or in an area located in a cemetery and used exclusively for those purposes; and

(2) place cremains of more than one person in the same temporary container or urn.

(j) Crematory operation certification. Any employee of a crematory whose function is to conduct the daily operations of the cremation process shall be certified by an organization approved by the division of cemeteries. Proof of such certification must be posted in the crematory and available for inspection at any time. Any new employees of a

crematory required to be certified under this section shall be certified within one year of their employment. Any employees of a crematory required to be certified under this section and retained prior to the effective date of this paragraph shall be certified within one year of such effective date. Renewal of such certification shall be completed every five years from the date of certification.

## NOT-FOR-PROFIT CORPORATION LAW; OTHER PROVISIONS

### § 202. General and special powers (excerpt)

(d) A corporation formed under general or special law to provide parks, playgrounds or cemeteries, or buildings and grounds for camp or grove meetings.\* Sunday school assemblies, cemetery purposes, temperance, missionary, educational, scientific, musical and other meetings, subject to the ordinances and police regulations of the county, city, town, or village in which such parks, playgrounds, cemeteries, buildings and grounds are situated, may appoint from time to time one or more special policemen, with power to remove the same at pleasure. Such special policemen shall preserve order in and about such parks, playgrounds, cemeteries, buildings and grounds, and the approaches thereto, and to protect the same from injury, and shall enforce the established rules and regulations of the corporation. Every policeman so appointed shall within fifteen days after his appointment and before entering upon the duties of his office, take and subscribe the oath of office prescribed in the thirteenth article of the constitution of the state of New York, which oath shall be filed in the office of the county clerk of the county where such grounds are situated. A policeman appointed under this section when on duty shall wear conspicuously a metallic shield with the name of the corporation which appointed him inscribed thereon. The compensation of policemen appointed under this section shall be paid by the corporation by which they are appointed.

\*So in original. Period following “meetings” probably should be a comma.

### § 204. Limitation on activities

Notwithstanding any other provision of this chapter or any other general law, a corporation of any kind to which this chapter applies shall conduct no activities for pecuniary profit or financial gain, whether or not in furtherance of its corporate purposes, except to the extent that such activity supports its other lawful activities then being conducted.

### § 404. Approvals, notices and consents (excerpt)

(e) Every certificate of incorporation of a cemetery corporation, except those within the exclusionary provisions of section 1503 (Cemetery corporations) shall have endorsed thereon or annexed thereto the approval of the cemetery board.

### § 508. Income from corporate activities

A corporation whose lawful activities involve among other things the charging of fees or prices for its services or products shall have the right to receive such income and, in so doing, may make an incidental profit. All such incidental profits shall be applied to the maintenance, expansion or operation of the lawful activities of the corporation, and in no case shall be divided or distributed in any manner whatsoever among the members, directors, or officers of the corporation.

### § 519. Annual report of directors (excerpt)

(a) The board shall present at the annual meeting of members a report, verified by the president and treasurer or by a majority of the directors, or certified by an independent public or certified public accountant or a firm of such accountants selected by the board, showing in appropriate detail the following:

- (1) The assets and liabilities, including the trust funds, of the corporation as of the end of a twelve month fiscal period terminating not more than six months prior to said meeting.
  - (2) The principal changes in assets and liabilities, including trust funds, during said fiscal period.
  - (3) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes during said fiscal period.
  - (4) The expenses or disbursements of the corporation, for both general and restricted purposes, during said fiscal period.
  - (5) The number of members of the corporation as of the date of the report, together with a statement of increase or decrease in such number during said fiscal period, and a statement of the place where the names and places of residence of the current members may be found.
- (b) The annual report of directors shall be filed with the records of the corporation and either a copy or an abstract thereof entered in the minutes of the proceedings of the annual meeting of members.

**§ 520. Reports of corporation**

Each domestic corporation, and each foreign corporation authorized to conduct activities in this state, shall from time to time file such reports on its activities as may be required by the laws of this state. All registration and reporting requirements pursuant to article seven-A of the executive law, and section 8-1.4 of the estates, powers and trusts law, or related successor provisions, are, without limitation on the foregoing, expressly included as reports required by the laws of this state to be filed within the meaning of this section. Willful failure of a corporation to file a report as required by law shall constitute a breach of the directors' duty to the corporation and shall subject the corporation, at the suit of the attorney-general, to an action or special proceeding for dissolution under article 11 (Judicial dissolution) in the case of a domestic corporation, or under section 1303 (Violations) in the case of a foreign corporation.

**§ 521. Liability for failure to disclose required information (excerpt)**

Failure of the corporation to comply in good faith with the notice or disclosure or reporting provisions of ... section 519 (Annual report of directors), or section 520 (Reports of corporation), shall make the corporation liable for any damage sustained by any person in consequence thereof.

**§ 553. Appropriation for expenditure or accumulation of endowment fund; rules of construction (excerpt)**

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (1) the duration and preservation of the endowment fund;
- (2) the purposes of the institution and the endowment fund;
- (3) general economic conditions;
- (4) the possible effect of inflation or deflation;
- (5) the expected total return from income and the appreciation of investments;
- (6) other resources of the institution;
- (7) where appropriate and circumstances would otherwise warrant, alternatives to expenditure of the endowment fund, giving due consideration to the effect that such alternatives may have on the institution; and
- (8) the investment policy of the institution.

For each determination to appropriate for expenditure, the institution shall keep a contemporaneous record describing the consideration that was given by the governing board to each of the factors enumerated in this paragraph.

**§ 603. Meetings of members (excerpt)**

(b) A meeting of the members shall be held annually for the election of directors and the transaction of other business on a date fixed by or under the by-laws. Failure to hold the annual meeting on the date so fixed or to elect a sufficient number of directors to conduct the business of the corporation shall not work a forfeiture or give cause for dissolution of the corporation, except as provided in paragraph (a) of section 1102 (Judicial dissolution; petition by directors or members; petition in case of deadlock among directors or members).

(c) Special meetings of the members may be called by the board and by such person or persons as may be authorized by the certificate of incorporation or the by-laws. In any case, such meetings may be convened by the members entitled to cast ten per cent of the total number of votes entitled to be cast at such meeting, who may, in writing, demand the call of a special meeting specifying the date and month thereof, which shall not be less than two nor more than three months from the date of such written demand. The secretary of the corporation upon receiving the written demand shall promptly give notice of such meeting, or if he fails to do so within five business days thereafter, any member signing

such demand may give such notice. The meeting shall be held at the place fixed in the by-laws or, if not so fixed, at the office of the corporation.

**§ 605. Notice of meeting of members**

(a) Whenever under the provisions of this chapter members are required or permitted to take any action at a meeting, written notice shall state the place, date and hour of the meeting and, unless it is an annual meeting, indicate that it is being issued by or at the direction of the person or persons calling the meeting. Notice of a special meeting shall also state the purpose or purposes for which the meeting is called. A copy of the notice of any meeting shall be given, personally, by mail, or by facsimile telecommunications or by electronic mail, to each member entitled to vote at such meeting. If the notice is given personally, by first class mail or by facsimile telecommunications or by electronic mail, it shall be given not less than ten nor more than fifty days before the date of the meeting; if mailed by any other class of mail, it shall be given not less than thirty nor more than sixty days before such date. If mailed, such notice is given when deposited in the United States mail, with postage thereon prepaid, directed to the member at his address as it appears on the record of members, or, if he shall have filed with the secretary of the corporation a written request that notices to him be mailed to some other address, then directed to him at such other address. If sent by facsimile telecommunication or mailed electronically, such notice is given when directed to the member's fax number or electronic mail address as it appears on the record of members, or, to such fax number or other electronic mail address as filed with the secretary of the corporation. Notwithstanding the foregoing, such notice shall not be deemed to have been given electronically (1) if the corporation is unable to deliver two consecutive notices to the member by facsimile telecommunication or electronic mail; or (2) the corporation otherwise becomes aware that notice cannot be delivered to the member by facsimile telecommunication or electronic mail. An affidavit of the secretary or other person giving the notice or of a transfer agent of the corporation that the notice required by this section has been given shall, in the absence of fraud, be prima facie evidence of the facts therein stated. Whenever a corporation has more than five hundred members, the notice may be served by publication in a newspaper published in the county in the state in which the principal office of the corporation is located, once a week for three successive weeks next preceding the date of the meeting, provided that the corporation shall also prominently post notice of such meeting on the homepage of any website maintained by the corporation continuously from the date of publication through the date of the meeting. A corporation shall send notice of meetings by first class mail to any member who requests in writing that such notices be delivered by such method.

(b) When a meeting is adjourned to another time or place, it shall not be necessary, unless the by-laws require otherwise, to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. However, if after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given to each member of record on the new record date entitled to notice under paragraph (a).

**§ 607. List or record of members at meetings**

A list or record of members entitled to vote, certified by the corporate officer responsible for its preparation or by a transfer agent, shall be produced at any meeting of members upon the request therefor of any member who has given written notice to the corporation that such request will be made at least ten days prior to such meeting. If the right to vote at any meeting is challenged, the inspectors of election, or the person presiding thereat, shall require such list or record of members to be produced as evidence of the right of the persons challenged to vote at such meeting, and all persons who appear from such list or record to be members entitled to vote thereat may vote at such meeting.

**§ 715. Related party transactions.**

(a) No corporation shall enter into any related party transaction unless the transaction is determined by the board, or an authorized committee thereof, to be fair, reasonable and in the corporation's best interest at the time of such determination. Any director, officer or key person who has an interest in a related party transaction shall disclose in good faith to the board, or an authorized committee thereof, the material facts concerning such interest.

(b) With respect to any related party transaction involving a charitable corporation and in which a related party has a substantial financial interest, the board of such corporation, or an authorized committee thereof, shall:

(1) Prior to entering into the transaction, consider alternative transactions to the extent available;

- (2) Approve the transaction by not less than a majority vote of the directors or committee members present at the meeting; and
- (3) Contemporaneously document in writing the basis for the board or authorized committee's approval, including its consideration of any alternative transactions.
- (c) The certificate of incorporation, by-laws or any policy adopted by the board may contain additional restrictions on related party transactions and additional procedures necessary for the review and approval of such transactions, or provide that any transaction in violation of such restrictions shall be void or voidable.
- (d) Unless otherwise provided in the certificate of incorporation or the by-laws, the board shall have authority to fix the compensation of directors for services in any capacity.
- (e) The fixing of compensation of officers, if not done in or pursuant to the by-laws, shall require the affirmative vote of a majority of the entire board unless a higher proportion is set by the certificate of incorporation or by-laws.
- (f) The attorney general may bring an action to enjoin, void or rescind any related party transaction or proposed related party transaction that violates any provision of this chapter or was otherwise not reasonable or in the best interests of the corporation at the time the transaction was approved, or to seek restitution, and the removal of directors or officers, or seek to require any person or entity to:
- (1) Account for any profits made from such transaction, and pay them to the corporation;
  - (2) Pay the corporation the value of the use of any of its property or other assets used in such transaction;
  - (3) Return or replace any property or other assets lost to the corporation as a result of such transaction, together with any income or appreciation lost to the corporation by reason of such transaction, or account for any proceeds of sale of such property, and pay the proceeds to the corporation together with interest at the legal rate; and
  - (4) Pay, in the case of willful and intentional conduct, an amount up to double the amount of any benefit improperly obtained.
- (g) The powers of the attorney general provided in this section are in addition to all other powers the attorney general may have under this chapter or any other law.
- (h) No related party may participate in deliberations or voting relating to a related party transaction in which he or she has an interest; provided that nothing in this section shall prohibit the board or authorized committee from requesting that a related party present information as background or answer questions concerning a related party transaction at a board or committee meeting prior to the commencement of deliberations or voting relating thereto.
- (i) In an action by any person or entity other than the attorney general, it shall be a defense to a claim of violation of any provisions of this section that a transaction was fair, reasonable and in the corporation's best interest at the time the corporation approved the transaction.
- (j) In an action by the attorney general with respect to a related party transaction not approved in accordance with paragraphs (a) or (b) of this section at the time it was entered into, whichever is applicable, it shall be a defense to a claim of violation of any provisions of this section that (1) the transaction was fair, reasonable and in the corporation's best interest at the time the corporation approved the transaction and (2) prior to receipt of any request for information by the attorney general regarding the transaction, the board has: (A) ratified the transaction by finding in good faith that it was fair, reasonable and in the corporation's best interest at the time the corporation approved the transaction; and, with respect to any related party transaction involving a charitable corporation and in which a related party has a substantial financial interest, considered alternative transactions to the extent available, approving the transaction by not less than a majority vote of the directors or committee members present at the meeting; (B) documented in writing the nature of the violation and the basis for the board's or committee's ratification of the transaction; and (C) put into place procedures to ensure that the corporation complies with paragraphs (a) and (b) of this section as to related party transactions in the future.

**§ 715-a. Conflict of interest policy.**

(a) Except as provided in paragraph (d) of this section, the board shall adopt, and oversee the implementation of, and compliance with, a conflict of interest policy to ensure that its directors, officers and key persons act in the corporation's best interest and comply with applicable legal requirements, including but not limited to the requirements set forth in section seven hundred fifteen of this article.

(b) The conflict of interest policy shall include, at a minimum, the following provisions:

(1) a definition of the circumstances that constitute a conflict of interest;

(2) procedures for disclosing a conflict of interest or possible conflict of interest to the board or to a committee of the board, and procedures for the board or committee to determine whether a conflict exists;

(3) a requirement that the person with the conflict of interest not be present at or participate in board or committee deliberation or vote on the matter giving rise to such conflict, provided that nothing in this section shall prohibit the board or a committee from requesting that the person with the conflict of interest present information as background or answer questions at a committee or board meeting prior to the commencement of deliberations or voting relating thereto;

(4) a prohibition against any attempt by the person with the conflict to influence improperly the deliberation or voting on the matter giving rise to such conflict;

(5) a requirement that the existence and resolution of the conflict be documented in the corporation's records, including in the minutes of any meeting at which the conflict was discussed or voted upon; and

(6) procedures for disclosing, addressing, and documenting related party transactions in accordance with section seven hundred fifteen of this article.

(c) The conflict of interest policy shall require that prior to the initial election of any director, and annually thereafter, such director shall complete, sign and submit to the secretary of the corporation or a designated compliance officer a written statement identifying, to the best of the director's knowledge, any entity of which such director is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the corporation has a relationship, and any transaction in which the corporation is a participant and in which the director might have a conflicting interest. The policy shall require that each director annually resubmit such written statement. The secretary of the corporation or the designated compliance officer shall provide a copy of all completed statements to the chair of the audit committee or, if there is no audit committee, to the chair of the board.

(d) A corporation that has adopted and possesses a conflict of interest policy pursuant to federal, state or local laws that is substantially consistent with the provisions of paragraph (b) of this section shall be deemed in compliance with provisions of this section. In addition, any corporation that is a state authority or a local authority as defined in section two of the public authorities law, and that has complied substantially with section twenty-eight hundred twenty-four and subdivision three of section twenty-eight hundred twenty-five of such law, shall be deemed in compliance with this section.

(e) Nothing in this section shall be interpreted to require a corporation to adopt any specific conflict of interest policy not otherwise required by this section or any other law or rule, or to supersede or limit any requirement or duty governing conflicts of interest required by any other law or rule.

#### **§ 715-b. Whistleblower policy.**

(a) Except as provided in paragraph (c) of this section, the board of every corporation that has twenty or more employees and in the prior fiscal year had annual revenue in excess of one million dollars shall adopt, and oversee the implementation of, and compliance with, a whistleblower policy to protect from retaliation persons who report suspected improper conduct. Such policy shall provide that no director, officer, employee or volunteer of a corporation who in good faith reports any action or suspected action taken by or within the corporation that is illegal, fraudulent or in violation of any adopted policy of the corporation shall suffer intimidation, harassment, discrimination or other retaliation or, in the case of employees, adverse employment consequence.

(b) The whistleblower policy shall include the following provisions:

(1) Procedures for the reporting of violations or suspected violations of laws or corporate policies, including procedures for preserving the confidentiality of reported information;

(2) A requirement that an employee, officer or director of the corporation be designated to administer the whistleblower policy and to report to the board or an authorized committee thereof, except that directors who are employees may not participate in any board or committee deliberations or voting relating to administration of the whistleblower policy;

(3) A requirement that the person who is the subject of a whistleblower complaint not be present at or participate in board or committee deliberations or vote on the matter relating to such complaint, provided that nothing in this subparagraph shall prohibit the board or committee from requesting that the person who is subject to the complaint present information as background or answer questions at a committee or board meeting prior to the commencement of deliberations or voting relating thereto; and

(4) A requirement that a copy of the policy be distributed to all directors, officers, employees and to volunteers who provide substantial services to the corporation. For purposes of this subdivision, posting the policy on the corporation's website or at the corporation's offices in a conspicuous location accessible to employees and volunteers are among the methods a corporation may use to satisfy the distribution requirement.

(c) A corporation that has adopted and possesses a whistleblower policy pursuant to federal, state or local laws that is substantially consistent with the provisions of paragraph (b) of this section shall be deemed in compliance with provisions of this section. In addition, any corporation that is a state authority or local authority as defined in section two of the public authorities law, and that has complied substantially with section twenty-eight hundred twenty-four of such law and is subject to the provisions of section twenty-eight hundred fifty-seven of such law, shall be deemed in compliance with the provisions of this section.

(d) Nothing in this section shall be interpreted to relieve any corporation from any additional requirements in relation to internal compliance, retaliation, or document retention required by any other law or rule.

**§ 725. Other provisions affecting indemnification of directors and officers (excerpt)**

(c) If any expenses or other amounts are paid by way of indemnification, otherwise than by court order or action by the members, the corporation shall prepare a statement specifying the persons paid, the amounts paid, and the nature and status at the time of such payment of the litigation or threatened litigation, and

(1) Not later than the next annual meeting of members, unless such meeting is held within three months from the date of such payment, and, in any event, within fifteen months of the date of such payment, shall mail the statement to its members of record entitled at the time to vote for the election of directors; or

(2) If the corporation has no members, shall include the statement in the records of the corporation open to public inspection, or

(3) If the corporation is a cemetery corporation, as defined in paragraph (a) of section 1502 (Definitions), which term, for the purposes of this section, shall include a religious corporation having members, (i) by including the statement required by this paragraph or paragraph (d) of section 726 (Insurance for indemnification of directors and officers), as the case may be in the records of the corporation open to public inspection; (ii) by including the information required by the statement in any notice published pursuant to the provisions of section 605 (Notice of meeting of members), except as otherwise provided by law; (iii) by enclosing the statement with the notice of annual meeting if such notice is in fact mailed to the members; and (iv) by raising the issue for approval at the next annual meeting of the members.

**§ 726. Insurance for indemnification of directors and officers (excerpt)**

(d) The corporation shall, within the time and to the persons provided in paragraph (c) of section 725 (Other provisions affecting indemnification of directors and officers), mail a statement in respect to any insurance it has purchased or renewed under this section, specifying the insurance carrier, date of the contract, cost of the insurance, corporate positions insured, and a statement explaining all sums, not previously reported in a statement to members, paid under any indemnification insurance contract. Notwithstanding any other provision of law, a cemetery corporation or a

religious corporation having members which purchases or renews any insurance under this section after the effective date of the act which added this sentence to this paragraph, which corporation had two hundred fifty or more interments in the calendar year preceding such purchase or renewal, shall mail the statement required by this section to every person to whom a care notice or solicitation for services has been sent during such calendar year and to every person to whom a notice of annual meeting was mailed during such calendar year, but in no event to less than ten per centum of the lot owners of record during such calendar year. Such corporation shall not be required to mail such statement during any subsequent year, unless such corporation elects to mail notices of annual meeting to its members in which event the statement shall be enclosed as provided in clause (iii) of paragraph (c)(3) of section 725 (Other provisions affecting indemnification of directors and officers). A corporation having less than two hundred fifty interments in the calendar year preceding such purchase or renewal shall not be required to mail such statement unless such corporation elects to mail notices of annual meeting to its members in which event the statement shall be enclosed as provided in clause (iii) of paragraph (c)(3) of section 725 (Other provisions affecting indemnification of directors and officers).

**§ 1401. Private and family cemetery corporations**

(a) Private cemetery corporation. Seven or more persons may become a private cemetery corporation by setting off for a private cemetery enclosed real property, to the extent of not more than three acres, and by electing at a meeting of the owners of the property so set off, at which not less than seven shall be present, three of their number to be directors, to hold office for five years. The chairman and secretary of such meeting shall make, sign and acknowledge, and file in the office of the clerk of the county in which such real property is situated, a certificate containing the name of the corporation, a description of the lands so purchased or set apart, and the names of the directors. No such cemetery shall be located within one hundred rods of any dwelling-house without the written consent of the owner thereof. Additional lands not exceeding three acres may be acquired by a private cemetery corporation; but no additional lands so purchased or otherwise acquired shall be used for the purpose of burial within three hundred feet of any dwelling without the written consent of the owner thereof.

(b) Removal of remains from private cemeteries to other cemeteries. The supervisor of any town containing a private cemetery may remove any body interred in such cemetery to any other cemetery within the town, if the owners of such cemeteries and the next of kin of the deceased consent to such removal. The owners of a private cemetery may remove the bodies interred therein to any other cemetery within such town, or to any cemetery designated by the next of kin of the deceased. Notice of such removal shall be given within twenty days before such removal personally or by certified mail to the next of kin of the deceased if known and to the clerk and historian of the county in which such real property is situated and notice shall be given to the New York state department of state, division of cemeteries. If any of the deceased are known to be veterans, the owners shall also notify the division of veterans' affairs. In the absence of the next of kin, the county clerk, county historian or the division of veterans' affairs may act as a guardian to ensure proper reburial.

(c) Family cemetery corporations. Any person, by deed or devise, may dedicate land to be used exclusively for a family cemetery. The executors, administrators or trustees of a deceased person, with the written authority of all of his surviving heirs, next of kin, devisees and legatees, executed in person or by an attorney, or if infants, by legal guardian, may dedicate lands of such deceased person exclusively for a family cemetery, or may purchase with the funds of the estate, suitable lands therefor. The land so dedicated shall not exceed three acres, not be located within one hundred rods of a dwelling-house, without the consent of the owner, unless such land, at the time of dedication, is in actual use for burial or cemetery purposes within the limits of a city. The instrument dedicating such land shall describe the same, may appoint directors to manage such cemetery, prescribe, or provide for making rules, directions or by-laws for such management, direct the manner of choosing successors to the directors, specify their qualifications, and grant to them and their successors money or personal property as a fund for maintaining, improving and embellishing the cemetery, in accordance with the deed or will, or the written authority of the heirs, next of kin, devisees and legatees. The instrument dedicating land for a family cemetery, together with the authority, if any, of the heirs, next of kin, devisees and legatees of the deceased person, shall be filed in the office of the county clerk of each county in which the cemetery is to be situated. The directors before entering on their duties, shall file in the office of the county clerk of each such county, a written acceptance of their appointment; and thereupon they and their successors shall constitute a corporation under the name designated in such instrument. A fund created by will for the purpose of maintaining, improving and embellishing such a cemetery shall not exceed ten per centum of the net value of the estate of the testator. Such corporation before receiving any property, money or funds for improving, maintaining and embellishing the cemetery, shall execute to the surrogate of the county in which such real property is situated, a bond with sureties, or the bond of a surety company,

approved by him, in a penalty of twice the principal sum of the fund placed in charge of the corporation, conditioned for the faithful preservation and application thereof according to the rules, directions or by-laws prescribed in the instrument under which the appointment of such directors was made, and renew such bond or execute a new bond whenever required so to do by such surrogate. At least once in each year and oftener if required by the surrogate the corporation shall file with him a verified account of its receipts and expenditures on account of the funds in its hands, or under its control, together with vouchers for all disbursements. Any person may bequeath or transfer to, and any such corporation may take, money or personal property by will, deed or other transfer, upon trust, to hold and apply to dispose of the same for the purpose of maintaining, improving and embellishing any lot, plot or portion of such cemetery, either according to the discretion of the directors, or for such time and upon such terms and conditions, if any, as to the application, investment and reinvestment of the principal and income and otherwise as shall be stated in the instrument creating the trust as agreed upon, but no such trust fund created by will shall exceed ten per centum of the net value of the estate of the testator. The corporation shall give security and account for such money or personal property as hereinbefore provided.

If security is furnished by a surety company bond, the reasonable expense thereof shall be a charge against the funds of the corporation.

(d) Type of corporation. A family or private cemetery corporation is a charitable corporation under this chapter.

(e) Private and family cemetery corporations; prohibitions. (1) No private or family cemetery corporation shall, directly or indirectly:

(i) sell, or have, enter into or perform a lease of any of its real property to a funeral entity, or use any of its property for location of a funeral entity;

(ii) commingle its funds with a funeral entity;

(iii) direct or carry on its business or affairs with a funeral entity;

(iv) authorize control of its business or affairs by a funeral entity;

(v) engage in any sale or cross-marketing of goods or services with a funeral entity;

(vi) have, enter into or perform a management or service contract for cemetery operations with a funeral entity; or

(vii) have, enter into or perform a management contract with any entity, other than a not-for-profit cemetery corporation.

(2) Only the provisions of subparagraphs (i) and (ii) of subdivision one of this paragraph shall apply to cemetery corporations with thirty acres or less of real property dedicated to cemetery purposes, and only to the extent the sale or lease is of real property dedicated to cemetery purposes, and such cemeteries shall not engage in the sale of funeral home goods or services, except if such goods and services are otherwise permitted to be sold by cemeteries.

(3) For the purposes of this paragraph, "funeral entity" means a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services, or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or an officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

## **PUBLIC HEALTH LAW**

### **§ 3441. Funeral firms; operation by licensed persons (excerpt)**

3. No funeral firm shall be operated or located on real property owned, leased or under the control of a cemetery corporation, a family cemetery corporation or a private cemetery corporation; or on real property dedicated for cemetery purposes or land adjacent thereto, which is owned, leased or under the control of a religious corporation, county, town, village or municipal corporation.

4. No funeral firm shall engage in the sale or cross-marketing of goods or services with any cemetery corporation. Such prohibition shall apply to any financial relationship and co-management between a funeral firm and cemetery corporation. For the purposes of this subdivision, "cross-marketing" shall include, but not be limited to, solicitation,

provider discounts (except as authorized by the regulations of the commissioner), or carrying on business or affairs between a funeral firm and cemetery corporation.

**§ 4144. Deaths; burial and removal permits; transportation of remains (excerpt)**

1. The body of any person whose death occurs in this state, or which shall be found dead herein shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from the county in which the death occurred or the body was found, or be temporarily held pending further disposition more than seventy-two hours after death, unless a permit for burial, removal, or other disposition thereof shall have been properly issued by the registrar of vital statistics of the registration district in which the death occurred or the body was found, except that such a body may be removed to an adjacent county without first obtaining a permit therefor; provided, however, that a licensed funeral director may apply for and receive such permit on behalf of any person or institution authorized by article forty-two or forty-three of this chapter to receive unclaimed cadavers or anatomical gifts.

**§ 4145. Deaths; burial and removal permits; disposition of remains**

1. No person in charge of any premises on which interments, cremations or other disposition of the body of a deceased person are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial, cremation or transit permit, as provided in this article.

2. (a) The funeral director or undertaker shall deliver the burial permit to the person in charge of the place of burial or other disposition before interring or otherwise disposing of the body or shall attach the removal or transit permit to the box containing the body, when shipped by any transportation company, which permit shall accompany the remains to its destination, where, if within this state, it shall be delivered to the person in charge of the place of burial or other disposition.

(b) Any person or other entity owning, operating, managing, or designated to receive the body of a deceased person at a place of burial, cremation, or other final disposition in this state, who receives the body of a deceased person, shall provide a receipt for the body to the funeral director, undertaker or registered resident who delivered such body. Each receipt shall (i) be endorsed by both such person and the funeral director, undertaker or registered resident, (ii) indicate the date the body was delivered, (iii) include the name of the funeral director, undertaker or registered resident delivering the body and the registration number of such funeral director, undertaker or registered resident, (iv) include the name of the registered funeral firm the funeral director, undertaker or registered resident represents, (v) include the name of the deceased person as it appears on the burial, cremation, or transit permit, and (vi) include the name of the owner, operator, manager, or person in charge of the place of burial, cremation, or other final disposition who received the body of the deceased person. A copy of such receipt shall be retained by the owner, operator, manager, or person in charge of the place of burial, cremation, or other final disposition for a period of not less than four years, and shall be made available for inspection by the division of cemeteries during normal business hours. The original copy of every such receipt shall be retained by the licensed funeral firm for a period of not less than four years pursuant to the rules and regulations of the department governing the maintenance of records.

3. The person in charge of the place of burial or other disposition shall endorse upon the permit, the date of interment, or cremation or other disposition over his signature, and shall return all permits so endorsed to the registrar of his district within seven days after the date of interment, cremation or other disposition.

4. When burying or otherwise disposing of the body of a deceased person in a cemetery or burial place having no person in charge, the funeral director or undertaker shall (a) sign the burial or removal permit, giving the date of burial; (b) write across the face of the permit the words "No person in charge;" and (c) file the burial or removal permit within three days with the registrar of the district in which the cemetery is located.

5. The person in charge of the place of burial, cremation, or other disposition shall keep a record of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and address of the funeral director or undertaker, which record shall at all time be open to official inspection.

**§ 4147. Deaths; confidentiality of records**

The death certificate, burial permit or any other record of death or interment, as defined by article forty-one of this chapter, including but not limited to the name, address or telephone number of the decedent, next of kin or surviving

relatives of such decedent, shall not be sold or offered for sale for commercial, promotional or profit-making purposes without the written consent of the next of kin or the legal representative of such decedent or next of kin. The provisions of this section shall not apply to newspapers or newsletters providing general information to the public. A violation of this section shall constitute a violation as defined in the penal law.

**§ 4201. Disposition of remains; responsibility therefor**

1. As used in this section, the following terms shall have the following meanings, unless the context otherwise requires:

(a) "Cremation" means the incineration of human remains.

(b) "Disposition" means the care, disposal, transportation, burial, cremation or embalming of the body of a deceased person, and associated measures.

(c) "Domestic partner" means a person who, with respect to another person:

(i) is formally a party in a domestic partnership or similar relationship with the other person, entered into pursuant to the laws of the United States or any state, local or foreign jurisdiction, or registered as the domestic partner of the person with any registry maintained by the employer of either party or any state, municipality, or foreign jurisdiction; or

(ii) is formally recognized as a beneficiary or covered person under the other person's employment benefits or health insurance; or

(iii) is dependent or mutually interdependent on the other person for support, as evidenced by the totality of the circumstances indicating a mutual intent to be domestic partners including but not limited to: common ownership or joint leasing of real or personal property; common householding, shared income or shared expenses; children in common; signs of intent to marry or become domestic partners under subparagraph (i) or (ii) of this paragraph; or the length of the personal relationship of the persons.

Each party to a domestic partnership shall be considered to be the domestic partner of the other party. "Domestic partner" shall not include a person who is related to the other person by blood in a manner that would bar marriage to the other person in New York state. "Domestic partner" shall also not include any person who is less than eighteen years of age or who is the adopted child of the other person or who is related by blood in a manner that would bar marriage in New York state to a person who is the lawful spouse of the other person.

(d) "Person" means a natural person eighteen years of age or older.

2. (a) The following persons in descending priority shall have the right to control the disposition of the remains of such decedent:

(i) the person designated in a written instrument executed pursuant to the provisions of this section;

(ii) the decedent's surviving spouse;

(ii-a) the decedent's surviving domestic partner;

(iii) any of the decedent's surviving children eighteen years of age or older;

(iv) either of the decedent's surviving parents;

(v) any of the decedent's surviving siblings eighteen years of age or older;

(vi) a guardian appointed pursuant to article seventeen or seventeen-A of the surrogate's court procedure act or article eighty-one of the mental hygiene law;

(vii) any person eighteen years of age or older who would be entitled to share in the estate of the decedent as specified in section 4-1.1 of the estates, powers and trusts law, with the person closest in relationship having the highest priority;

(viii) a duly appointed fiduciary of the estate of the decedent;

(ix) a close friend or relative who is reasonably familiar with the decedent's wishes, including the decedent's religious or moral beliefs, when no one higher on this list is reasonably available, willing, or competent to act, provided that such person has executed a written statement pursuant to subdivision seven of this section; or

(x) a chief fiscal officer of a county or a public administrator appointed pursuant to article twelve or thirteen of the surrogate's court procedure act, or any other person acting on behalf of the decedent, provided that such person has executed a written statement pursuant to subdivision seven of this section.

(b) If a person designated to control the disposition of a decedent's remains, pursuant to this subdivision, is not reasonably available, unwilling or not competent to serve, and such person is not expected to become reasonably available, willing or competent, then those persons of equal priority and, if there be none, those persons of the next succeeding priority shall have the right to control the disposition of the decedent's remains.

(c) The person in control of disposition, pursuant to this section, shall faithfully carry out the directions of the decedent to the extent lawful and practicable, including consideration of the financial capacity of the decedent's estate and other resources made available for disposition of the remains. The person in control of disposition shall also dispose of the decedent in a manner appropriate to the moral and individual beliefs and wishes of the decedent provided that such beliefs and wishes do not conflict with the directions of the decedent. The person in control of disposition may seek to recover any costs related to the disposition from the fiduciary of the decedent's estate in accordance with section eighteen hundred eleven of the surrogate's court procedure act.

(d) No funeral director, undertaker, embalmer or no person with an interest in, or who is an employee of any funeral firm, cemetery organization or business operating a crematory, columbarium or any other business, who also controls the disposition of remains in accordance with this section, shall receive compensation or otherwise receive financial benefit for disposing of the remains of a decedent.

(e) No person who: (1) at the time of the decedent's death, was the subject of an order of protection protecting the decedent; or (2) has been arrested or charged with any crime set forth in article one hundred twenty-five of the penal law as a result of any action allegedly causally related to the death of the decedent shall have the right to control the disposition of the remains of the decedent. However, the application of this paragraph in a particular case may be waived or modified in the interest of justice by order of (i) the court that issued the order of protection or in which the criminal action against the person is pending, or a superior court in which an action or proceeding under the domestic relations law or the family court act between the person and the decedent was pending at the time of the decedent's death, or (ii) if proceeding in that court would cause inappropriate delay, a court in a special proceeding.

3. The written instrument referred to in paragraph (a) of subdivision two of this section may be in substantially the following form, and must be signed and dated by the decedent and the agent and properly witnessed:

APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

I, \_\_\_\_\_

(Your name and address)

being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by

\_\_\_\_\_.

(name of agent)

With respect to that subject only, I hereby appoint such person as my agent with respect to the disposition of my remains.

SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent as well as any instructions or wishes desired to be followed in the disposition of my remains:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Indicate below if you have entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law for funeral merchandise or service in advance of need:

No, I have not entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law.

Yes, I have entered into a pre-funded pre-need agreement subject to section four hundred fifty-three of the general business law.

\_\_\_\_\_  
(Name of funeral firm with which you entered into a pre-funded pre-need funeral agreement to provide merchandise and/or services)

AGENT:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

SUCCESSORS:

If my agent dies, resigns, or is unable to act, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent to control the disposition of my remains as authorized by this document:

1. First Successor

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

2. Second Successor

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

DURATION:

This appointment becomes effective upon my death.

PRIOR APPOINTMENT REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of person making the appointment)

Statement by witness (must be 18 or older)

I declare that the person who executed this document is personally known to me and appears to be of sound mind and acting of his or her free will. He or she signed (or asked another to sign for him or her) this document in my presence.

Witness 1: \_\_\_\_\_

(signature)

Address: \_\_\_\_\_

Witness 2: \_\_\_\_\_

(signature)

Address: \_\_\_\_\_

ACCEPTANCE AND ASSUMPTION BY AGENT:

1. I have no reason to believe there has been a revocation of this appointment to control disposition of remains.

2. I hereby accept this appointment.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of agent)

4. (a) In the absence of a written instrument made pursuant to subdivision three of this section, the designation of a person for the disposition of one's remains or directions for the disposition of one's remains in a will executed pursuant to the laws of the state of New York prior to the effective date of this section, or otherwise executed pursuant to the laws of a jurisdiction outside the state of New York, shall be: (i) considered reflective of the intent of the decedent with respect to the disposition of the decedent's remains; and (ii) superseded by a written instrument subsequently executed pursuant to subdivision three of this section, or by any other subsequent act by the decedent evidencing a specific intent to supersede the designation or direction in such a will with respect to the disposition of the decedent's remains. All actions taken reasonably and in good faith based upon such authorizations and directions regarding the disposition of one's remains in such a will shall be deemed valid regardless of whether such a will is later probated or subsequently declared invalid.

(b) In the absence of a written instrument made pursuant to subdivision three of this section, the designation of a person for the disposition of one's remains or directions for the disposition of one's remains in a will executed pursuant to the laws of the state of New York on or after the effective date of this section, shall be considered a reflection of the intent of the decedent with respect to the disposition of the decedent's remains, provided that the person who represents that he or she is entitled to control the disposition of remains of the decedent has complied with subdivision five and paragraph (a) of subdivision seven of this section and signed a written statement in accordance with paragraph (b) of subdivision seven of this section.

4-a. A written instrument under this section may limit the disposition of remains agent's authority to consent to organ or tissue donation or designate another person to do so, under article forty-three of this chapter. Failure to state wishes or instructions shall not be construed to imply a wish not to donate.

5. A written instrument executed under this section shall be revoked upon the execution by the decedent of a subsequent written instrument, or by any other subsequent act by the decedent evidencing a specific intent to revoke the prior written instrument and directions on disposition and agent designations in a will made pursuant to subdivision three of this section shall be superseded by a subsequently executed will or written instrument made pursuant to this section, or by any other subsequent act of the decedent evidencing a specific intent to supersede the direction or designation. The designation of the decedent's spouse or domestic partner as an agent in control of disposition of remains shall be revoked upon the divorce or legal separation of the decedent and spouse, or termination of the domestic partnership, unless the decedent specified in writing otherwise.

6. A person acting reasonably and in good faith, shall not be subject to any civil liability for:

(a) representing himself or herself to be the person in control of a decedent's disposition;

(b) disposing of a decedent's remains if done with the reasonable belief that such disposal is consistent with this section;  
or

(c) identifying a decedent.

7. No cemetery organization, business operating a crematory or columbarium, funeral director, undertaker, embalmer, or funeral firm shall be held liable for actions taken reasonably and in good faith to carry out the written directions of a

decedent as stated in a will or in a written instrument executed pursuant to this section. No cemetery organization, business operating a crematory or columbarium, funeral director, undertaker, embalmer or funeral firm shall be held liable for actions taken reasonably and in good faith to carry out the directions of a person who represents that he or she is entitled to control of the disposition of remains, provided that such action is taken only after requesting and receiving written statement that such person:

(a) is the designated agent of the decedent designated in a will or written instrument executed pursuant to this section; or

(b) that he or she has no knowledge that the decedent executed a written instrument pursuant to this section or a will containing directions for the disposition of his or her remains and that such person is the person having priority under subdivision two of this section.

8. Every dispute relating to the disposition of the remains of a decedent shall be resolved by a court of competent jurisdiction pursuant to a special proceeding under article four of the civil practice law and rules. No person providing services relating to the disposition of the remains of a decedent shall be held liable for refusal to provide such services, when control of the disposition of such remains is contested, until such person receives a court order or other form of notification signed by all parties or their legal representatives to the dispute establishing such control.

9. This section does not supersede, alter or abridge any provision of section four hundred fifty-three of the general business law. In the event of a conflict or ambiguity, the provisions of section four hundred fifty-three of the general business law shall govern.

10. This section does not supersede, alter or abridge any provision of article forty-three of this chapter including, but not limited to, the persons authorized to execute an anatomical gift pursuant to section forty-three hundred one of this chapter.

11. This section does not diminish the enforceability of a contract or agreement in which a person controlling the disposition of the remains of a decedent agrees to pay for goods or services in connection with the disposition of such remains.

#### **§ 4202. Cremated remains; disposition**

1. Every body delivered to a cemetery for cremation shall be accompanied by a statement from a physician, coroner, or medical examiner certifying that such body does not contain a battery or power cell. The person in charge of a cemetery may refuse to cremate a body unless accompanied by such statement.

2. Cremated remains means human remains after incineration in a crematory.

3. An institution authorized by article forty-two or forty-three of this chapter to receive unclaimed cadavers or anatomical gifts, notwithstanding any other provision of law, may prepare or preserve cadavers in its lawful possession for purposes of research, study or anatomical instruction and may cremate the cadavers or dissected remains of such cadavers after the completion of such research, study or anatomical instruction thereon; provided, however, that cremation shall be performed only in a retort used exclusively for such purpose. For the purposes of the provisions of this subdivision, such institution shall not be subject to article fifteen of the not-for-profit corporation law.

4. At the time of the arrangement for a funeral performed by any undertaker or funeral director, the person contracting for funeral services shall designate his intentions with respect to the disposition of the remains of the deceased in a signed declaration of intent on a form as designated by the department which shall be provided by and retained by the undertaker. Every undertaker, administrator, executor, authorized representative of a deceased person, corporation, company or association, or other person having in his or its lawful possession cremated remains, except such remains committed to his or its care for permanent interment, which remains shall not have been claimed by a relative or friend of the deceased person within one hundred twenty days from the date of cremation, may dispose of such remains by placement in a tomb, mausoleum, crypt, niche in a columbarium, burial in a cemetery, or scattering of the remains at sea or by otherwise disposing of such remains as provided by rule of the department. A record of such disposition shall be made and kept by the person making such disposition. Upon disposing of such remains in the manner prescribed above, such person shall be discharged from any legal obligation or liability in relation to such remains.

**§ 4210-a. Unlawful dissection of the body of a human being**

A person who makes, or causes or procures to be made, any dissection of the body of a human being, except by authority of law, or in pursuance of a permission given by the deceased, is guilty of a class E felony.

**§ 4216. Body stealing**

A person who removes the dead body of a human being, or any tissue, organ or part thereof from a grave, vault, or other place, where the same has been buried, or from a place where the same has been deposited while awaiting burial, without authority of law, with intent to sell the same, or for the purpose of dissection, or for the purpose of procuring a reward for the return of the same, or from malice or wantonness, is guilty of a class D felony.

**§ 4217. Receiving stolen body of a human being**

A person who purchases, or receives except for the purpose of burial, the dead body of a human being, or any tissue, organ, or part thereof, knowing that the same has been removed contrary to section forty-two hundred sixteen of this title, is guilty of a misdemeanor.

**§ 4218. Opening graves**

A person who opens a grave or other place of interment, temporary or otherwise, or a building wherein the dead body of a human being is deposited while awaiting burial, without authority of law, with intent to remove the body, or any tissue, organ or part thereof, for the purpose of selling it or demanding money for the same, or for the purpose of dissection, or from malice or wantonness, or with intent to steal or remove the coffin or any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the dead body, is guilty of a class D felony.

**§ 4219. Arresting or attaching a dead body of a human being**

A person who arrests or attaches the dead body of a human being upon any debt or demand whatever, or detains or claims to detain it for any debt or demand, or upon any pretended lien or charge, is guilty of a misdemeanor.

**§ 4220. Disturbing funerals**

A person who, without authority of law, obstructs or detains any persons engaged in carrying or accompanying the dead body of a human being to a place of burial, is guilty of a misdemeanor.

**§ 4307. Prohibition of sales and purchases of human organs (excerpt)**

1. It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer for valuable consideration any human organ for use in human transplantation. The term human organ means the human kidney, liver, heart, lung, bone marrow, and any other human organ or tissue as may be designated by the commissioner but shall exclude blood. The term "valuable consideration" does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ. Any person who violates this section shall be guilty of a class E felony.

**10 NYCRR PART 13-EXCERPT FROM STATE SANITARY CODE**

**§ 13.1. Transportation of dead human bodies by common carrier**

The transportation of dead bodies by common carrier, defined for the purposes of this Part as a carrier licensed or authorized to transport cargo by any of the following: New York State Department of Transportation; Interstate Commerce Commission; Federal Aviation Administration; or United States Coast Guard, shall be conducted in such manner as not to be a menace to health and shall conform to the following requirements:

(a) Burial-transit permit required. A burial-transit permit issued by the local registrar of vital statistics must accompany each dead body transported by a common carrier.

(b) Transportation of dead human bodies by common carrier. Transportation of dead bodies by common carrier shall be permitted only under the following conditions:

(1) dead bodies shall be encased in a rigid container which is so constructed as to withstand hazards associated with the methods of transportation used. In order to prevent the leakage of body fluids either the dead body must be placed in a leak-proof pouch within the container, or the container must be leakproof or the container must be placed in a leak-proof container; and

(2) all dead bodies shall be clothed or covered by a shroud or other body covering, all external body orifices shall be closed with absorbent cotton and a name tag affixed to the dead body giving the name of the deceased as it appears on the death certificate.

(c) Exceptions. Notwithstanding any other provisions of this section, a permit for the burial or cremation of human remains issued by the authorized agency of any municipality or county within the United States, of any State, territory or possession of the United States, the District of Columbia, or of any foreign state within whose jurisdiction the death or fetal death occurred, which specifies the cemetery or crematory, may be accepted by the person in charge of the cemetery or crematory in lieu of a permit issued by a registrar of vital statistics of this State. If a permit issued in another jurisdiction does not specify the cemetery or crematory, or if the cemetery or crematory specified is not the actual place of intended burial or cremation, it shall not be accepted by the person in charge of a cemetery or crematory, but shall be exchanged for a permit issued by the registrar of vital statistics in the registration district where the burial or cremation of the remains was originally intended.

### **§ 13.2. Transportation of dead human bodies by other than common carrier**

In the transportation of dead human bodies by every mode of transportation including air, other than by common carrier in the State of New York, and including such transportation which originates outside the State of New York, the dead body shall be encased in a casket or container or shall be enclosed in a waterproof pouch and secured in a rigid litter or stretcher, and however encased or enclosed, the dead body shall be obscured from public view and:

the funeral director or his agent assuming responsibility for the transportation of the dead body must take the steps necessary to prevent leakage of body fluids from the container in which the remains are encased; and

the interior of the vehicle and equipment used for transportation must be maintained in a clean and sanitary manner.

### **§ 13.3. Disinterments**

(a) No dead human bodies shall be disinterred for transportation and/or removal to another cemetery or crematory without a permit from the registrar of vital statistics having jurisdiction at the place of disinterment. No permit is necessary for removal within the same cemetery.

(b) The funeral director or undertaker shall make a request to disinter the body on a form provided by the commissioner. Upon receipt of such request, the local registrar shall issue a permit as required by section 13.1(a) of this Part.

(c) If the original burial container has not retained its integrity, transfer to another container shall be required if transportation of the body is necessary. If the remains are to be transported by common carrier, the provisions of section 13.1(b) of this Part shall apply.

## **10 NYCRR PART 77—EXCERPTS FROM PRACTICE OF FUNERAL DIRECTING**

### **Section 77.7. Funeral directing (excerpt)**

(a) A funeral director, undertaker or embalmer shall not permit any unlicensed person to engage in or take charge of the activities for which a license to engage in the business or practice of funeral directing, undertaking or embalming is required by the provisions of the Public Health Law.

(1) A licensed and registered funeral director or undertaker or a registered resident shall be present and personally supervise and arrange for the removal or transfer of each dead human body from the place where death occurs, or from the place where it is released to him/her by the family or other legal authority.

(2) A licensed and registered funeral director or undertaker or a registered resident shall be present and personally supervise the conduct of each funeral service.

(3) Nothing herein shall be construed as prohibiting religious supervision of the funeral service by a member or members of the clergy designated by the family of the deceased person.

(4) A licensed and registered funeral director or undertaker or a registered resident shall, unless prevented by the rules or documented practices of the cemetery, be present and personally supervise the interment, delivery to and acceptance by crematory personnel at the crematory, or the pickup from or the delivery to a common carrier, of a dead human body.

(5) No person other than a duly licensed and registered funeral director or undertaker shall make or be permitted to make arrangements on behalf of any funeral director, undertaker or funeral firm with a customer or customer's designee:

(i) for temporary or final entombment, or cremation, disinterment, reinterment or other lawful disposition of a dead human body;

(ii) for the care, preparation, shipment or transportation of a dead human body; or

(iii) for the purchase, sale or rental of funeral merchandise, services or paraphernalia.

The taking of preliminary information over the telephone by an unlicensed person shall not be construed as the making of funeral arrangements under this section.

(b)

(1) In no case shall a dead human body be released from any hospital, institution or other place where the death occurred or from the place where the body is held by legal authority to any person not a duly licensed and registered funeral director or undertaker or a registered resident.

(2) Every person, including, although not limited to, a person in charge of a hospital, institution, or place where a person has died, having lawful possession, charge, custody or control of a dead human body, shall request the person seeking to obtain the release of said body and acting as, for, or in behalf of a funeral director or funeral firm, to produce his/her current certificate of registration, showing that he/she is personally entitled to practice as a funeral director, undertaker or as a registered resident.

(c) Every person, including a person acting lawfully in an emergency, in charge of a cemetery, crematory, vault or other place to which a dead human body is brought for temporary or permanent disposition shall require the person in charge of such body to identify himself/herself as a duly licensed and registered funeral director or undertaker or as a registered resident and to produce his/her current certificate of registration as such.

(d) In the event such burial or other disposition is not in the charge of a duly licensed and registered funeral director or undertaker or registered resident, the person in charge of the cemetery, crematory, vault or other place where dead human bodies are brought for temporary or permanent disposition shall immediately submit to the Department of Health the name and address of the person who had charge of the body at the time of burial or other disposition and the name and address of the funeral director, undertaker, registered resident or funeral firm for which such person was acting.

(e) In the event that a person other than a duly licensed and registered funeral director or undertaker shall make any arrangements for the purchase, sale or rental of funeral merchandise, services or paraphernalia accompanied by the representative of a decedent at a casket showroom, display room or other facility, the owner or manager of such facility shall immediately notify the Department of Health of the name and address of the person and of the funeral director, undertaker or funeral firm for which such person was acting.

(f) Nothing contained in this section shall be deemed to require that a mere transporter, to whom or to which a dead human body has been duly released for the sole purpose of transportation or transfer, shall be a duly licensed and registered funeral director or undertaker or a registered resident.

## **REAL PROPERTY LAW**

### **§ 450. Lands used for cemetery purposes not to be sold or mortgaged**

1. No land actually used and occupied for cemetery purposes shall be sold under execution or for any tax or assessment, nor shall such tax or assessment be levied, collected or imposed, nor shall it be lawful to mortgage such land, or to apply it in payment of debts, so long as it shall continue to be used for such cemetery purposes, except cemetery lands in which interments have not been made may be sold under execution to satisfy a valid judgment of a court of record. Whenever any such land shall cease to be used for cemetery purposes, any judgment, tax or assessment which, but for the provisions of this section would have been levied, collected or imposed, shall thereupon forthwith, together with interest thereon, become and be a lien and charge upon such land, and collectible out of the same. The provisions of this section shall not apply to any lands held by the city of Rochester or to lands lying within the village of Lewiston, Niagara county.

2. The provisions of subdivision one of this section shall not apply to real property taxes and assessments levied or imposed on the land described in subdivision one of this section on or after the first day of January, nineteen hundred eighty-two, but the provisions of section four hundred forty-six of the real property tax law shall be applicable to such land on or after such date.

**§ 451. Acquisition of lands for cemetery purposes in certain counties**

It shall not be lawful for any person to take by deed, devise or otherwise or set apart or use any land or ground in any of the counties of Westchester, Kings, Queens, Richmond, Bronx, New York, Rockland, Suffolk, Putnam or Nassau, for cemetery purposes without the consent of the board of supervisors for such county, or of the city council of the city of New York, as the case may be, first had and obtained in like manner as provided for in the membership corporations law;1 and said board of supervisors or city council in granting such consent may annex thereto such conditions, regulations and restrictions as such board may deem the public health or the public good require.

**REAL PROPERTY TAX LAW**

**§ 446. Cemeteries**

1. Real property actually and exclusively used for cemetery purposes shall be exempt from taxation and exempt from special ad valorem levies and special assessments.
2. In addition to the exemption provided in subdivision one of this section, unimproved land, which is not presently used for cemetery purposes, but in which interments are reasonably and in good faith anticipated, shall be exempt from taxation, special ad valorem levies and special assessments. An exemption pursuant to this subdivision shall be granted only upon application by the owner of the property on a form prescribed by the commissioner. The application shall be filed with the assessor of the appropriate county, city, town or village on or before the taxable status date of such county, city, town or village.
3. The term “cemetery purposes”, as used in this section shall mean land and buildings, whether privately or publicly owned or operated, used for the disposal or burial of deceased human beings, by cremation or in a grave, mausoleum, vault, columbarium or other receptacle. Such term shall also include land and buildings actually used and essential to the providing of cemetery purposes including, but not limited to, the on site residence of a full-time caretaker and a storage facility for necessary tools and equipment.
4. No real property shall be entitled to receive an exemption pursuant to this section if the owner or operator of such real property or any officer, member or employee thereof, shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, other than reasonable compensation for services performed, or, if the ownership or operation is a guise or pretense for directly or indirectly making any other pecuniary profit for such owner or operator or for any of its officers, members or employees.

**GENERAL BUSINESS LAW ARTICLE 28-A**  
**Cemetery Property and Funeral Services**

**§ 450. Unlawful acts relating to sales of cemetery property**

The sale or procuring any agreement for sale of cemetery lots or plots, or of crypts or niches in a community mausoleum, or niches in a columbarium or crematorium, upon the promise, representation or inducement of re-sale at a financial profit is hereby prohibited. Any person or individual who shall make, or attempt to make, either on his own behalf or on behalf of another a sale conveyance or agreement contrary to the provisions of this act shall be guilty of a misdemeanor.

**§ 450-a. Unauthorized sale of cemetery markers and flag holders**

Except for a veterans' organization, those businesses which normally carry on such trade, or are authorized by veterans' organizations to do so, it shall be unlawful for any person, firm, association or corporation to engage in the buying or selling of metal cemetery markers and flag holders bearing the insignia of any veterans' organization placed upon the graves of veterans. A violation of the provisions of this section shall constitute a violation and shall be punishable by a fine of not more than five hundred dollars or not more than fifteen days imprisonment or both.

**§ 451. Cemetery to state true location**

Any cemetery corporation or employee or agent thereof that shall advertise in a newspaper, magazine or other publication or in the form of a book, notice, circular, pamphlet, letter, poster, card, or over any radio station, or in any other way for the purpose of selling lots, plots or parts thereof in its cemetery shall in such advertisement state the location of the cemetery grounds, including the city, town or village, and the county and state. A violation of the provisions of this section shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars or not more than six months imprisonment or both.

**§ 452. Unauthorized charges in connection with permits for burials or erection of monuments**

It shall be unlawful for a society or fraternal organization or a representative thereof to obtain, receive or exact or attempt to obtain, receive or exact, a fee or thing of value in addition to the regular dues or charges required to be paid pursuant to the by-laws, constitution, or rules of such society or fraternal organization as a condition to granting a permit for or consent to burial in or the erection of a monument or memorial upon a lot or plot in a cemetery. A violation of this section shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars or not more than six months imprisonment or both.

**§ 453. Moneys paid in connection with agreements for funeral merchandise or services in advance of need to be kept on deposit pending use or repayment**

1. (a) Any and all moneys paid to a funeral firm, funeral director, undertaker, cemetery, or any other person, firm or corporation, under or in connection with an agreement, or any option to enter into an agreement, for the sale of merchandise to be used in connection with a funeral or burial, or for the furnishing of personal services of a funeral director or undertaker, wherein the merchandise is not to be actually physically delivered or the personal services are not to be rendered until the occurrence of the death of the person for whose funeral or burial such merchandise or services are to be furnished shall continue to be the money of the person making such payment and shall be held in trust for such person by the funeral firm, funeral director, undertaker, cemetery or any other person, firm or corporation to whom such payment is made and shall, within ten business days of receipt, be deposited in an interest bearing account in a bank, national bank, federal savings bank, federal savings and loan association, savings bank, savings and loan association, credit union, or federal credit union within the state and duly authorized to receive deposits in the state of New York and which shall earn interest at a rate which shall be at not less than the prevailing rate of interest earned by other such deposits in such banks, savings banks, savings and loan associations, or credit unions under this section, or shall be placed in a trust company in an investment backed by the government of the United States and shall not be commingled with other moneys of the funeral firm, funeral director, undertaker, cemetery, or other person, firm or corporation or become the funds of the funeral firm, funeral director, undertaker, cemetery, or other person, firm or corporation, and shall be so held on deposit, together with any interest thereon, until said merchandise has been actually physically delivered and said personal services have been rendered, unless sooner repaid, in whole or in part. No funeral firm, funeral director, undertaker, cemetery or any other person, firm or corporation, shall discharge the obligation established under this section to deposit or place money with a bank, national bank, federal savings bank, federal savings and loan

association, savings bank, savings and loan association, credit union, federal credit union or trust company within the state through a surety bond or other financial instrument unless expressly provided under this section.

(b) Such funeral firm, funeral director, undertaker, cemetery, or other person, firm or corporation which received such moneys shall, within thirty business days after the deposit or any change in the institution in which such funds are deposited, provide written notification to the person who made such payment of the institution of the deposit and, until such moneys have been repaid or the personal services and merchandise have been provided, shall annually provide the person who made such payment with a statement identifying the location and annual interest earned by the account.

(c) Upon request of the person who made such payment, or his or her representative, the funeral firm, funeral director, undertaker, cemetery or other person, firm or corporation which received such moneys shall provide a statement within thirty days of such request identifying the location of the account, amount of such account and interest earned on such account. Upon the provision of any merchandise or personal services in connection with any such agreement, the funeral firm, funeral director, undertaker, cemetery or other person, firm or corporation which received such moneys shall provide a statement itemizing the merchandise or personal services provided and the cost of such merchandise or personal services and describing the disposition of all moneys in the account. Copies of such statements and the records on which they are based shall be made available for inspection and shall be made available during ordinary business hours for copying upon written request by any state agency regulating the funeral firm, funeral director, undertaker, cemetery or other person, firm or corporation which received such money or enforcing the requirements of this section, provided a complaint, either oral or written, has been received, or an inspector has grounds to believe that serious or repeat violations of this section have occurred.

(d) Moneys paid for such an agreement for an applicant or recipient of supplemental security income benefits under section two hundred nine of the social services law or of medical assistance under section three hundred sixty-six of such law, or moneys paid by such an applicant or recipient for such an agreement for his or her family member, shall be placed into a trust which shall be irrevocable but under which such applicant/recipient reserves the right to select any funeral firm, funeral director, undertaker, cemetery or any other person, firm or corporation to whom such payment is made and to change such selection any time to any type of funeral or any funeral firm, funeral director, cemetery or any other person, firm or corporation to whom such payment is made, located in the state of New York or any other state. Any such change must be carried out within ten business days following receipt of a request by the purchaser to the funeral firm, funeral director, cemetery or any other person, firm or corporation to whom such payment is made, with which such trust was established. This requirement is subject to any limits set forth in federal law or regulation pertaining to disregarded resources or income.

2. The amount of any and all moneys paid under or in connection with such an agreement, together with interest, if any, accrued thereon while on deposit as so required shall be repaid on demand at any time prior to the delivery of the merchandise and/or the rendering of the personal services. No administrative, consultation or other fee may be assessed against the person making such payment in connection with or planning for such agreement. Provided, however, neither the applicant, recipient or other purchaser of preneed funeral goods or services through an irrevocable trust, their legal representative nor the heirs of such person, shall be entitled to any repayment of the moneys which created such trust.

3. Any such agreement must be in writing and must:

(a) Identify all moneys paid or to be paid; and

(b) Identify any fees paid to the person administering such trust fund by a third party, provided, however, any such fees shall not exceed seventy-five hundredths of one percent of the amount of such trust fund; and

(c) Except for an irrevocable trust established pursuant to section two hundred nine of the social services law or paragraph (d) of subdivision one of this section, notify the person making such payment of his or her right to be repaid moneys paid, together with accrued interest, as described in this section and of his or her right to receive an annual statement; and

(d) Identify the provider of each service or item of merchandise to the extent agreed upon, and fully describe the service or merchandise to the extent agreed upon; and

(e) Describe the obligations of each party:

(i) in the event the service or merchandise described in the agreement cannot, for reasons beyond the control of the parties, be provided when needed;

(ii) in the event the cost of such services or merchandise, when such services or merchandise is to be provided, exceeds the amount of the moneys paid and accrued interest; and

(iii) in the event the amount of the moneys paid and accrued interest exceeds the cost of such services or merchandise when they are to be provided. If the agreement does not provide to the contrary, the services or merchandise described in the agreement must be provided for no more than the price stated therein. Except for an irrevocable trust established pursuant to section two hundred nine of the social services law or paragraph (d) of subdivision one of this section, any moneys in excess of the amount set forth in the agreement must be repaid to the person who made the payment or to the estate of such person. The agreement must also specify the name and address of a person not living at the address of the person who made payments under or in connection with the agreement, to whom required notices may be sent if the person who made payments under or in connection with the agreement cannot be contacted. The person making such payments may decline in writing to specify the name and address of a person not living at the address of the person making such payments to whom such notice may be sent; and

(f) With respect to an agreement for an irrevocable trust fund pursuant to section two hundred nine of the social services law or paragraph (d) of subdivision one of this section, include the following statement in the agreement in conspicuous print of at least twelve point type:

#### DISCLOSURE

NEW YORK LAW REQUIRES THIS AGREEMENT TO BE IRREVOCABLE FOR APPLICANTS FOR AND RECIPIENTS OF SUPPLEMENTAL SECURITY BENEFITS UNDER SECTION TWO HUNDRED NINE OF THE SOCIAL SERVICES LAW OR OF MEDICAL ASSISTANCE UNDER SECTION THREE HUNDRED SIXTY-SIX OF THE SOCIAL SERVICES LAW, AND FOR THE MONEYS PUT INTO A TRUST UNDER THIS AGREEMENT TO BE USED ONLY FOR FUNERAL AND BURIAL EXPENSES. WHETHER THE AGREEMENT IS FOR YOUR FUNERAL AND BURIAL EXPENSES OR FOR THOSE OF A FAMILY MEMBER, IF ANY MONEY IS LEFT OVER AFTER YOUR FUNERAL AND BURIAL EXPENSES HAVE BEEN PAID, IT WILL GO TO THE COUNTY. YOU MAY CHANGE YOUR CHOICE OF FUNERAL HOME AT ANY TIME. IF THIS AGREEMENT IS FOR THE FUNERAL AND BURIAL EXPENSES OF A FAMILY MEMBER, AFTER YOUR DEATH SUCH FAMILY MEMBER MAY CHANGE THE CHOICE OF FUNERAL HOME AT ANY TIME.

(g) Any promotional literature prepared after January first, nineteen hundred ninety-seven by a funeral firm, funeral director, undertaker, cemetery, or any other person, firm or corporation for prearranged funeral and burial services must contain language disclosing the irrevocable nature of burial trusts established by or for an applicant or recipient of supplemental security income benefits or medical assistance.

4. Any provision of any such agreement whereby a person who pays money under or in connection therewith waives any provision of this section shall be void.

5. (a) Upon the sale or transfer of any business, firm, corporation or other entity having received moneys in connection with such agreements or the transfer of control over such money, both the new owner and former owner or the estate of the former owner, or both the persons currently and formerly having control over such money, shall, within thirty days of such sale or transfer, notify, in writing, each such person who has paid moneys of the sale or transfer, including the name and address of the new and former owner. Copies of such notification shall be made available for inspection and shall be made available during ordinary business hours for copying upon written request by any official or agency having jurisdiction.

(b) Upon the sale or other transfer of any business, firm, corporation or other entity having received moneys in connection with such agreements or upon any transfer of control over such moneys, the transferee shall be liable for compliance with all provisions of this section including the repayment of any moneys and provision of funeral merchandise and services, and for compliance with all other requirements of this section if the transferor or a transferor's predecessor in interest was liable for such compliance with the requirements of this section. Such liability shall attach whether or not the successor in interest has, upon conveyance of such business, firm, corporation or other entity, received such moneys or has knowledge of the existence of the agreement as herein described. Such liability shall attach

where there is proof of a valid agreement for providing funeral merchandise and services, and the funeral director, undertaker, cemetery or other person, firm or corporation has not refunded the moneys received from the customer.

(c) Upon the sale or other transfer of any business, firm, corporation or other entity having received such moneys, or upon a transfer of control of such moneys, the transferor shall disclose a complete accounting of all moneys transferred pursuant to such agreement to the transferee, including the names and addresses of all persons who deposited moneys with such business, firm, corporation or other entity, the amount and location of such moneys, the names and addresses of persons who have received refunds and the amount of such refund.

(d) Upon the termination, cessation of operation or discontinuance of any business, firm, corporation or other entity which has received moneys in connection with such agreements or is otherwise liable for compliance with the requirements of this section, such business, firm, corporation or other entity shall repay all such monies and accrued interest as if a demand had been made therefor within thirty days of such termination or discontinuance. Copies of records relating to the repayment of such moneys shall be available for inspection and shall be made available during ordinary business hours for copying upon written request by the appropriate official or agency having jurisdiction.

6. Any person, firm or corporation who or which, having received any moneys under or in connection with such an agreement, shall knowingly and willfully fail to deposit or keep such moneys on deposit shall be guilty of a misdemeanor or, shall knowingly and willfully fail to provide the notification required pursuant to subdivision five of this section shall be guilty of a violation. Any person, firm or corporation who or which, having received any moneys under or in connection with such an agreement, or who or which is deemed responsible for such moneys pursuant to subdivision five of this section shall, without lawful reason, knowingly and willfully fail to repay, upon demand, any and all such moneys as provided in this section, or shall knowingly and willfully misappropriate such money for a use not authorized in this section, shall, in addition to any other penalties provided by law, be guilty of a misdemeanor.

7. Whenever there shall be a violation of this section an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction by a special proceeding to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant has, in fact, violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violations, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of not more than one thousand dollars for each violation; provided, however, the court shall not impose a civil penalty in any case where the department of health has imposed such a penalty for an identical violation of the provisions of the public health law. In connection with any such proposed application the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules, and direct restitution.

8. Records required by this section to be maintained and true copies of agreements shall be retained for four years following the provisions of funeral merchandise and services. In the event the funds are returned to the person who deposited the money or their representative, such records, including the record of return of funds shall be retained for a period of four years after the sale, transfer, termination, cessation of operation or discontinuance of the funeral.

9. This section shall not apply to the sale of lots or graves by a cemetery.

10. For the purposes of subdivision eleven of this section, "preneed administrator" means any person, partnership, firm, limited liability company or corporation, which is either domiciled in or doing business in the state of New York, and which has received money under or in connection with an agreement executed pursuant to this section; and "county" shall refer only to a county located within the state of New York. For the purposes of subdivision five of this section, "preneed administrator" shall also include any successor, assignee or transferee of funds held pursuant to this section.

11. Notwithstanding any other provision of law to the contrary, the following provisions shall be applicable to each preneed administrator of written preneed accounts, both revocable and irrevocable:

(a) The assets of such an account shall be deemed abandoned as of the later of (i) three years after the date of death of the person for whose funeral or burial such assets were to be used; or (ii) one year after the preneed administrator has

determined that the person for whose funeral or burial such assets were to be used has died if such death occurred less than two years prior to such determination. The preneed administrator shall make reasonable attempts to determine if the person for whose funeral or burial such assets were to be used has died, using available information from federal and state sources. Upon the death of a person for whose funeral or burial such merchandise or services are to be furnished, the preneed administrator shall determine the name and address of the funeral director who performed the funeral services. If the preneed administrator determines that the funeral director has been paid in full for the funeral services, and if the account is irrevocable, the preneed administrator shall, on or before the tenth day of March in each year, transfer the assets of such account to the indigent care burial fund for the county in which the person for whose funeral or burial such assets were to be used resided at the date of his or her death. If the preneed administrator determines that the funeral director has been paid in full for the funeral services, and if the account is revocable, the preneed administrator shall, on or before the tenth day of March in each year, pay or deliver to the state comptroller pursuant to section one thousand three hundred fifteen of the abandoned property law, the assets of such account which was deemed to have been abandoned as of the thirty-first day of December of such calendar year.

(1) Upon the death of a person for whose funeral or burial such merchandise or services are to be furnished, if the preneed administrator determines that the funeral director has not been paid in full for the funeral services, the preneed administrator shall pay the funeral director for the funeral services upon receipt of the required documentation for paying claims for funeral services. If the balance due is more than the cost of the funeral services, the preneed administrator shall transfer the remaining balance, if an irrevocable account, to the indigent care burial fund as provided in this paragraph, or, if a revocable account, to the state comptroller as provided in this paragraph.

(2) Upon the death of a person for whose funeral or burial such merchandise or services are to be furnished, and with reasonable efforts, the preneed administrator cannot determine the name and address of the funeral director who provided the funeral services, the preneed administrator, if the account was irrevocable, shall transfer the assets of such account to the indigent care burial fund for the county in which the person for whose funeral or burial such merchandise or services are to be furnished resided at the time the irrevocable account was established, such transfer to be made as described in this paragraph. The preneed administrator, if the account was revocable, shall pay or deliver the assets of such account to the state comptroller, such transfer to be made as described in this paragraph.

(b) If the preneed administrator is not able to determine a current proper address of an account for the person for whose funeral or burial such merchandise or services are to be furnished such that the annual statements mailed regarding the account are returned to the preneed administrator as undeliverable, and such administrator cannot, after making reasonable efforts, determine a current and proper address for the person for whose funeral or burial such merchandise or services are to be furnished, the account shall be deemed dormant if (i) the preneed administrator has not been able to determine a correct address for the person for whose funeral or burial such merchandise or services are to be furnished for a period of fifteen consecutive years, and (ii) based upon the information contained in the written agreement the preneed administrator can determine that, if the person for whose funeral or burial such merchandise or services are to be furnished were then living, the person for whose funeral or burial such merchandise or services are to be furnished would have reached the age of one hundred fifteen years.

(1) If the account is deemed dormant as defined in this paragraph, the preneed administrator shall transfer the assets of such account, if it is an irrevocable account, to the indigent care burial fund for the county in which the person for whose funeral or burial such merchandise or services are to be furnished resided at the time the irrevocable account was established. The administrator shall transfer the assets of such account, if it is a revocable account, to the state comptroller as provided in paragraph (a) of this subdivision.

(2) Nothing contained in this subdivision shall prevent a person for whose funeral or burial such merchandise or services are to be furnished, if an irrevocable account, or a funeral home which provided funeral services to the person for whose funeral or burial such merchandise or services are to be furnished, or a person who has paid for funeral services for which an irrevocable account was established, from requesting and receiving the lesser of (i) the actual cost or amount paid for the funeral, or (ii) the amount transferred to the indigent burial fund, in the event that the person for whose funeral or burial such merchandise or services are to be furnished is living, or that the funeral services for the person for whose funeral or burial such merchandise or services are to be furnished were not paid in full, or that a person has paid for funeral services for which an irrevocable account was established. Nothing contained in this subdivision shall

prevent a person otherwise authorized by law to seek reimbursement of the funds from a revocable account pursuant to the applicable provisions of the abandoned property law.

**§ 454. Sale of monuments and memorials**

1. Definitions. As used in this section, the following words shall have the following meanings:

(a) “Consumer” means any natural person who is solicited to purchase or who purchases a memorial. The term shall not include a person making a purchase for resale.

(b) “Memorial” means any monument, headstone, footstone, ledger stone, marker or plaque designed or intended to be erected or installed in or on any cemetery, grave, mausoleum or other appropriate place of burial or memorialization.

(c) “Seller” means an individual, firm, corporation, not-for-profit corporation, religious corporation, municipal corporation, political subdivision, partnership, association, society or joint stock company, or any agent or employee thereof.

(d) “Offer for sale” means any contact by a seller with a consumer of which the subject of the sale of a memorial to a consumer is a part, whether such contact be in person, by telephone, mail, or other electronic means, and regardless of whether or not the consumer initiates such contact.

(e) “Sale” means the sale of a memorial to or for a consumer for actual delivery prior to, or subsequent to, a death.

(f) “Foundation” means a poured concrete or other permanent base intended to support the memorial and installed at the gravesite in the appropriate location.

2. Each sale of a memorial shall only be evidenced by a written contract which shall be signed by all the parties to the contract, which shall be dated, and which shall be completely separate and may not be included in any other contract, agreement, purchase order, price list, itemization of funeral services and merchandise selected or like document reflecting the purchase by a consumer of any other real or personal property or service related to the burial, cremation, or other disposition of the remains of a deceased person. For purposes of this section, the pourer of a foundation shall not be considered the seller of a foundation. Such separate contract shall be prepared, completed and maintained in accordance with this section for every memorial sale, including a foundation therefor, and shall be the only contractual document prepared in connection with such sale. Provided however in the case of the sale of a monument or memorial made at the same time as a preneed sale of funeral goods or services, a one page document summarizing the transaction shall be given to the consumer in addition to, but not in lieu of, the separate contract required by this section. A full and complete copy of such contract shall be given to the consumer by the seller at the time of purchase of such memorial, and shall be retained by the seller for a period of at least three years from the date of sale. Said contract shall contain at least the following:

(a) the name, address and telephone number of the seller of the memorial;

(b) the name, address and telephone number of the consumer;

(c) the full name of the individual to be memorialized and, if known, the date of such individual’s death;

(d) a full description of the memorial, including the material to be provided, the dimensions of the finished memorial, a sketch or drawing of the proposed memorial, the wording of any inscription on such memorial including the approximate layout thereof, the method of engraving of such inscription and the country or state of origin of such monument or memorial provided by the manufacturer;

(e) the approximate date when the memorial is expected to be completed;

(f) the name of the cemetery in which the memorial is to be placed, together with the location of the plot or grave, if known; and

(g) a full disclosure of each of the following: the price of the memorial; applicable sales tax, if any; the charge made by the cemetery for the foundation; any charges for additional work, provided that such additional work is clearly described in the contract and such charges are itemized; the total price as contracted; and the schedule for payment, if any.

3. Whenever there shall be a violation of the provisions of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or the justice that the defendant has violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eight thousand three hundred three of the civil practice law and rules and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of up to five hundred dollars for the first violation and up to one thousand dollars for the second or subsequent violation within an eighteen month period.

4. The provisions of this section shall not apply to cemetery corporations as defined and regulated by article fifteen of the not-for-profit corporation law and the regulations promulgated thereunder.

**§ 454-a. Unsolicited offers for monuments or memorials**

1. (a) Except as provided in paragraph (b) of this subdivision, it shall be unlawful to provide any offer for monuments or memorials by mail unless such offer has first been solicited by the individual to which it is sent.

(b) Provided, however, such an offer is permissible where, in large, bold-face type at the top of such offer, "SOLICITATION" is clearly printed.

2. Whenever there shall be a violation of the provisions of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or the justice that the defendant has violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eight thousand three hundred three of the civil practice law and rules and direct restitution. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules. Whenever the court shall determine that a violation of this section has occurred, the court may impose a civil penalty of up to five hundred dollars for the first violation and up to one thousand dollars for the second or subsequent violation within an eighteen month period.

3. The provisions of this section shall not apply to cemetery corporations as defined and regulated by article fifteen of the not-for-profit corporation law and the regulations promulgated thereunder.

**ESTATES, POWERS AND TRUSTS LAW**

**§ 1-2.10 Issue**

(a) Unless a contrary intention is indicated:

(1) Issue are the descendants in any degree from a common ancestor.

(2) The terms "issue" and "descendants", in subparagraph (1), include adopted children.

**§ 4-1.1 Descent and distribution of a decedent's estate**

The property of a decedent not disposed of by will shall be distributed as provided in this section. In computing said distribution, debts, administration expenses and reasonable funeral expenses shall be deducted but all estate taxes shall be disregarded, except that nothing contained herein relieves a distributee from contributing to all such taxes the amounts apportioned against him or her under 2-1.8. Distribution shall then be as follows:

(a) If a decedent is survived by:

(1) A spouse and issue, fifty thousand dollars and one-half of the residue to the spouse, and the balance thereof to the issue by representation.

- (2) A spouse and no issue, the whole to the spouse.
- (3) Issue and no spouse, the whole to the issue, by representation.
- (4) One or both parents, and no spouse and no issue, the whole to the surviving parent or parents.
- (5) Issue of parents, and no spouse, issue or parent, the whole to the issue of the parents, by representation.
- (6) One or more grandparents or the issue of grandparents (as hereinafter defined), and no spouse, issue, parent or issue of parents, one-half to the surviving paternal grandparent or grandparents, or if neither of them survives the decedent, to their issue, by representation, and the other one-half to the surviving maternal grandparent or grandparents, or if neither of them survives the decedent, to their issue, by representation; provided that if the decedent was not survived by a grandparent or grandparents on one side or by the issue of such grandparents, the whole to the surviving grandparent or grandparents on the other side, or if neither of them survives the decedent, to their issue, by representation, in the same manner as the one-half. For the purposes of this subparagraph, issue of grandparents shall not include issue more remote than grandchildren of such grandparents.
- (7) Great-grandchildren of grandparents, and no spouse, issue, parent, issue of parents, grandparent, children of grandparents or grandchildren of grandparents, one-half to the great-grandchildren of the paternal grandparents, per capita, and the other one-half to the great-grandchildren of the maternal grandparents, per capita; provided that if the decedent was not survived by great-grandchildren of grandparents on one side, the whole to the great-grandchildren of grandparents on the other side, in the same manner as the one-half.
- (b) For all purposes of this section, decedent's relatives of the half blood shall be treated as if they were relatives of the whole blood.
- (c) Distributees of the decedent, conceived before his or her death but born alive thereafter, take as if they were born in his or her lifetime.
- (d) The right of an adopted child to take a distributive share and the right of succession to the estate of an adopted child continue as provided in the domestic relations law.
- (e) A distributive share passing to a surviving spouse under this section is in lieu of any right of dower to which such spouse may be entitled.

**§ 11-2.2 Power to invest**

(a) Investment of trust funds

(1) A fiduciary holding funds for investment may invest the same in such securities as would be acquired by prudent men of discretion and intelligence in such matters who are seeking a reasonable income and preservation of their capital, provided, however, that nothing in this subparagraph shall limit the effect of any will, agreement, court order or other instrument creating or defining the investment powers of a fiduciary, or shall restrict the authority of a court of proper jurisdiction to instruct the fiduciary in the interpretation or administration of the express terms of any will, agreement or other instrument or in the administration of the property under the fiduciary's care. This paragraph shall apply to any investment, made on or after May first, nineteen hundred seventy, of funds held for investment by a fiduciary, and to all estates and trusts now in existence or which may hereafter come into existence.

A bank, trust company or paid professional investment advisor (whether or not registered under any federal securities or investment law) which serves as a fiduciary, and any other fiduciary representing that it has special investment skills shall exercise such diligence in investing the funds for which the fiduciary is responsible, as would customarily be exercised by prudent men of discretion and intelligence having special investment skills. This paragraph shall apply to any investment, made on or after January first, nineteen hundred eighty-six, of the funds held for investment by such a fiduciary and to all estates and trusts now in existence or which may hereafter come into existence.

This subparagraph shall not apply to any investment, made on or after January first, nineteen hundred ninety-five, of funds held for investment by a fiduciary, and to all estates and trusts in existence or which may come into existence on or after January first, nineteen hundred ninety-five.

(2) A trustee or other person holding trust funds may require such personal bonds or guaranties of payment of principal or interest or both, or such other bonds or guaranties, to accompany investments as may seem prudent, and may from time to time adjust, reduce, modify, postpone or compound the same, or any terms and conditions thereof, including the rate of interest, or any installments thereof, and may at any time release the same, and all premiums paid on such guaranties or fees for servicing mortgages may be charged to or paid out of income, provided that such charge or payment is not more than at the rate of one-half of one per centum per annum on the par value of such investments. But no trustee shall purchase securities hereunder from himself.

(3) Whenever a trustee or other person holding trust funds has heretofore lawfully invested or shall hereafter lawfully invest any trust funds in a share or part of a bond and mortgage or any part interest therein or shall hold any such share, part or part interest by apportionment, transfer, representation or otherwise, if the property subject to such mortgage is purchased pursuant to foreclosure sale or acquired by voluntary conveyance by or in behalf of such trustee or other person holding trust funds and another person, including another such trustee, owning another such share, part or part interest in such bond and mortgage, such trustee or other person holding trust funds or a person purchasing or acquiring title in behalf of such trustee may convey the undivided interest in such real property so purchased or acquired to a corporation, formed for the purpose of acquiring such property, in exchange for a proportionate part of the capital stock and the bonds, if any, of such corporation; provided that the other person, by or in whose behalf such property has been purchased or acquired, shall exchange his undivided interest in such property for a proportionate part of the capital stock and the bonds, if any, of such corporation, issued in exchange for such real property.

(4) The corporation formed, as provided in subparagraph (3), for the acquisition of such real property shall be a business corporation, and shall have all the powers of such a corporation, and its stockholders shall have the same power to vote to authorize or confirm any sale, mortgage, lease, option or other disposition of any or all of its property that is ordinarily possessed by shareholders of a business corporation; provided, however, that the certificate of incorporation shall prohibit it from investing in any stocks, bonds or other securities, which are not under the laws of this state a proper subject for the investment of trust funds, and shall provide that upon the sale of the real property acquired by the corporation such corporation shall be dissolved. Such dissolution shall be effectuated by proceedings under article 10 of the business corporation law to be taken promptly after such sale; provided, however, that if any such corporation shall sell real property held by it for a consideration consisting in whole or in part of evidences of indebtedness secured by mortgage upon such real property or shall reacquire such property upon foreclosure of such mortgage, in either of such events, such dissolution proceedings shall not be required to be taken until final liquidation in cash by the corporation of its entire interest in or lien upon such real property.

(5) Nothing contained in this section, however, shall affect any lawful investments in shares, parts or part interests in bonds and mortgages heretofore made by any trustee or other person holding trust funds for investment, nor affect any action heretofore taken in accordance with law with respect to such bonds and mortgages or shares, parts or part interests in such bonds and mortgages. Such trustee or other person holding trust funds for investment shall have all the powers heretofore possessed under this section or any other provision of law with respect to part interests in bonds and mortgages for the protection and preservation of the trust property. It is the intention of this section to prohibit any future investments in part interests in bonds, or notes, and mortgages for any estate or fund, for which such trustee or other person may hold funds for investment.

(6) A fiduciary holding funds for investment who is directed or authorized by an instrument creating the fiduciary relationship to retain the stock of a bank or trust company that is a member of a bank holding company currently fully registered under an act of Congress entitled "Bank Holding Company Act of 1956",<sup>1</sup> as the same may be amended from time to time, shall be considered as being directed or authorized to retain the stock of such bank holding company. Notwithstanding any contrary provision in this section, this subdivision shall apply to any fiduciary relationship now in existence or which may hereafter come into existence and to all investments now held or which may hereafter be acquired in such relationship.

(7) No fiduciary holding funds for investment shall be liable for any loss incurred with respect to any investment not eligible by law for the investment of trust funds, if such ineligible investment was received by such fiduciary pursuant to a decree of court or the terms of the will, deed, or other instrument creating the fiduciary relationship, or if such ineligible investment was eligible when received or when the investment was made by the fiduciary; provided such fiduciary exercises due care and prudence in the disposition or retention of any such ineligible investment.

(8) Investment by a fiduciary in a limited partnership or investment trust, as defined in 9-1.5 of this chapter, shall not be deemed to be an improper delegation of investment authority.

(9) As used in this paragraph, the phrase “person holding trust funds” and the terms “fiduciary” and “trustee” include a personal representative, trustee, guardian, a donee of a power during minority, committee of the property of an incompetent person, and conservator of the property of a conservatee.

(b) Rights of fiduciaries to invest in securities of investment companies.

(1) A fiduciary holding funds for investment may invest the same in securities of any management type investment company or trust registered pursuant to the federal investment company act of nineteen hundred forty, as amended, in any case in which a court order, the will, agreement or other instrument creating or defining the investment powers of the fiduciary authorizes the investment of such funds in either of the following: (A) Such investments as the fiduciary may, in his discretion, select. (B) Generally in investments other than those in which fiduciaries are by law authorized to invest trust funds, notwithstanding that the fiduciary or an affiliate of the fiduciary acts as investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager or provides other services to the investment company or trust. Unless the will, lifetime trust or order appointing the fiduciary provides otherwise, the fiduciary shall elect annually either (i) to receive or have its affiliate receive compensation for providing such services to such investment company or trust for the portion of the trust invested in such investment company or trust or (ii) to take annual corporate trustees' commissions with respect to such portion.

This subparagraph shall not apply to any investment, made on or after January first, nineteen hundred ninety-five, of funds held for investment by a fiduciary, and to all estates and trusts in existence or which may come into existence on or after January first, nineteen hundred ninety-five.

(1-a) In any case in which a court order, will, agreement or other instrument creating or defining the investment powers of the fiduciary directs, requires or authorizes that the funds held for investment be invested in United States government obligations, the fiduciary may invest such funds in securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered pursuant to the federal investment company act of nineteen hundred forty, as amended, provided that the portfolio of such investment company or investment trust is limited to United States government obligations or to repurchase agreements fully collateralized by such obligations and provided further that such investment company or investment trust shall take delivery of such collateral, either directly or through an authorized custodian.

(2) As used in this paragraph, the term “fiduciary” includes a personal representative, trustee, guardian, committee of the property of an incompetent and conservator of the property of a conservatee.

### **§ 11-2.3 Prudent investor act**

(a) Prudent investor rule.

A trustee has a duty to invest and manage property held in a fiduciary capacity in accordance with the prudent investor standard defined by this section, except as otherwise provided by the express terms and provisions of a governing instrument within the limitations set forth by section 11-1.7 of this chapter. This section shall apply to any investment made or held on or after January first, nineteen hundred ninety-five by a trustee.

(b) Prudent investor standard.

(1) The prudent investor rule requires a standard of conduct, not outcome or performance. Compliance with the prudent investor rule is determined in light of facts and circumstances prevailing at the time of the decision or action of a trustee. A trustee is not liable to a beneficiary to the extent that the trustee acted in substantial compliance with the prudent investor standard or in reasonable reliance on the express terms and provisions of the governing instrument.

(2) A trustee shall exercise reasonable care, skill and caution to make and implement investment and management decisions as a prudent investor would for the entire portfolio, taking into account the purposes and terms and provisions of the governing instrument.

(3) The prudent investor standard requires a trustee:

(A) to pursue an overall investment strategy to enable the trustee to make appropriate present and future distributions to or for the benefit of the beneficiaries under the governing instrument, in accordance with risk and return objectives reasonably suited to the entire portfolio;

(B) to consider, to the extent relevant to the decision or action, the size of the portfolio, the nature and estimated duration of the fiduciary relationship, the liquidity and distribution requirements of the governing instrument, general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of investment decisions or strategies and of distributions of income and principal, the role that each investment or course of action plays within the overall portfolio, the expected total return of the portfolio (including both income and appreciation of capital), and the needs of beneficiaries (to the extent reasonably known to the trustee) for present and future distributions authorized or required by the governing instrument;

(C) to diversify assets unless the trustee reasonably determines that it is in the interests of the beneficiaries not to diversify, taking into account the purposes and terms and provisions of the governing instrument; and

(D) within a reasonable time after the creation of the fiduciary relationship, to determine whether to retain or dispose of initial assets.

(4) The prudent investor standard authorizes a trustee:

(A) to invest in any type of investment consistent with the requirements of this paragraph, since no particular investment is inherently prudent or imprudent for purposes of the prudent investor standard;

(B) to consider related trusts, the income and resources of beneficiaries to the extent reasonably known to the trustee, and also an asset's special relationship or value to some or all of the beneficiaries if consistent with the trustee's duty of impartiality;

(C) to delegate investment and management functions if consistent with the duty to exercise skill, including special investment skills; and

(D) to incur costs only to the extent they are appropriate and reasonable in relation to the purposes of the governing instrument, the assets held by the trustee and the skills of the trustee.

(5) Trustee's power to adjust.

(A) Where the rules in article 11-A apply to a trust and the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, the prudent investor standard also authorizes the trustee to adjust between principal and income to the extent the trustee considers advisable to enable the trustee to make appropriate present and future distributions in accordance with clause (b)(3)(A) if the trustee determines, in light of its investment decisions, the consideration factors incorporated in clause (b)(5)(B), and the accounting income expected to be produced by applying the rules in article 11-A, that such an adjustment would be fair and reasonable to all of the beneficiaries.

(B) In deciding whether and to what extent to exercise the power conferred by clause (b)(5)(A), a trustee may consider, in addition to the factors stated in clauses (b)(3)(B) and (b)(4)(B), the following factors to the extent relevant:

(i) the intent of the settlor, as expressed in the governing instrument; the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

(ii) the net amount allocated to income under article 11-A and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available; and

(iii) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income.

(C) A trustee may not make an adjustment:

(i) with respect to a charitable remainder unitrust described in section 664 of the United States internal revenue code of 1986;

(ii) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust's assets;

(iii) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless the income therefrom is also permanently devoted to charitable purposes;

(iv) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(v) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(vi) if the trustee is a current beneficiary or a presumptive remainderman of the trust;

(vii) if the trustee is not a current beneficiary or a presumptive remainderman, but the adjustment would benefit the trustee directly or indirectly (which, however, shall not include the possible effect on a trustee's commission); or

(viii) if the trust is an irrevocable lifetime trust which provides income to be paid for life to the grantor, and possessing or exercising the power to make an adjustment would cause any public benefit program to consider the adjusted principal or income to be an available resource or available income and the principal or income or both would in each case not be considered as an available resource or income if the trustee did not possess the power to make an adjustment;

(D) An adjustment otherwise prohibited by items (b)(5)(C)(i) through (viii) may be made if the terms of the trust, by express reference to this section, provide otherwise. If item (b)(5)(C)(iv), (v), (vi) or (vii) applies to a trustee and there is more than one trustee, the trustee or trustees to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is prohibited by the terms of the trust. If there is no trustee qualified to make the adjustment, it may be made if so directed by the court upon application of the trustee or of an interested party.

(E) A trustee may release the entire power conferred by clause (b)(5)(A) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in items (b)(5)(C)(i) through (vi) or (b)(5)(C)(viii) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in clause (b)(5)(C). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(F) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income are not contrary to this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by clause (b)(5)(A).

(6) Special investment skills.

For a bank, trust company or paid professional investment advisor (whether or not registered under any federal securities or investment law) which serves as a trustee, and any other trustee representing that such trustee has special investment skills, the exercise of skill contemplated by the prudent investor standard shall require the trustee to exercise such diligence in investing and managing assets as would customarily be exercised by prudent investors of discretion and intelligence having special investment skills.

(c) Delegation of investment or management functions.

(1) Delegation of an investment or management function requires a trustee to exercise care, skill and caution in:

(A) selecting a delegee suitable to exercise the delegated function, taking into account the nature and value of the assets subject to such delegation and the expertise of the delegee;

(B) establishing the scope and terms of the delegation consistent with the purposes of the governing instrument;

(C) periodically reviewing the delegee's exercise of the delegated function and compliance with the scope and terms of the delegation; and

(D) controlling the overall cost by reason of the delegation.

(2) The delegee has a duty to the trustee and to the trust to comply with the scope and terms of the delegation and to exercise the delegated function with reasonable care, skill and caution. An attempted exoneration of the delegee from liability for failure to meet such duty is contrary to public policy and void.

(3) By accepting the delegation of a trustee's function from the trustee of a trust that is subject to the law of New York, the delegee submits to the jurisdiction of the courts of New York even if a delegation agreement provides otherwise, and the delegee may be made a party to any proceeding in such courts that places in issue the decisions or actions of the delegee.

(d) Investment in securities of related investment companies.

A trustee holding funds for investment may invest the same in securities of any management type investment company or trust registered pursuant to the federal investment company act of nineteen hundred forty, as amended, notwithstanding that the trustee or an affiliate of the trustee acts as investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager or provides other services to the investment company or trust. Unless the will, lifetime trust or order appointing the trustee provides otherwise, the trustee shall elect annually either (i) to receive or have its affiliate receive compensation for providing such services to such investment company or trust for the portion of the trust invested in such investment company or trust or (ii) to take annual corporate trustees' commissions with respect to such portion.

(e) As used in this section:

(1) the term “trustee” includes a personal representative, trustee, guardian, donee of a power during minority, guardian under article eighty-one of the mental hygiene law, committee of the property of an incompetent person, and conservator of the property of a conservatee, but does not include an institutional fund as defined in section 551 of the not-for-profit corporation law;

(2) the term “trust” includes any fiduciary entity with property owned by a trustee as defined in this section;

(3) the term “governing instrument” includes a court order; and

(4) the term “portfolio” includes all property of every kind and character held by a trustee as defined in this section.

#### STATE FINANCE LAW

##### **§ 97-r. State cemetery vandalism restoration, monument repair or removal and administration fund**

1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the state cemetery vandalism restoration, monument repair or removal and administration fund.

2. Such fund shall consist of all revenues received from the assessment pursuant to paragraph (h) of section fifteen hundred seven of the not-for-profit corporation law and all other moneys credited or transferred thereto from any other fund or source pursuant to law.

3. Moneys of the fund may be expended for the purposes provided in subparagraph three of paragraph (h) of section fifteen hundred seven of the not-for-profit corporation law according to the requirements of such paragraph (h). Moneys shall be paid out of the fund on the audit and warrant of the state comptroller on vouchers certified or approved by the secretary of state.

4. The fund shall be held within the business and licensing services account as established in section ninety-seven-y of this article.

#### GENERAL MUNICIPAL LAW

##### **§ 162. Conveyance by unincorporated cemetery association to city, town or village**

An unincorporated cemetery association may convey and transfer its real property held for burial purposes, together with its other assets, to a city having a population of less than one million inhabitants in which such real property is located, or to a village, provided such real property is located within such village or wholly within three miles of the boundaries thereof, or to a town, in which such real property is located, if all the directors and trustees of such association living and residing in the state unite in the conveyance and transfer. Such conveyance and transfer shall be subject to all agreements as to lots sold and all trusts, restrictions and conditions upon the title or use of such real property and assets. Lots previously sold and grants previously made for burial purposes shall not be affected by such conveyance, nor shall any grave, monument or other erection or any monuments be disturbed or removed except in accordance with law. No such conveyance shall be effective unless and until the legislative body of such city, town or village shall by ordinance or local law or resolution accept the same subject to the conditions and restrictions hereinabove imposed, which ordinance or local law or resolution said legislative body is hereby authorized and empowered to adopt by a majority vote of such body. Upon such conveyance and transfer such property shall be and become a municipal cemetery of such city, town or village and such property and assets so conveyed and transferred shall be administered as any other municipal cemetery of such city, town or village and the said cemetery association shall be dissolved by the recording of such conveyance and transfer.

##### **§ 164. Abandonment of cemeteries in cities of less than one million**

Upon a verified petition presented to a judge of a court of record by the common council of any city of less than one million, the judge to whom said verified petition was presented shall make an order to show cause, returnable before him at a time and place within the county in not less than twenty days from the date of presentation of said petition, why the remains of any deceased person buried in potters field, or in any neglected or abandoned cemeteries in which no deceased person shall have been interred within twenty years, should not be removed to and reinterred in a properly kept incorporated cemetery in the same city or in a town or city adjoining the city in which the remains of each deceased

person or persons are buried, or in lands owned by said city for cemetery purposes, and to fix the amount of expenses for such removal and reinterment and the order to show cause shall provide for its publication in a newspaper, to be designated in the order, which is published nearest to the cemetery from which the removal is to be made, once in each week for two successive weeks. The verified petition presented to the judge shall show that the petitioner is the common council of the city in which said cemetery is located and (1) the name of the deceased person or persons whose remains are sought to be removed, if known; (2) the name and location of the cemetery in which he is interred and from which removal is asked to be made; (3) the name and the location of the incorporated cemetery to which the remains are desired to be removed and reinterred; (4) the facts showing the reasons for such removal. Upon the return day of the order to show cause and at the time and place fixed in said order, upon filing proof of publication of the order to show cause with the judge, if no objection is made thereto, he shall make an order directing the removal of the remains of said deceased person or persons to the cemetery designated in the petition within the city or within a town or city adjoining said city in which the remains are then buried and shall specify in the order the amount of the expenses of such removal, which expenses of removal and reinterment, including the expense of the proceeding under this section, shall be a charge upon the city in which the cemetery is situated from which the removal is made and such expenses shall be a city charge and audited and paid in the same manner as other charges. On or after the removal and reinterment of the remains of any deceased person or persons, the expenses for annual care of the grave in the cemetery to which the removal is made shall be annually provided by the city in which the remains were originally buried at a rate not to exceed fifty cents per grave, and shall be paid annually to the incorporated cemetery association to which the remains of each deceased person may be removed or reinterred unless said remains have been removed to lands owned by said city for cemetery purposes, in which case such payment shall be made under the provisions of the city ordinance providing for the care and upkeep of said cemetery lands owned by said city. Any city owning a lot or lots in a cemetery maintained by an incorporated cemetery association in which the remains of the deceased persons have been or may be buried pursuant to this section, however, may pay such association an amount sufficient to provide perpetual care therefor. The petition and order shall be filed in the county clerk's office of the county in which the remains of the deceased person were originally interred, and the service of a certified copy of the final order upon the cemetery association shall be made prior to any removal. Any relatives of the deceased person or the officer of any cemetery association in which the remains of deceased person were originally interred may oppose the granting of said order and the judge shall summarily hear the statement of the parties and make such order as the justice and equity of the application shall require. Any headstone or monument which marks the grave of the deceased person shall be removed and reset at the grave in the cemetery to which the removal is permitted to be made and in each case the final order shall provide the amount of expenses of such removals and reinterment and resetting of the headstones or monument, including the expenses for the proceedings under this section; except that where provision is otherwise made for the purchase or erection of a new headstone, monument or marker at the grave in the cemetery to which said removal is permitted, such old headstone or monument need not be so removed and reset in which case the final order shall not provide for the expense of resetting. The order shall designate the person or persons having charge of the removals or reinterments. Upon completion of the removal, reinterment or resetting the headstones or monuments, the person or persons having charge of same shall make a verified report of the removal, reinterment, and resetting of the headstone or monument and file the report in the clerk's office of the proper county.

After said bodies shall have been removed and reinterred in the manner prescribed by said order, said lands in which such deceased persons were originally interred shall be available for and subject to such uses for city purposes as the common council of such city may determine and may be conveyed or otherwise disposed of in the same manner as other city lands.

**§ 165. Maintenance and cleanup of abandoned cemeteries**

1. Any municipal corporation is hereby authorized and empowered to establish volunteer cemetery maintenance and cleanup programs to maintain and cleanup abandoned cemeteries wholly contained within such municipal corporation for which such municipal corporation has the primary responsibility to provide care.
2. The cemetery division of the department of state is hereby authorized and directed to assist any municipal corporation in the organization, implementation and administration of a volunteer cemetery maintenance and cleanup program at the request of such municipal corporation. The department of state is hereby authorized and directed to promulgate rules and regulations setting forth the manner and form of such assistance and request.

3. No municipal corporation which establishes a volunteer cemetery maintenance and cleanup program shall be liable for any damages sustained by any person participating and no cause of action for such damages shall be adjudicated by any court in this state which would otherwise have jurisdiction to adjudicate such claim.

4. Any municipal corporation which establishes a volunteer cemetery maintenance and cleanup program shall provide written notice of the provisions of subdivision three of this section to each person participating in such program.

**§ 165-a. Voluntary municipal assistance to public cemetery corporations**

Any municipal corporation may appropriate and provide funding to a public cemetery corporation as defined in article fifteen of the not-for-profit corporation law. In lieu of or in addition to providing funding to a public cemetery corporation, any municipal corporation may provide goods and/or services to a public cemetery corporation as defined in article fifteen of the not-for-profit corporation law.

**§ 166. Cemetery and funeral home combinations**

1. No municipal corporation shall, directly or indirectly:

- (a) sell, or have, enter into or perform a lease of any of its real property dedicated to cemetery purposes or adjacent thereto to a funeral entity, or use any of its property for location of a funeral entity;
- (b) commingle funds used for cemetery purposes with a funeral entity;
- (c) direct or carry on its cemetery related business or affairs with a funeral entity;
- (d) authorize control of its cemetery related business or affairs by a funeral entity;
- (e) engage in any sale or cross-marketing of goods or services with a funeral entity;
- (f) have, enter into or perform a management or service contract for cemetery operations with a funeral entity; or
- (g) have, enter into or perform a management contract with any entity other than a not-for-profit or religious corporation, or governmental entity.

2. Only the provisions of paragraphs (a) and (b) of subdivision one of this section shall apply to municipal corporations with thirty acres or less of real property dedicated to cemetery purposes, and only to the extent the sale or lease is of real property dedicated to cemetery purposes, and such cemeteries shall not engage in the sale of funeral home goods or services, except if such goods and services are otherwise permitted to be sold by cemeteries.

3. For the purposes of this section, “funeral entity” means a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services, or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or any officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

**COUNTY LAW**

**§ 222. Cemeteries**

1. The board of supervisors may acquire by condemnation, purchase, gift or devise burial plots outside a city or village within the county, for the burial of indigent persons. Such burial plots shall be under the general care and supervision of the county commissioner of public welfare.

2. a. The board of supervisors or county legislature may, by the affirmative vote of two-thirds of the total membership of the board, acquire by condemnation, purchase, gift or devise lands outside a city or village within the county and establish and maintain a county cemetery for the burial of members of the armed forces of the United States. Remains of the members of the armed forces of the United States, heretofore or hereafter dying may be interred in such county cemetery or may be removed from other cemeteries or burial plots and be interred in such county cemetery as authorized by law. The county cemetery shall be under the general care and supervision of such officer or employee of the county or other person as the board of supervisors may direct.

b. Any member of the armed forces of the United States, who was a resident of Rockland county at the time of his induction into the armed forces of the United States, killed in action may be buried in such county cemetery, entirely at

county expense, at the option of the next of kin. The board of supervisors or county legislature may adopt rules or regulations governing the cost, procedure for interment and rights of the next of kin.

3. Any such county cemetery or burial plot may be designated by name and adequate maintenance, perpetual care, ornamentation and markers provided. The board of supervisors may adopt rules governing interments and the rights of distributees, not inconsistent with law.

4. A portion or block of lots may be purchased in an existing incorporated cemetery association within the county for such purposes and title shall be taken in the name of the county. Subject to such conditions and restrictions as may be imposed by the incorporated cemetery association, adequate maintenance, perpetual care, ornamentation and markers may be provided.

5. Burial plots for the indigent shall be kept separate and apart from plots for the burial of members of the armed forces of the United States; and no member of the armed forces shall be interred in the same part of the cemetery as indigents.

5-a. The board of supervisors of any county may, by the affirmative vote of two-thirds of the total membership of the board, provide for the perpetual care, upkeep and maintenance of any cemetery located within the county if such cemetery is abandoned or not controlled by an existing board or body and for the care of which there exists no special fund or endowment and the expense thereof may be appropriated from funds in the county treasury not otherwise appropriated. The board of supervisors may also provide that any such cemetery shall be under the general care and supervision of such officer or employee of the county as the board of supervisors may direct.

6. Nothing herein shall be deemed to affect, impair or supersede any other general or special law authorizing a county to establish and maintain cemeteries.

7. (a) No county shall, directly or indirectly:

(i) sell, or have, enter into or perform a lease of any of its real property dedicated to cemetery purposes or adjacent thereto to a funeral entity, or use any of its property for location of a funeral entity;

(ii) commingle funds used for cemetery purposes with a funeral entity;

(iii) direct or carry on its cemetery related business or affairs with a funeral entity;

(iv) authorize control of its cemetery related business or affairs by a funeral entity;

(v) engage in any sale or cross-marketing of goods or services with a funeral entity;

(vi) have, enter into or perform a management or service contract for cemetery operations with a funeral entity; or

(vii) have, enter into or perform a management contract with any entity other than a not-for-profit or religious corporation, or governmental entity.

(b) Only the provisions of subparagraphs (i) and (ii) of paragraph (a) of this subdivision shall apply to counties with thirty acres or less of real property dedicated to cemetery purposes, and only to the extent the sale or lease is of real property dedicated to cemetery purposes, and such cemeteries shall not engage in the sale of funeral home goods or services, except if such goods and services are otherwise permitted to be sold by cemeteries.

(c) For the purposes of this subdivision, "funeral entity" means a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services, or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or any officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

## TOWN LAW

### § 291. Burial grounds

1. The title to every lot or piece of land which shall have been used by the inhabitants of any town in this state as a cemetery or burial ground for the space of fourteen years shall be deemed to be vested in such town, and shall be subject in the same manner as other corporate property of towns, to the government and direction of the town board. In any town the town board may adopt regulations for the proper care of any such cemetery and burial ground and regulating the

burial of the dead therein. It shall be the duty of the town board to remove the grass and weeds from any such cemetery or burial ground in any such town at least three times in each year, and to erect and maintain suitable fences around such cemetery or burial ground. The town board of any town must also provide for the removal of grass and weeds at least twice in each year from any cemetery or burial ground, by whomsoever owned, in such town, where such control is not vested by other provisions of law in the town or in trustees or other corporate body, and provide for the preservation, care and fencing of any such cemetery and the town board of any town must also provide for the removal of grass and weeds from all cemeteries, other than private burial grounds, which are abandoned or not controlled by any existing board or body and for the care of which there exists no special fund or endowment and such duties shall be performed under the supervision of the town board, or a person whom the town board may designate; provided, however, that such duties shall not be exercised in respect to any private ground or particular lot or lots therein after the true owner or owners thereof file written objections thereto with the town clerk. The cost and expenses of any officer or person in performing any duties under or pursuant to the provisions of this section shall be a town charge, and the town board shall appropriate and provide annually the moneys necessary for carrying out the provisions of this section, and make the same available for the proper officer or persons by whom the moneys are required to be expended. The town board may also receive and execute any trust for the care of any cemetery which the town is required to care for pursuant to the provisions of this section and to receive and execute any trust for the care of lots in any such cemetery.

2. Burial grounds and cemeteries of which the title is vested in or the care or control is charged upon any town, by virtue of this section, shall not be taxed or assessed for any local improvement or other purpose whatsoever by any village, and no action shall be maintained against any town to recover the cost of any local improvement or municipal charge, based on town ownership or care of such burial grounds, the provisions of any special, local or general statute whatsoever to the contrary notwithstanding.

3. Upon the adoption of a resolution therefor, the town board may construct and maintain permanent improvements in any one or more of the classes of cemeteries described herein and may acquire, by purchase or condemnation, additional lands for cemetery or burial ground purposes, whenever in the judgment of the town board it is necessary or advisable that such improvements be made or additional lands be acquired. If the expenditure for such improvements or acquisition is in excess of one thousand five hundred dollars and is to be paid by taxes levied for the fiscal year in which such expenditure is to be made, or paid from the proceeds of town obligations, the adoption of any such resolution or resolutions shall be subject to a permissive referendum. The improvements so made or the lands so acquired shall be used only for the purposes authorized by this article but such cemeteries or burial grounds so improved or enlarged shall not be subject to conveyance or transfer pursuant to section two hundred ninety-two of this article. The expense of such improvements and/or the acquiring of such lands may be financed in the manner provided in article fifteen of this chapter for the financing of general improvements.

4. Notwithstanding any other provision of law, upon the adoption of a resolution therefor, the town board of the town of Southampton may transfer title to the cemetery vested in such town, located at the corner of Madison street and Latham street and bearing Suffolk county tax map identification number 473609-3-4-27, to the village of Sag Harbor, provided, however, that such transfer shall be made only upon the adoption of a resolution by the board of trustees of the village of Sag Harbor, requesting the town of Southampton to make such transfer.

**§ 292. Transfer of burial grounds to cemetery corporation**

Any town may convey and transfer its right, title and interest in any burial grounds within the limits of and belonging to the town, or belonging to the town and individual lot owners, to a cemetery corporation authorized to hold and maintain property within the town for cemetery purposes, organized or to be organized under the membership corporations law. The deed of conveyance shall be executed by the supervisor, after the town board shall have authorized such conveyance.

**§ 292-a. Cemetery and funeral home combinations**

1. No town shall, directly or indirectly:

(a) sell, or have, enter into or perform a lease of any of its real property dedicated to cemetery purposes or adjacent thereto to a funeral entity, or use any of its property for location of a funeral entity;

(b) commingle funds used for cemetery purposes with a funeral entity;

- (c) direct or carry on its cemetery related business or affairs with a funeral entity;
- (d) authorize control of its cemetery related business or affairs by a funeral entity;
- (e) engage in any sale or cross-marketing of goods or services with a funeral entity;
- (f) have, enter into or perform a management or service contract for cemetery operations with a funeral entity; or
- (g) have, enter into or perform a management contract with any entity other than a not-for-profit or religious corporation, or governmental entity.

2. Only the provisions of paragraphs (a) and (b) of subdivision one of this section shall apply to towns with thirty acres or less of real property dedicated to cemetery purposes, and only to the extent the sale or lease is of real property dedicated to cemetery purposes, and such cemeteries shall not engage in the sale of funeral home goods or services, except if such goods and services are otherwise permitted to be sold by cemeteries.

3. For the purposes of this section, "funeral entity" means a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services, or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or any officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

**§ 296. Abandonment of cemeteries**

Upon a verified petition presented to a judge of a court of record by any supervisor of any town in this state, the judge to whom said verified petition is presented shall make an order to show cause, returnable before him at a time and place within the county in not less than twenty days from the date of presentation of said petition, why the remains of any deceased person buried in potter's field, or in any neglected or abandoned cemeteries in which no deceased person shall have been interred within twenty years, should not be removed to and reinterred in a properly kept incorporated cemetery in the same town or in a town or city adjoining the town in which the remains of each deceased person or persons are buried, and to fix the amount of expenses for such removal and reinterment, and the order to show cause shall provide for its publication in a newspaper, to be designated in the order, which is published nearest to the cemetery from which the removal is to be made, once in each week for two successive weeks. The verified petition presented to the judge shall show that the petitioner is a supervisor of the town in which said cemetery is located and (1) the name of the deceased person or persons whose remains are sought to be removed, if known; (2) the name and location of the cemetery in which he is interred and from which removal is asked to be made; (3) the name and location of the incorporated cemetery to which the remains are desired to be removed and reinterred; (4) the facts showing the reasons for such removal. Upon the return day of the order to show cause and at the time and place fixed in said order, upon filing proof of publication of the order to show cause with the judge, if no objection is made thereto, he shall make an order directing the removal of the remains of said deceased person or persons to the cemetery designated in the petition within the town or city or within a town adjoining the town or city in which the remains are then buried and shall specify in the order the amount of the expenses of such removal, which expenses of removal and reinterment, including the expense of the proceeding under this section, shall be a charge upon the town in which the cemetery is situated from which the removal is made and such expenses shall be a town charge and audited by the town board and paid in the same manner as other town charges. On and after the removal and reinterment of the remains of any deceased person or persons, the expenses for annual care of the grave in the cemetery to which the removal is made shall be annually provided by the town in which the remains were originally buried at a rate not to exceed twenty dollars per grave, and shall be paid annually to the incorporated cemetery association to which the remains of each deceased person may be removed or reinterred. Any town owning a lot or lots in a cemetery maintained by an incorporated cemetery association in which the remains of deceased persons have been or may be buried pursuant to this section, however, may pay such association an amount sufficient to provide perpetual care therefor. The petition and order shall be filed in the county clerk's office of the county in which the remains of the deceased person were originally interred, and the service of a certified copy of the final order upon the cemetery association shall be made prior to any removal. Any relative of the deceased person or the officer of any cemetery association in which the remains of the deceased person were originally interred may oppose the granting of said order and the judge shall summarily hear the statement of the parties and make such order as the justice and equity of the application shall require. Any headstone or monument which marks the grave of the deceased person shall be removed and reset at the grave in the cemetery in which the removal is permitted to be made and in each case the final order shall provide the amount of the expenses of such removals and reinterment and

resetting of the headstone or monument, including the expenses of the proceedings under this section; except that where provision is otherwise made for the purchase or erection of a new headstone, monument or marker at the grave in the cemetery to which such removal is permitted, such old headstone or monument need not be so removed and reset, in which case such final order shall not provide for the expense of resetting. The order shall designate the person or persons having charge of the removals and reinterments. Upon completion of the removal, reinterment and resetting of the headstones or monuments, the person or persons having charge of the same shall make a verified report of the removal, reinterment and resetting of the headstone or monument and file the report in the clerk's office of the proper county.

After said bodies shall have been removed and reinterred in the manner prescribed by said order, said lands in which such deceased persons were originally interred shall be available for and subject to such uses for town purposes as the town board of such town may determine and may be conveyed or otherwise disposed of in the same manner as other town lands.

## **VILLAGE LAW**

### **§ 15-1500 Acquisition of lands for cemeteries**

The board of cemetery commissioners of a village may, in behalf of the village, accept by gift, grant or devise thereto, land for one or more village cemeteries within the village, or wholly within five miles of the boundaries thereof. The board of trustees may, by unanimous vote, adopt a resolution to purchase for such purpose, any lands so located, which resolution must specify the maximum amount to be paid therefor and the mode of raising such amount; provided, however, that if the lands to be purchased are within the village and are to be used for park purposes such resolution may be adopted by majority vote. If the resolution be adopted, the board of cemetery commissioners may purchase such lands accordingly, or if unable to agree with the owners for the purchase thereof, may acquire the title thereto pursuant to the provisions of the eminent domain procedure law. All lands acquired by gift, grant, devise or purchase for a village cemetery shall be a part of the territory of the village, and upon the acquisition of same, a map and description thereof shall be filed in the office of the village clerk and if located outside of the village, in the office of the secretary of state.

### **§ 15-1510 Cemetery and funeral home combinations**

1. No village shall, directly or indirectly:

- (a) sell, or have, enter into or perform a lease of any of its real property dedicated to cemetery purposes or adjacent thereto to a funeral entity, or use any of its property for location of a funeral entity;
- (b) commingle funds used for cemetery purposes with a funeral entity;
- (c) direct or carry on its cemetery related business or affairs with a funeral entity;
- (d) authorize control of its cemetery related business or affairs by a funeral entity;
- (e) engage in any sale or cross-marketing of goods or services with a funeral entity;
- (f) have, enter into or perform a management or service contract for cemetery operations with a funeral entity; or
- (g) have, enter into or perform a management contract with any entity other than a not-for-profit or religious corporation, or governmental entity.

2. Only the provisions of paragraphs (a) and (b) of subdivision one of this section shall apply to villages with thirty acres or less of real property dedicated to cemetery purposes, and only to the extent the sale or lease is of real property dedicated to cemetery purposes, and such cemeteries shall not engage in the sale of funeral home goods or services, except if such goods and services are otherwise permitted to be sold by cemeteries.

3. For the purposes of this section, "funeral entity" means a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services, or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or any officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

## RELIGIOUS CORPORATIONS LAW

### § 2. Definitions (excerpt)

The term “funeral entity” means a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services, or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or an officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

### § 7. Acquisition of property by religious corporations for cemetery purposes; management thereof

A religious corporation may take and hold, by purchase, grant, gift or devise, real property for the purposes of a cemetery; or such lot or lots in any cemetery connected with it, as may be conveyed or devised to it, with or without provisions limiting interments therein to particular persons or classes of persons; and may take and hold any property granted, given, devised or bequeathed to it in trust to apply the same or the income or proceeds thereof, under the direction of the trustees of the corporation, for the improvement or embellishment of such cemetery or any lot therein, including the erection, repair, preservation or removal of tombs, monuments, gravestones, fences, railings or other erections, or the planting or cultivation of trees, shrubs, plants, or flowers in or around any such cemetery or cemetery lots.

A religious corporation may erect upon any property held by it for cemetery purposes, a suitable building for religious services for the burial of the dead, or for the use of the keepers or other persons employed in connection therewith, and may sell and convey lots in such cemetery for burial purposes, subject to such conditions and restrictions as may be imposed by the instrument by which the same was acquired, or by the rules and regulations adopted by such corporation. Every such conveyance of a lot or plat for burial purposes, signed, sealed and acknowledged in the same manner as a deed to be recorded, may be recorded in like manner and with like effect as a deed of real property.

Notwithstanding the provisions of section four hundred fifty-one of the real property law or any other provision of law to the contrary, a religious corporation that prior to January first, nineteen hundred eighty-four received a special permit from the zoning board of appeals for the use of certain real property as a cemetery and which actually used such real property for cemetery purposes, may use such real property for cemetery purposes without the consent of the county legislative body for the county in which such real property is situated.

No religious corporation owning, managing or controlling a cemetery shall, directly or indirectly:

- (a) sell, or have, enter into or perform a lease of any of its real property dedicated to cemetery purposes or adjacent thereto to a funeral entity, or use any of its property for locating a funeral entity;
- (b) commingle its funds with a funeral entity;
- (c) direct or carry on its cemetery related business or affairs with a funeral entity;
- (d) authorize control of its cemetery related business or affairs by a funeral entity;
- (e) engage in any sale or cross-marketing of goods or services with a funeral entity;
- (f) have, enter into or perform a management or service contract for cemetery operations with a funeral entity; or
- (g) have, enter into or perform a management contract with any entity other than a not-for-profit cemetery or religious corporation.

Only the provisions of subparagraphs (a) and (b) of the previous paragraph shall apply to religious corporations with thirty acres or less of real property dedicated to cemetery purposes, and only to the extent the sale or lease is of real property dedicated to cemetery purposes, and such cemeteries shall not engage in the sale of funeral home goods or services, except if such goods and services are otherwise permitted to be sold by cemeteries.

### § 7-a. Deeds for cemetery purposes; presumption

Every deed of conveyance of real property to a religious corporation used for cemetery purposes, whether heretofore or hereafter recorded, shall be presumptive evidence that the conveyance vested in the grantee and its successors a fee simple absolute in the premises therein described, subject to the limitations and conditions therein prescribed, and that all proceedings prior thereto, including the consent of the court, if required, were regular and in accordance with all the

provisions of law relating thereto. At the expiration of twenty years from the date of record of any such conveyance, heretofore or hereafter recorded, such presumption shall be conclusive.

**§ 8. Lot owners' rights**

Lots in such cemeteries shall be held indivisible, and upon the decease of a proprietor of such lot the title thereto shall descend to his heirs-at-law or devisees, subject, however, to the following limitations and conditions: If he leaves a widow and children, they shall have in common the possession, care and control of such lot during her life. If he leaves a widow and no children, she shall have the possession, care and control of such lot during her life. If he leaves children and no widow, they, or the survivor of them, shall in common have the possession, care and control of such lot during the life of the survivor of them. The parties having such possession, care and control of such lot during the term thereof, may erect a monument and make other permanent improvements thereon. The widow shall have the right of interment, for her own body in such lot, or in a tomb in such lot and a right to have her body remain permanently interred or entombed therein, except that her body may be removed therefrom to some other family lot or tomb with the consent of her heirs. At any time when more than one person is entitled to the possession, care or control of such lot, the persons so entitled thereto shall designate in writing to the religious corporation which of their number shall represent the lot, and on their failure to designate, the board of trustees or directors of the corporation shall enter of record which of said parties shall represent the lot, while such failure continues. The widow may at any time release her right in such lot, but no conveyance or devise by any other person shall deprive her of such right.

**§ 9. Removal of human remains from one cemetery of a religious corporation to another cemetery owned by it**

A religious corporation, notwithstanding the restrictions contained in any conveyance or devise to it, may remove the human remains buried in a cemetery owned by it, or when such church corporation is situated within or outside of a city in the grounds surrounding the church belonging to such corporation, to another cemetery owned by it, or to a plot or lot acquired by it in any other cemetery located in the same county, or in any town adjoining the town or city in which the cemetery wherein such human remains are buried is located, if the trustees thereof so determine, and if either three-fourths of the members of such corporation, qualified to vote at its corporate meetings, sign and acknowledge and cause to be recorded in the office of the clerk of the county in which such cemetery or a part thereof is situated, a written consent thereto, or if approval thereof be given by the vote of three-fourths of those members of such corporation qualified to vote, who shall be present and vote thereon, at a corporate meeting of such corporation, specially called for that purpose, a quorum of at least eight qualified voters being present. Provided, however, that in lieu of such removal by such religious corporation it shall be lawful for the surviving spouse or any heir of any decedent, upon obtaining permission of the county court of the county, or of the supreme court in the district, where the cemetery from which the removal is proposed, is situated, at his own expense to cause the removal of such remains and tombstones, monuments or other erections and the reinterment of such remains and the replacement of such tombstones, monuments or other erections in some other cemetery selected by the applicant, the notice of which application for permission to be given in the manner and to those designated by the court. But if such corporation be a church, previous notice of the object of such meeting shall be published once each week for at least four successive weeks in a newspaper of the town, village or city in which the cemetery from which the removal is proposed, is situated, or if no newspaper is published therein, then in a newspaper designated by the county judge of such county. Such removal shall be made in an appropriate manner and in accordance with such directions as to the manner thereof, as may be given by the board of health of the town, village or city in which the cemetery from which the removal is made, is situated. All tombstones, monuments or other erections at or upon any grave from which any remains are removed, shall be properly replaced or raised at the grave where the remains are reinterred. Such religious corporation may, in its discretion, erect one or more tombstones, monuments or other suitable markers appropriately inscribed as a memorial for all those decedents whose remains shall not be found for removal and reinterment, but the said religious corporation shall make a certificate setting forth an exact copy of all inscriptions on each tombstone, monument, or other erection which shall not be replaced or raised because of failure to find remains for removal and reinterment, and shall file the same in the cemetery office or in the office of the town or city clerk of the town or city in which the cemetery from which removal is proposed, is situated; all tombstones, monuments or other erections not so replaced or raised shall be disposed of by such religious corporation as it shall determine and such certificate, in addition to such inscriptions, shall state the disposition so made.

## GENERAL OBLIGATIONS LAW

### **§ 3-112. Liability of parents and legal guardians having custody of an infant for certain damages caused by such infant**

1. The parent or legal guardian, other than the state, a local social services department or a foster parent, of an infant over ten and less than eighteen years of age, shall be liable to any public officer, organization or authority, having by law the care and/or custody of any public property of the state or of any political subdivision thereof, or to any private individual or organization having by law the care, custody and/or ownership of any private property, for damages caused by such infant, where such infant has willfully, maliciously, or unlawfully damaged, defaced or destroyed such public or private property, whether real or personal, or, where such infant, with intent to deprive the owner and/or custodian of such property or to appropriate the same to himself or herself or to a third person, has knowingly entered or remained in a building and has wrongfully taken, obtained or withheld such public or private personal property from such building which personal property is owned or maintained by the state or any political subdivision thereof or which is owned or maintained by any individual, organization or authority, or where such infant has falsely reported an incident or placed a false bomb as defined in section 240.50, subdivision one or two of section 240.55, section 240.60 or section 240.61 of the penal law. Such public officer, organization or authority, or private individual or organization, as the case may be, may bring an action for civil damages in a court of competent jurisdiction for a judgment to recover such damages from such parent or legal guardian other than the state or a local social services department or a foster parent. For the purposes of this subdivision, damages for falsely reporting an incident or placing a false bomb shall mean the funds reasonably expended by a victim in responding to such false report, as set forth in subdivision eleven of section 60.27 of the penal law. In no event shall such damages portion of a judgment authorized by this section, as described in this subdivision, exceed the sum of five thousand dollars.

2. Notwithstanding the provisions of subdivision one of this section, prior to the entering of a judgment under this section in the sum total of five hundred dollars or more, the court shall provide such parent or legal guardian of such infant with an opportunity to make an application to the court based upon such parent's or legal guardian's financial inability to pay any portion or all of the amount of such sum total which is in excess of five hundred dollars, and upon the return date of such application, or any adjournment thereof, the court shall, in summary fashion, hear and consider all evidence of financial hardship presented tending to establish the inability of such parent or legal guardian to pay any or all of the amount of the sum total in excess of five hundred dollars, and the court shall render its decision as to such party's inability to make such payment based upon a preponderance of the evidence presented. Upon a decision that such party has established his or her inability to make such payment, the court shall enter the judgment authorized by this section but in an amount within the financial capacity of such parent or legal guardian, provided, however, that since the original of the sum total exceeded five hundred dollars, no such judgment shall be entered for an amount which is less than five hundred dollars.

3. It shall be a defense to an action brought under this section that restitution has been paid pursuant to section seven hundred fifty-eight-a or 353.6 of the family court act, or paragraph (g) of subdivision two of section 65.10 of the penal law. It shall also be a defense to an action brought under this section that such infant had voluntarily and without good cause abandoned the home of the parent or guardian and without good cause refused to submit to the guidance and control of the parent or guardian prior to and at the time of the occurrence of such damages or destruction. In no event shall it be a defense that the parent or legal guardian has exercised due diligent supervision over the activities of such infant, provided, however, that in the interests of justice, the court may consider mitigating circumstances that bear directly upon the actions of the parent or legal guardian in supervising such unemancipated infant.

4. For the purposes of this section the following definitions shall apply:

a. The terms "enters or remains unlawfully" and "building" shall have the same meaning as ascribed to such terms in section 140.00 of the penal law.

b. "Public officer, organization or authority" shall include but not be limited to: those having by law the care and custody of a municipal district or corporation; those having by law the care and custody of the public property of the state or of any agency, department, board, bureau, commission, division, office, council, committee of the state, or of a public benefit corporation or public authority; and the board of education or trustees of any city, union free or common school district or the city board of any New York City community school district.

c. "Private individual or organization" shall include, but not be limited to: any individual, private or public corporation or partnership or sole proprietorship, organized church, synagogue or temple, not-for-profit organization or corporation, cemetery corporation, or, if such liability is as a result of damage upon any cemetery plot or mausoleum, the next of kin of a person upon whose gravesite such damage or destruction occurred.

#### **PENAL LAW**

##### **§ 145.22 Cemetery desecration in the second degree**

A person is guilty of cemetery desecration in the second degree when: (a) with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he damages any real or personal property maintained as a cemetery plot, grave, burial place or other place of interment of human remains; or

(b) with intent to steal personal property, he steals personal property which is located at a cemetery plot, grave, burial place or other place of interment of human remains and which property is owned by the person or organization which maintains or owns such place or the estate, next-of-kin or representatives of the deceased person interred there.

Cemetery desecration in the second degree is a class A misdemeanor.

**§ 145.23 Cemetery desecration in the first degree**

A person is guilty of cemetery desecration in the first degree when with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he:

- (a) damages any real or personal property maintained as a cemetery plot, grave, burial place or other place of interment of human remains in an amount exceeding two hundred fifty dollars; or
- (b) with intent to steal personal property, he steals personal property, the value of which exceeds two hundred fifty dollars, which is located at a cemetery plot, grave, burial place or other place of interment of human remains and which property is owned by the person or organization which maintains or owns such place or the estate, next-of-kin or representatives of the deceased person interred there; or
- (c) commits the crime of cemetery desecration in the second degree as defined in section 145.22 of this article and has been previously convicted of the crime of cemetery desecration in the second degree within the preceding five years.

Cemetery desecration in the first degree is a class E felony.

**§ 145.26 Aggravated cemetery desecration in the second degree**

A person is guilty of aggravated cemetery desecration in the second degree when, having no right to do so nor any reasonable ground to believe that he or she has such right, he or she opens a casket, crypt, or similar vessel containing a human body or human remains which has been buried or otherwise interred in a cemetery and unlawfully removes therefrom a body, bodily part, any human remains or any object contained in such casket, crypt or similar vessel for the purpose of obtaining unlawful possession of such body, bodily part, human remains or object for such person or a third person.

Aggravated cemetery desecration in the second degree is a class E felony.

**§ 145.27 Aggravated cemetery desecration in the first degree**

A person is guilty of aggravated cemetery desecration in the first degree when such person commits the crime of aggravated cemetery desecration in the second degree and has been previously convicted within the past five years of the crime of cemetery desecration in the second degree as defined in section 145.22 of this article, cemetery desecration in the first degree as defined in section 145.23 of this article or aggravated cemetery desecration in the second degree as defined in section 145.26 of this article.

Aggravated cemetery desecration in the first degree is a class D felony.

**§ 60.29 Authorized disposition; cemetery desecration**

When a person is convicted of an offense defined in section 145.22 or 145.23 of this chapter or of an attempt to commit such an offense, and the sentence imposed by the court for such conviction includes a sentence of probation or conditional discharge, such sentence shall, where appropriate, be in accordance with paragraph (h) of subdivision two of section 65.10 of this article as such section relates to cemetery crime.

**§ 65.10 Conditions of probation and of conditional discharge (excerpt)**

1. In general. The conditions of probation and of conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

2. Conditions relating to conduct and rehabilitation. When imposing a sentence of probation or of conditional discharge, the court shall, as a condition of the sentence, consider restitution or reparation and may, as a condition of the sentence, require that the defendant:

(h) Perform services for a public or not-for-profit corporation, association, institution or agency, including but not limited to services for the division of substance abuse services, services in an appropriate community program for removal of graffiti from public or private property, including any property damaged in the underlying offense, or services for the maintenance and repair of real or personal property maintained as a cemetery plot, grave, burial place or other place of interment of human remains. Provided however, that the performance of any such services shall not result in the displacement of employed workers or in the impairment of existing contracts for services, nor shall the performance of any such services be required or permitted in any establishment involved in any labor strike or lockout. The court may establish provisions for the early termination of a sentence of probation or conditional discharge pursuant to the provisions of subdivision three of section 410.90 of the criminal procedure law after such services have been completed. Such sentence may only be imposed upon conviction of a misdemeanor, violation, or class D or class E felony, or a youthful offender finding replacing any such conviction, where the defendant has consented to the amount and conditions of such service;

**§ 80.00 Fine for felony (excerpt)**

7. When the court imposes a fine pursuant to section 145.22 or 145.23 of this chapter, the court shall direct that no less than ten percent of such fine be credited to the state cemetery vandalism restoration and administration fund created pursuant to section ninety-seven-r of the state finance law.

## 19 NYCRR

### PART 200 RULES OF PROCEDURE OF STATE CEMETERY BOARD

(Statutory authority:Not-for-Profit Corporation Law, §§1401[zz] [1], 1504[c])

#### § 200.1. Administration

- (a) The Not-for-Profit Corporation Law may be cited herein as N-PCL.
- (b) The Division of Cemeteries of the Department of State may be referred to as the division.
- (c) The Director of the Division of Cemeteries of the Department of State may be referred to as the director.
- (d) For purposes of administration and reporting requirements, cemeteries shall be classified as follows:
  - (1) The term small cemetery corporation means any cemetery corporation which had, at the end of the preceding calendar year, less than \$1,000,000 in total financial assets.
  - (2) The term medium cemetery corporation means any cemetery corporation which had, at the end of the preceding calendar year, at least \$1,000,000 but less than \$10,000,000 in total financial assets and which had under \$1,000,000 in total receipts in the preceding calendar year.
  - (3) The term large cemetery corporation means:
    - (i) any cemetery corporation which had, at the end of the preceding calendar year, \$10,000,000 or more in total financial assets; or
    - (ii) any cemetery corporation which had \$1,000,000 or more in total receipts in the preceding calendar year.
  - (4) The term non-traditional cemetery corporation means any cemetery corporation which does not offer and has not in the past offered full body ground burials. A non-traditional cemetery corporation is excluded from the terms small, medium and large cemetery corporation.
- (e) The term total financial assets includes all general funds, permanent maintenance funds, perpetual care funds, special trust funds and other funds under the control of the cemetery, including both restricted and unrestricted funds, regardless of the form in which they are held.

#### § 200.2. Applications for orders or determinations

- (a) All applications required to be made to the Cemetery Board for orders or determinations, except applications for approval of rates and charges or for authority to issue certificates of indebtedness, pursuant to sections 1509(a)-(e) and 1511(a) of the Not-for-Profit Corporation Law, shall be determined and the orders made by the director in the first instance.
- (b) A party aggrieved, by an order or determination so made by the director, may file a protest with the Cemetery Board within 30 days after the effective date of such order or determination.
- (c) If a protest be not filed with the Cemetery Board within 30 days after the effective date of the order or determination made by the director, said order or determination shall be considered the final order or determination of the Cemetery Board unless (1) the time to file a protest is, for good cause, extended by the Cemetery Board, or (2) the Cemetery Board, within 60 days after the effective date of the order or determination made by the director, shall upon its own action make an order or determination modifying, amending, supplementing or rescinding the order or determination of the director.
- (d) The protest shall specify the objections to the subject order or determination. The board, in passing upon the protest, will consider only those objections so specified and may afford a hearing or limit the protestant to the filing of affidavits or memoranda.
- (e) The filing and determination of a protest to the Cemetery Board shall be a prerequisite to obtaining judicial review of any order or determination made by the director under section 200.1 of this Part.

(f) Any protest not acted upon by the Cemetery Board within 60 days after the filing thereof shall be deemed to be denied in all respects.

(g) The director shall make a determination in respect of such matters as are authorized to be made by him under subdivision (a) of this section, within six months after the application is submitted to him in complete form. Should the director require additional information, time to render his decision is extended by the time required for the cemetery to comply with such request.

(h)

(1) A party aggrieved by an order or determination of the Cemetery Board, made pursuant to sections 1509(a)-(e) and 1511(a) of the Not-for-Profit Corporation Law, may file a protest with the Cemetery Board within 30 days after the effective date of such order or determination.

(2) The time to file a protest may be extended by the Cemetery Board for good cause shown, but solely in the discretion of the board.

(3) The protest shall specify the objections to the order or determination. The protest may include a request for a hearing, in which event the board shall grant a hearing to be held within a reasonable time thereafter.

(4) After formal proof is introduced at such a hearing by the party aggrieved, then at the request of such party, the official data and calculations on which the board's order or determination was based shall be made available to the applicant.

(5) At least 10 days' written notice of the time and place of a hearing shall be given by the Cemetery Board to the applicant requesting the same at its principal place of business. Such applicant may be represented by counsel at such hearing. The Cemetery Board or any member of the board, or deputy or other person duly authorized by the board, may hold and conduct such hearing, and shall have the power to administer oaths and take testimony.

(6) Hearings shall be held at such place or places as the board may designate.

(7) A full record of the proceedings of every hearing shall be taken. Such record, together with the recommendations of the hearing officer, if the hearing is not conducted by the board, shall be referred as soon as practicable to the board for review and decision, all of which shall be deemed a part of such record. The cost of the stenographic record of such hearing shall be borne by the applicant.

(8) Within a reasonable time after the conclusion of a hearing held pursuant to this section, the board shall make its final order or determination in the matter. A copy thereof shall be mailed to the applicant and to its counsel, if any.

(i) An application made to the Cemetery Board pursuant to section 1509(a)-(e) of the Not-for-Profit Corporation Law shall be determined by the board within six months after the application is submitted in complete form, except that should the board request additional information, the time to render its decision is extended by the time required for a cemetery to comply with such request.

### **§ 200.3. Filing of financial reports by cemeteries**

(a) Every cemetery corporation shall file an annual financial report with the division within 90 days following the close of the cemetery's fiscal year. The annual report shall be filed or submitted in the form and manner prescribed by the division, whether by mail, electronically, or otherwise.

(b) The annual report shall be signed by at least two officers or directors of the cemetery corporation, shall include a completed division financial report, DOS-415, and shall include any Federal Form 990 filed by the cemetery for the preceding calendar or fiscal year. The Form 990 shall be filed or submitted in the manner prescribed by the division, whether by mail, electronically or otherwise.

(c) In addition, every medium, large and non-traditional cemetery corporation and any cemetery directed to do so pursuant to section 200.4(d) of this Part shall also file a CPA financial report.

**§ 200.4. CPA financial reports**

(a) Every medium cemetery corporation shall file a CPA financial review with the division within 90 days following the close of the cemetery's fiscal year. The review shall be conducted by an independent certified public accountant or an independent enrolled public accountant. It shall be supplemented by the following data:

- (1) a description of the extent of the physical examination of the cash and investments;
- (2) a statement concerning the internal controls for safeguarding the cash and investments;
- (3) a statement concerning compliance with N-PCL section 1507(c) and (d) indicating whether separate accounts are maintained for each perpetual care endowment, reflecting the principal amount, the income apportioned for the year, the cost of care charged for the year, and the excess of income credited to such account to be used in future years;
- (4) a statement concerning the accountability for the permanent maintenance fund, indicating whether the cemetery's records separately identify cumulative principal reflecting allocations from the proceeds of the sales of lots and from supplemental sources, cumulative capital gains or losses from investments, and the retained income available for the maintenance and preservation of the cemetery; and
- (5) a statement concerning the accountability for the perpetual care fund, indicating whether the cemetery's records separately identify cumulative principal for endowment, cumulative capital gains or losses, and the cumulative income retained for use in future years.

(b) Every large and non-traditional cemetery corporation shall file a CPA financial audit with the division within 90 days following the close of the cemetery's fiscal year. The audit shall be conducted by an independent certified public accountant or an independent enrolled public accountant expressing an opinion in connection with the financial statement filed with the division. The opinion shall be supplemented by the following data if applicable to the filing cemetery:

- (1) a description of the extent of the physical examination of the cash and investments;
- (2) a statement concerning the internal controls for safeguarding the cash and investments;
- (3) a statement concerning compliance with N-PCL section 1507(c) and (d) indicating whether separate accounts are maintained for each perpetual care endowment reflecting the principal amount, the income apportioned for the year, the cost of care charged for the year, and the excess of income credited to such account to be used in future years;
- (4) a statement concerning the accountability for the permanent maintenance fund, indicating whether the cemetery's records separately identify cumulative principal reflecting allocations from the proceeds of the sales of lots and from supplemental sources, cumulative capital gains or losses from investments, and the retained income available for the maintenance and preservation of the cemetery; and
- (5) a statement concerning the accountability for the perpetual care fund, indicating whether the cemetery's records separately identify cumulative principal for endowment, cumulative capital gains or losses, and the cumulative income retained for use in future years.

(c) For any non-traditional cemetery, the opinion shall also be supplemented by the following data if applicable to the filing cemetery:

- (1) a statement indicating whether funds, accounts, assets, and liabilities of the cemetery corporation are kept separate and distinct from the funds, accounts, assets, and liabilities of any related for-profit entity;
- (2) a statement indicating whether the income and expenses of the cemetery corporation are kept separate and distinct from the income and expenses of any related for-profit entity; and
- (3) a statement indicating whether any transaction between the cemetery corporation and any related for-profit entity are arm's length, fair and reasonable.

(d) The division may, upon application by a medium or large cemetery, modify the reporting requirements for such cemetery if the cemetery demonstrates to the satisfaction of the division that the requirements of this section and the cost

of compliance are onerous and unreasonable and may, upon evidence of possible financial irregularity or non-compliance, order a small or medium cemetery to comply with the requirements of subdivision (b) of this section.

**§ 200.5. Additional information and reports**

Nothing herein limits or impairs the power and authority of the cemetery board pursuant to N-PCL section 1508(b) and other provisions of Article 15 of the N-PCL.

**§ 200.6. Commercial crime insurance coverage**

(a) Every cemetery corporation shall carry commercial crime insurance or similar insurance coverage for the acts or omissions of cemetery directors, officers, and employees as well as volunteers who handle money, accounts or securities for the cemetery.

(b) The annual financial report filed with the division shall set forth the amount of commercial crime coverage, the classes of persons included, the name of the carrier/issuer, the policy number, and the expiration date of coverage.

(c) The amount of coverage required is \$15,000 or 10 percent of total financial assets, whichever is greater, up to a maximum of \$500,000. Notwithstanding the foregoing:

(1) the division may, at its discretion, order a cemetery to obtain commercial crime coverage in excess of \$500,000 if it determines that an increase in coverage is appropriate and that such coverage is readily available in the marketplace. A cemetery subject to such order may file a protest with the Cemetery Board pursuant to section 200.2(b) of this Part; and

(2) Upon application as prescribed by the division showing good cause for such relief, a cemetery may request that the division reduce, waive or modify the requirements under this section. Good cause may include proof that the cemetery is unable to obtain commercial crime insurance or similar coverage despite diligent effort, or that the cost of such coverage at the level required by this section is onerous and unreasonable.

**§ 200.7. Location of offices**

(a) The principal office of the State Cemetery Board is located at 123 William Street, New York, NY 10038-3804.

(b) All communications, papers, maps or copies thereof, reports or documents shall be addressed to or filed in the principal office of the State Cemetery Board unless otherwise directed by the division.

(c) Orders by the State Cemetery Board may be filed in its principal office or its Albany, New York branch.

(d) There are branch offices at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001; State Office Building, 207 Genesee Street, Utica, NY 13501-3744; Hughes State Office Building, 333 E. Washington Street, Syracuse, NY 13202-1418; 44 Hawley Street, Bing-hampton NY 13901 and 65 Court Street, Buffalo, NY 14202-3471.

**Section 200.8. Repealed**

**§ 200.9. Application for extension of time**

An application for extension of time within which to file any annual or periodic report with the State Cemetery Board or the division shall be filed before the expiration of the period prescribed and shall set forth in detail:

(a) the effort made by the applicant to prepare such report; and

(b) the further period of time required to file such report.

**§ 200.10. Serving of notices by Cemetery Board or division**

Unless otherwise specified by statute, all notices or other papers shall be served by the State Cemetery Board or the division upon a cemetery corporation in person or by mail. When any party is represented by an attorney, service upon such attorney shall be deemed service upon the party.

**§ 200.11. State cemetery vandalism restoration, monument repair or removal and administration fund**

(a) Definitions.

(1) Vandalism means the willful or malicious destruction or defacement of property in a cemetery, including, but not limited to, the toppling of memorial stones, damage to crypts, niches, grave sites, monuments and memorials.

(2) Abandoned cemetery means a cemetery maintained by a municipality pursuant to law, including but not limited to one maintained by a town pursuant to Town Law, section 291 or by a county pursuant to County Law, section 222(5-a), which cemetery was previously owned by a cemetery corporation organized pursuant to the Not-for-Profit Corporation Law or existing by virtue of the Membership Corporation Law, for which there no longer exists any corporate board or body to maintain it, and for which there is no sufficient trust fund or endowment to provide ordinary and necessary care and maintenance.

(3) Municipality means a city, county, town or village.

(4) Maintenance means the ordinary and necessary care of a cemetery, including the removal of grass and weeds, and the preservation, care and fencing of a cemetery, and also including the care of crypts, niches, grave sites and monuments and memorials paid for by means of the general fund or special fund or the income applied from the permanent maintenance fund, perpetual care fund, monument maintenance fund, general fund, or a special fund.

(5) Qualifying damage means damage caused by an act or acts of vandalism that cannot be repaired by means of regular maintenance.

(6) Fund means the fund created by Not-for-Profit Corporation Law, section 1507(h) and State Finance Law, section 97-r.

(b) Payment of contributions. On or before March 15th of each year, every cemetery or crematory that has performed an interment or cremation during the preceding calendar year shall submit a check drawn to the order of the Department of State in the total amount of monies collected during said period toward payment to the fund. Such check shall be accompanied by a statement signed by a cemetery officer certifying the number of interments or cremations and the amount transmitted. The contribution shall be \$5 per interment or cremation. No contribution shall be collected upon the interment of the remains of a deceased person where a contribution was collected upon cremation.

(c) Initial report of vandalism. Within 30 days of the discovery of a qualifying act of vandalism, the cemetery shall:

(1) report such act to the Division of Cemeteries either verbally or in writing; and

(2) in the event that damage was done to a crypt, niche, grave site, monument or memorial, provide written notice to the lot owner or next of kin, if the identity and whereabouts of such individual is reasonably ascertainable. Such notice shall include a brief description of the damaged property and a request for funds for its repair. The notice shall also advise the lot owner or next of kin to seek insurance benefits that may be available pursuant to a homeowner's insurance policy. A copy of such notice shall be maintained by the cemetery.

(d) Application for payment for repair of vandalism damage.

(1) The completed application shall be submitted within six months of the date of discovery of the act of vandalism.

(2) A cemetery may, for good cause and within the above-described time period, request a definite extension of time to file a vandalism application. Such request shall be in writing and state the reasons therefor, including the date by which it is anticipated that the application will be filed.

(3) The application shall include the following:

(i) a description of the qualifying damage, photographs, and the date that the report of damage was filed with the Division of Cemeteries;

(ii) a copy of such other reports filed in accordance with law;

(iii) a copy of bids submitted by at least two contractors for the cost of repairs; and

(iv) a notarized statement signed by a cemetery officer that the cemetery has no available funds which it is authorized to use for the purpose of the repair; that it has not been able to obtain sufficient funds from the family of the deceased (include copies of letters or newspaper advertisements); and that the proposed costs of the repairs are fair and reasonable.

(4) Within 90 days of receipt of a complete application, the Cemetery Board shall make a determination, based upon the following factors:

- (i) whether there is qualifying damage;
  - (ii) severity of the damage;
  - (iii) whether the vandalism is part of a wave of vandalism;
  - (iv) emotional distress to visiting families;
  - (v) appropriateness of prior use of payments from the fund;
  - (vi) compliance with Not-for-Profit Corporation Law, article 15 and Cemetery Board rules and regulations;
  - (vii) priority of application based upon previous allocations; and
  - (viii) availability of monies within the fund.
- (e) Use of disbursements for vandalism.

(1) The cemetery must apply all disbursements made by the Cemetery Board to the repair of the vandalized property described in the vandalism application.

(2) Any funds remaining after the repairs have been performed must be returned to the Cemetery Board for redeposit into the vandalism fund.

(f) Final report. Within 90 days of its receipt of disbursements, the cemetery shall make a report to the Cemetery Board setting forth the repairs made and by whom, the amount of funds expended, and the amount of funds to be returned to the Cemetery Board, if any. If the repairs have not been completed, the reason therefor shall be set forth, and the anticipated date for a subsequent, final report shall be disclosed. Such report and any additional report shall be sworn by a cemetery officer.

(g) Application for maintenance of abandoned cemeteries.

(1) An application for reimbursement for the fair and reasonable expenses for maintenance may be made on behalf of an abandoned cemetery by the municipality in charge of the maintenance of such cemetery. Such application shall include:

- (i) a certification from the municipality of the current status of the cemetery with respect to abandonment; the funds of the cemetery and the investment income therefrom; donations, if any; whether the cemetery currently sells lots or graves or performs interments or cremations, and if so, the annual number and the total revenue;
- (ii) the proposed amount and purpose of the disbursement; and
- (iii) the contribution of the municipality and others, if any, with respect to the maintenance of the cemetery.

(2) Within 60 days of receipt of a complete application, the Cemetery Board shall make a determination, based upon the following:

- (i) severity of conditions;
- (ii) when applicable, appropriateness of use of prior payments from the fund;
- (iii) compliance with New York State Law affecting cemeteries;
- (iv) priority of application based upon previous applications; and
- (v) availability of monies within the Fund.

(3) The Cemetery Board shall apply the following guidelines in authorizing a disbursement for the maintenance of an abandoned cemetery:

- (i) moneys disbursed shall be used exclusively for the purpose of maintenance of an abandoned cemetery;

- (ii) the costs of labor and equipment rental or lease for a one time clean-up may be authorized;
  - (iii) equipment purchases that are essential for the maintenance of an abandoned cemetery may be authorized, provided that disbursements for equipment purchases may not exceed the price offered by the Office of General Services for the same or similar equipment pursuant to section 163 of the State Finance Law;
  - (iv) where equipment is purchased by a municipality for episodic maintenance of an abandoned cemetery, the pro-rated share of the purchase costs attributable to cemetery use may be considered for reimbursement;
  - (v) labor costs associated with future cemetery care, preservation and maintenance that are the legal obligation of a municipality may not be reimbursed;
  - (vi) moneys disbursed may not be used to pay for the cost of the ongoing operation of an abandoned cemetery.
- (h) Use of disbursements by a municipality.
- (1) The municipality must apply all disbursements made by the Cemetery Board to the maintenance of the cemetery as described in the order of the Cemetery Board authorizing a disbursement.
  - (2) Any funds remaining after the maintenance has been performed must be returned to the Cemetery Board for redeposit into the fund.
  - (3) Within 90 days of its receipt of disbursements, the municipality shall make a report to the Cemetery Board setting forth details of the maintenance and clean-up undertaken, equipment purchased, and the amount of funds, if any, to be redeposited in the fund. If the maintenance and clean-up have not been completed, or the equipment requested has not been purchased, the reasons therefor shall be set forth, and the anticipated date for a subsequent, final report shall be disclosed.
- (i) Application for repair or removal of dilapidated or disrepaired monuments that create a dangerous condition.
- (1) An application for payment by the fund for the repair or removal of monuments or other markers not owned by the cemetery corporation that have become dilapidated or are in disrepair so as to create a dangerous condition shall include the following:
    - (i) a description of the damaged monuments or markers, including photographs, and a statement that the monuments or markers are so badly out of repair or dilapidated as to create a dangerous condition;
    - (ii) a copy of bids submitted by at least two contractors for the cost of repairs, or removal and replacement;
    - (iii) proof that the cemetery corporation has given not less than 60 days notice to the last known owner to repair or remove the monument or other marker and that said owner has failed to do so within the time prescribed in said notice. Such notice shall be addressed to the last known owner or owners and to all persons having or claiming an interest in or to the burial lot on which the monument or marker is located. In the event that the last known owner or owners cannot be found, proof that notice was given by publishing the same once each week for three consecutive weeks in a newspaper published or circulated in the county in which the cemetery is located. The notice shall be effective on the date of mailing such notice by registered or certified mail, or the date of the third publication in the newspaper; and
    - (iv) a notarized statement signed by a cemetery corporation officer that the cemetery corporation has not been able to obtain sufficient funds from the family of the deceased (include copies of letters or newspaper advertisements); and that the proposed costs of the repairs or removals and replacements are fair and reasonable.
  - (2) Within 90 days of receipt of a complete application, the Cemetery Board shall make a determination, based upon the following factors:
    - (i) whether the monuments or markers are so badly out of repair or dilapidated as to create a dangerous condition;
    - (ii) whether due notice has been given to the last known owner to repair or remove the monument or other marker and the said owner has failed to do so within the time prescribed in said notice;
    - (iii) danger to visiting families;

- (iv) appropriateness of prior use of payments from the fund;
  - (v) compliance with Not-for-Profit Corporation Law, article 15 and Cemetery Board rules and regulations;
  - (vi) priority of application based upon previous allocations; and
  - (vii) availability of monies within the fund.
- (j) Use of disbursements for repair or removal of dilapidated or disrepaired monuments that create a dangerous condition.
- (1) The cemetery corporation must apply all disbursements made by the Cemetery Board to the repair or removal and replacement of monuments or other markers as described in the application.
- (2) Any funds remaining after the repairs or removals and replacements have been performed must be returned to the Cemetery Board for redeposit into the fund.
- (k) Final report. Within 90 days of its receipt of disbursements, the cemetery corporation shall make a report to the Cemetery Board setting forth the repairs or removals and replacements made and by whom, the amount of funds expended, and the amount of funds to be returned to the Cemetery Board, if any. If any monuments or other markers have been removed, the report shall include a statement that they have been replaced with a flush bronze or granite marker suitably inscribed if replacement is appropriate for identification purposes. If the repairs and removals have not been completed, the reason therefor shall be set forth, and the anticipated date for a subsequent, final report shall be disclosed. Such report and any additional report shall be sworn by a cemetery corporation officer.

## **PART 201. CEMETERY OPERATIONS**

(Statutory authority: Not-for-Profit Corporation Law, § 1504[c])

### **§ 201.1. Offer of resale of cemetery lots to cemetery corporations**

(a) Where the lot sought to be sold is improved, as by a mausoleum, the Cemetery Board will, there being no objectionable factors, grant approval of the resale upon proof that the cemetery corporation has refused to repurchase the lot, in accordance with the provisions of section 1513(c) of the Not-for-Profit Corporation Law, together with the sound value of the improvement thereon.

Section 201.2. Sale of lots or graves purchased prior to September 1, 1949 for purpose of resale

(a) The Cemetery Board will approve resale of a lot or grave owned by persons, firms or corporations engaged in the business or practice of funeral directing pursuant to article 34 of the Public Health Law prior to September 1, 1949, there being no objectionable factors, upon proof that the cemetery corporation has refused to repurchase the same as provided in section 1513(c) of the Not-for-Profit Corporation Law provided that:

- (1) the resale be made only for immediate use and not in advance of need, except for the sale of a reserve grave for a spouse if purchased at the same time as the grave purchased for immediate use;
- (2) the price shall be as closely equivalent as possible to the price posted and filed by the cemetery corporation for a comparable lot or grave;
- (3) the seller shall pay to the cemetery corporation wherein the lot or grave is located within five days of the signed agreement, a sum equivalent to 25 percent of the gross resale price, which sum shall thereupon be deposited by the cemetery corporation into its permanent and current maintenance funds as established by and subject to the provisions of section 1507(a) of the Not-for-Profit Corporation Law, as follows: not less than 25 percent into the statutory funds.

### **§ 201.3. Burial in a path or walk**

The cemetery board authorizes the director to approve an interment in a path, alley, avenue or walk, under a conveyance made prior to September 1, 1949, where, in the opinion of the director, there will remain reasonable access to other lots, plots and graves.

### **§ 201.4. Foreign cemetery corporations**

The certificate of authority for a foreign corporation to do business in this State in the selling or offering for sale of cemetery lots, plots or parts thereof, located within this State, cannot be issued without the prior approval of the Cemetery Board. The Cemetery Board will approve a certificate of authority of a foreign corporation only upon condition that the foreign corporation is and shall be in compliance with the provisions of N-PCL article 15.

### **§ 201.5. Repealed**

### **§ 201.6. Sale of outer containers**

(a) A cemetery corporation may not compel the use of any particular outer enclosure, except that a cemetery may require the use of a concrete burial vault, or, at the option of the customer, a concrete grave liner under the following conditions and restrictions:

- (1) the customer must have purchased a lot after January 1, 1985;
- (2) the requirement must be stated prominently in writing and a written statement must be given to the customer in advance of the signing of the agreement to purchase a grave or lot;
- (3) only a concrete grave liner or a concrete burial vault of the type and grade which conforms to the following minimum specifications may be required:

(i) concrete burial vault

--1 1/2" average sidewall

--2" top

--2" bottom (whether top seal or plate of air seal)

--4,500 pounds per square inch

--Sealed

(ii) concrete grave liner

--1 1/2" average top and bottom

--1" sidewall

--minimum of two holes in or near bottom to allow discharge of water

--4,500 pounds per square inch

--not sealed

(4) should a lot owner, a person with burial rights or a representative of one about to be interred express objection to the use of the required concrete burial vault or grave liner at the time of interment based upon a religious belief, the cemetery must, without question, cancel the requirement that a concrete vault or concrete grave liner be used; provided, however, that the cemetery may impose at the time of interment a reasonable fee for the periodic refilling of the grave after receiving approval of the Cemetery Board for that fee;

(5) a plot owner may purchase the prescribed grave liner from any source including the cemetery; and

(6) a cemetery may not sell burial vaults.

**§ 201.7. Posting of sign at cemetery**

(a) Every cemetery corporation shall post in its main office a notice that provides the following in no less than 20-point type:

(Name of Cemetery)

is regulated by the

New York State Cemetery Board

(Phone number of nearest office of NYS

Division of Cemeteries, or hotline)

If the cemetery corporation does not have a main office on or adjacent to the cemetery premises that is open during regular business hours at least five days per week, it shall post such notice at the main entrance to the cemetery in no less than 40-point type. Such notice shall also include the name, title and office telephone number of the superintendent or other person with primary responsibility for the operation of the cemetery.

(b) The sign shall be legible, in the English language and in any other language deemed appropriate by the cemetery corporation, and posted in a conspicuous, unobstructed location that is readily visible to a visitor to the cemetery corporation's main office or to a person who approaches the cemetery's main entrance.

**§ 201.8. Availability for interment on six-day basis**

Every cemetery corporation shall be available for interments at least six days per week (legal holidays excluded) as set forth in the cemetery's regulations or in accordance with its practices, except as otherwise ordered by the Cemetery Board. Any cemetery which maintains and designates a burial section for persons of a particular religious belief must remain available for grave openings and interments Sunday through Friday or other six-day period in accordance with the religious and/or ethnic traditions of the persons interred in said religious section. Nothing herein shall require a cemetery to provide grave openings and/or interments if they are otherwise unable to do so as a direct consequence of severe weather conditions or other similar conditions.

**§ 201.9. Maintenance of maps and directional signs**

(a) Every cemetery shall erect, exhibit, keep and maintain maps delineating lots, plots, roads, avenues, paths, alleys, and walks by their respective names or designations.

(b) Every cemetery shall supply readable copies of such maps, or pertinent sections thereof without charge, to all interested persons. Plot owners shall be advised, in writing, of the availability of the maps.

(c) Every cemetery shall maintain appropriate identifying and directional signs at each and every intersection of the roads, avenues, paths, alleys and walks in the cemetery; said signs shall be made of weatherproof material and unobstructed, clear and legible. Where a cemetery has denominated subdivisions or sections by name, letter or other convenient identification, the boundaries of each said section or subdivision shall be likewise so identified. This subdivision shall not apply to cemeteries at which a full view of the whole area of its developed grounds is within sight of the main entrance.

**§ 201.10. Community or public mausoleums and columbariums**

A cemetery may not sell or assign burial rights, crypts or niches to a person or persons who will not use these plots or crypts directly. A group of persons not related by family ties may not purchase land from the cemetery for the purpose of erecting a public mausoleum or columbarium under contract with an operator. Only a cemetery may undertake to construct and own a public mausoleum or columbarium.

**§ 201.11. Procedure for approval for construction of a mausoleum**

(a) A cemetery corporation planning construction of a mausoleum or columbarium for at least 60 days prior to the actual commitment for construction, shall submit to the Cemetery Board the following information:

1. Whether the proposed construction has the approval of the corporation's lot owners, obtained at a special or regular meeting. If not, a description of the authorization or approval obtained. A copy of the minutes of the meeting of the lot owners or board of trustees, or of the resolution, shall be included.

2. (A) The name of the licensed architect or engineer and the estimated total costs of construction, including land to be appropriated, landscaping, embellishments and other features.

(B) A map or sketch indicating the location of the building, together with a general description including the number of crypts and niches.

(C) Whether the proposed construction is the complete structure or whether units are to be added later. If future units are contemplated, the extent of such commitment or plan.

3. The source of funds to pay for the construction and the terms of payment.

4. An estimate of the trust funds and the current maintenance funds required to maintain and preserve the facility, covering the year-to-year maintenance and long-term preservation.

5. An estimate of the cumulative total revenues from sales based on the projected selling prices.

6. A full disclosure to the extent outstanding certificates of indebtedness or land shares are to participate in the sales proceeds.

7. The projected disposition of the total estimated sales revenues, including but not limited to the amounts to be allocated for:

- (A) permanent maintenance and current maintenance funds;
- (B) supplemental trust or special fund;
- (C) estimated selling expenses, including disclosure of promotional plans;
- (D) recovery of construction costs;
- (E) general fund use or retention; and
- (F) building operation.

8. (A) A copy of the drawing required by paragraph (B) of this subdivision along with an indication of the location of the proposed building, and a statement that the notices required by such paragraph have been posted in accordance with its provisions.

(B) In addition to its submission to the Cemetery Board, the cemetery corporation shall, no earlier than 10 days prior to such submission, post mausoleum construction notices in the immediate proximity of the proposed mausoleum, the cemetery office and, in a manner so as not to violate local zoning ordinances or to create a traffic hazard, all entrances. Each mausoleum construction notice shall provide information written in plain English concerning the mausoleum proposed and include a drawing, which shall be an appropriately apt rendition designed to give a fair impression of the construction. In addition, such notices shall reveal the telephone number and address where comments may be received and the last date on which such comments will be accepted, which shall be no earlier than 60 days following the date the notices are posted. The provisions of this paragraph shall not apply to the construction of an addition to an existing mausoleum if the number of crypts to be added does not exceed 250 spaces.

(b) Prior to offering sale of space to the public, the cemetery corporation shall file with the Cemetery Board the prices for each type or category of entombment unit pursuant to N-PCL section 1513(b). A copy of the rules and regulations, filed and approved pursuant to N-PCL section 1509, setting forth the cemetery's and the lot owner's obligations and responsibilities, shall be furnished to a purchaser at the time the sales contract is signed.

(c) All charges for services to be rendered and the basis for such charges must be approved by the Cemetery Board, before implementation, pursuant to N-PCL section 1509(c)(1). If existing service charges are intended to be applied to mausoleum entombments, specific approval will be required prior to their becoming effective for such new services.

**§ 201.12. Holiday burials**

(a) In the case of requests for burial on those days which by union contract, or by established operating policy, are decreed "holidays", each request for burial on such days which is received at the office of the cemetery by 9 a.m. of said holiday shall be complied with by such cemetery, except as may be impossible by reason of the physical condition of the gravesite or the unavailability of grave digging personnel.

(b) The cemetery shall make any and all arrangements necessary to receive said requests and, upon receipt of such request, the cemetery shall immediately make any and all necessary arrangements to comply therewith. It shall, no later than 10:30 a.m. of said holiday, advise the funeral director, the family of the deceased and the person who made such request (if neither a member of the family nor the funeral director) of its ability to comply therewith and fixing the time of burial. In the event that the cemetery is unable to comply with said request, it shall so advise said persons orally and by letter setting forth the reason for such inability to comply with said request; a copy of said writing shall be also sent to the division as required by subdivision (d) of this section.

(c) In addition to the regular approved charge, identifiable extra costs incurred may be charged to the burial, consistent with N-PCL section 1509(d), provided that the total amount to be paid is stated in writing to the family of the deceased at the time of the request for burial and, further, provided that a copy of such statement shall be simultaneously filed with the Cemetery Board at its office in New York City.

(d) Each cemetery shall make every effort, in good faith, to comply with such requests. In the event of its inability to comply therewith, said cemetery shall furnish to the Cemetery Board reasons for its inability, in each instance, to provide for the aforesaid burial.

**§ 201.13. Liquidation of burial societies within an incorporated cemetery**

(a) Certain incorporated cemeteries maintain sections devoted exclusively to the burial of persons who are members of particular burial societies. Many of these societies have become dormant and no longer hold meetings. Some have attempted distribution and liquidation of all of their assets, coupled with attempts to sell cemetery plots back to the cemetery at the statutory rate or in exchange for a care arrangement for occupied plots in such society section. The liquidation and distribution of such societies falls within the jurisdiction of the New York State Insurance Department, Liquidation Bureau. The Division of Cemeteries is directly concerned with the disposition of unused graves.

(b) Accordingly, when cemeteries and burial societies attempt to negotiate the liquidation of the society assets and the buy-back of unused graves, the cemetery shall give written notice thereof to the director of the Division of Cemeteries, and may not repurchase such graves so offered without the written consent of the director. Such written notice shall also be given to the New York State Insurance Department, Liquidation Bureau. The Division of Cemeteries shall also notify the Liquidation Bureau.

**§ 201.14. Repair or notice as to nondangerous damage or defacement**

Small cemetery corporations shall be exempt from the provisions of N-PCL section 1510(h).

**§ 201.15. Authorization to inter**

(a) An authorization to inter a body is a written statement subscribed by the lot owner in accordance with the rules and regulations of the cemetery corporation. Such authorization when signed by the lot owner shall include the right to memorialize, which right shall belong to the person having the right to possession of the body.

(b) The right of memorialization may be restricted to the number, size, shape, material, color, inscription or reasonable placement of monuments, according to the generally accepted plan of the cemetery and the rules and regulations of the cemetery corporation or association duly approved by the Cemetery Board; and, where the lot is owned by a membership corporation, association or society which provides burial benefits for its members, according to the rules, regulations or established practices of such corporation, association or society.

**§ 201.16. Cemetery renovation**

(a) A major alteration to a cemetery shall not be commenced without the approval of the Cemetery Board. Such approval shall be conditioned upon the submission of a report by the cemetery in accord with this section. Such report shall be submitted to the Cemetery Board at least three months prior to the anticipated commencement date of any work on the period. The report shall describe the method and purpose of such alteration, the proposed cost thereof, and include further information as required by this section.

(b) Definitions.

(1) Major alteration means: a project for which an environmental assessment form (EAF) is prepared or required; an activity which can reasonably be expected to have a substantial and adverse impact on the adjacent community, the lots or the lot owners of the cemetery, including: demolition; stockpiling materials; grading and other forms of earthwork; dumping, filling or depositing of any material; excavation or trenching; dredging; removal of soil; flooding or draining; or paving or construction of buildings, structures or facilities. The term major alteration shall not include those activities commenced with respect to the construction of a mausoleum or lawn crypt. Such activities are subject to the requirements of sections 201.10 and 210.11 or 201.17 of this Part.

(2) Applicant means a cemetery which submits a report as required by this section.

(c) Report. An applicant shall include in its report information in response to the following:

(1) whether the alteration will result in or avoid the destruction, damage to, modification or interference with existing graves and markers, crypts, mausoleums, roadways, and pathways;

(2) the location, design and duration of the major alteration;

(3) the financial impact on the applicant;

(4) whether the alteration will interfere with the lots or the interests of the lot owners;

(5) whether the alteration will be appropriate for cemetery purposes;

- (6) whether the alteration will have an adverse impact on the surrounding community;
  - (7) whether the alteration will have the potential to adversely affect the public health and safety, the environment or natural resources; and
  - (8) the degree to which measures will be taken to minimize or eliminate these impacts.
- (d) Approvals and permits. An applicant shall include in its report a description of any approvals or permits required by state or local law. No cemetery shall commence a major alteration which requires a state or local government approval or permit until such approval or permit has been obtained. Any board approval of a major alteration shall be so conditioned.
- (e) Certification. A report submitted for a major alteration expected to cost in excess of \$25,000 shall be certified by a licensed engineer.
- (f) Further information. Within 35 days following receipt of the report, the board or the division may request from the cemetery corporation any additional information or documentation and technical assistance deemed necessary to review such report. Such report shall not be deemed complete until the requested information has been received. If no such request is made, the submission shall be deemed complete on the 35th day after its receipt by the division.
- (g) Determination. The board shall approve or deny the proposed major alteration within the following time periods:
- (1) for a cemetery corporation holding less than \$400,000 in cash and investments, including restricted funds, within 60 days of the completed submission; and
  - (2) for a cemetery corporation holding \$400,000 or more in cash and investments, including restricted funds, within 90 days of the completed submission.
- (h) Notification. The board shall provide written notice of its determination to the cemetery corporation. If a negative determination, such notice shall state the reasons therefor. Notice shall be made by registered or certified mail addressed to the corporation at its principal office.

**§ 201.17. Lawn crypts**

- (a) A lawn crypt is a single or double receptacle designed for encasement of casketed human remains set into a recess in the earth. No cemetery may install a lawn crypt except in accordance with a plan submitted to the Cemetery Board and acted upon in accordance with the provisions of this directive. A lawn crypt may be installed anywhere in the cemetery provided that its location adheres to such plan and it is installed in conformity with such plan.
- (b) Every application and proposed lawn crypt plan shall be submitted to the director of the Division of Cemeteries. All such plans shall meet the design and performance standards set forth in subdivision (c) of this section. The application shall specify:
- (1) The means of financing the purchase and installation of the lawn crypt to be employed by the cemetery.
  - (2) The method of drainage to be used by the cemetery, including the results of percolation tests performed by an engineer licensed by the State of New York.
  - (3) A statement from the company and/or the organization manufacturing and/or installing the lawn crypts stating that the lawn crypts meet the design and performance standards of subdivision (c) of this section.
  - (4) Any additional information specifically relating to items in paragraphs (1), (2) and (3) deemed by the director to be necessary to make a determination.
- (c) Design and performance standards.
- (1) General.
    - (i) The earth cover above the units shall be a minimum of 18" of fill as specified by the engineer and a maximum of 48";
    - (ii) Crypts shall, at a minimum, be 6' distant from the edge of the road.

(iii) Crypts shall be set on a base of 12" of compacted select granular fill or as recommended by a soil evaluation conducted by a professional engineer licensed by the State of New York.

(iv) Positive drainage beneath the crypts shall be designed by a competent engineer using appropriate soil and survey data as specified in this directive.

(v) Area between crypts shall be filled and compacted with sand or fine stone fill to prevent settlement of top soil.

(2) Concrete.

(i) The concrete cylinder compressive strength must test 4,500 psi plus or minus 10 percent at the end of 28 days after manufacture thereof.

(ii) Entrained air shall be five percent to nine percent by volume.

(3) Design notes.

(i) The manufacturer of the reinforced concrete design must provide a certificate signed by a professional engineer licensed by the State of New York that the lawn crypt will perform to withstand a dead load specified in subparagraph (ii) of this paragraph and a live load specified in subparagraph (iii) of this paragraph, which will permit it to function for the purpose of a lawn crypt.

(ii) Dead loads will consist of the weight of structure, earth fill, snow loads and any other material that may produce a static load.

(iii) Live loads will consist of vehicle and pedestrian loads normally encountered in a cemetery and the minimum design wheel load shall be 4,000 lbs.

(iv) Lateral earth pressure loads shall be computed by the Rankine Method using the appropriate soil parameters; the minimum equivalent pressure used shall be 36 psf per foot depth. Lateral pressure induced by live loads on the ground surface shall be considered to be equivalent to a 2' depth of earth.

(4) Other materials.

(i) Crypts may be constructed of material other than concrete provided the above standards are met.

(d) Procedures for applications.

(1) The director shall within 30 days of receipt of the application notify the cemetery of any additional information required by the division. The application shall be deemed complete on the 60th day after the division receives the application, unless such a letter is issued. If additional information is requested, the application shall be complete upon the submission of the requested information.

(2) The Cemetery Board shall have 90 days from the date on which the application is deemed complete within which to object to the application. Failure to so object shall mean that the Cemetery Board has no objection to the application.

(3) If the Cemetery Board shall object to the application, it shall notify the cemetery of its reasons in writing. The cemetery may not install any lawn crypts until such objection has been withdrawn.

#### **§ 201.18. Management services contracts**

A management services contract means any agreement whereby one cemetery corporation undertakes responsibility for the sale of lots or promotion thereof, the maintenance of grounds or property, or the performance of interments for another cemetery corporation. No cemetery corporation shall enter into a management services contract without notification to the board at least 60 days in advance of its commencement date.

#### **§ 201.19. Disposition of cremains at pet cemeteries**

The owner of private property on which a pet cemetery licensed pursuant to General Business Law article 35-C is located and operated, and the operator of such pet cemetery may permit the disposition of cremains, as defined in N-PCL section 1502(i), in such pet cemetery without acting as a cemetery and without violating N-PCL Article 15 and 19 NYCRR Parts 200 and 201 if:

(a) neither the property owner nor the pet cemetery identifies, advertises, or otherwise promotes the pet cemetery or the property as a place for disposition of cremains;

(b) neither the property owner nor the pet cemetery solicits, encourages or entices customers of the pet cemetery to dispose of cremains in the pet cemetery;

(c) neither the property owner nor the pet cemetery charges a fee in relation to the disposition of cremains;

(d) customers seeking to dispose of cremains in the pet cemetery are charged the same amounts for lots and for the disposition of pet remains as are charged to customers who do not seek to dispose of cremains in the pet cemetery;

(e) the pet cemetery provides the following printed notice:

(1) when a customer inquires about disposing of cremains in the pet cemetery, but before the customer commits to purchasing a lot with the right to dispose of cremains; and

(2) when a person with custody or control over cremains makes arrangements for the disposition of the cremains at the pet cemetery, but before such arrangements are finalized. The printed notice must be in fourteen point bold font and must be contained in a document separate from all other forms and documents provided to the customer or the person making arrangements:

”;This property is not a cemetery for human cremains.

Cremains disposed of on this property WILL NOT be covered by the protections and legal rights granted by New York State Law to cremains disposed of in a cemetery.

The family and descendants of the deceased WILL NOT be covered by the protections and legal rights granted by New York State Law to the family and descendants of deceased persons whose cremains are disposed of in a cemetery such as mandatory records of burials, rights of memorialization and restrictions on removals.

There is NO ASSURANCE under New York State Law that this property will be maintained in its current condition and for its current purpose.

There is NO ASSURANCE under New York State Law that this property will not be sold or transferred to another owner, or that access to this property will remain open to you, the family or the descendants of the deceased.

There is NO ASSURANCE under New York State Law that any burial plots or memorials for cremains on this property will be maintained or preserved for any period of time.

There is NO ASSURANCE under New York State Law that any cremains disposed of on this property will remain for any period of time in the location they were disposed, or on this property at all.”

#### **§ 201.20. Permanent maintenance fund collections and contributions**

(a) All permanent maintenance fund deposits required by N-PCL section 1507 shall be made at least quarterly.

(b) A cemetery that receives payment in installments or over time for a lot, plot or part thereof, shall deposit to the permanent maintenance fund the full amount required by N-PCL section 1507 on the entire sale either:

(1) in lump sum at the time the contract is signed and any initial payment is received; or

(2) by depositing at least 10 percent of any initial payment and each installment payment to the permanent maintenance fund as such payments are received until the full amount required by N-PCL section 1507 on the entire sale has been deposited to the fund.

### **PART 202. VOLUNTEER CEMETERY MAINTENANCE**

(Statutory authority: Executive Law, § 91; General Municipal Law, § 165)

#### **§ 202.1. Volunteer cemetery maintenance and cleanup programs**

(a) Upon the request of a municipal corporation, the Division of Cemeteries shall assist a municipal corporation in the organization, implementation and administration of a volunteer cemetery maintenance and cleanup program in an

abandoned cemetery wholly contained within such municipal corporation for which such municipal corporation has the primary responsibility to provide care.

(b) Assistance provided by the division shall include, but shall not be limited to, the following:

- (1) provide professional and technical guidance;
- (2) provide a listing of service providers, such as historical monument restorers; and
- (3) provide written guidelines for general maintenance.

### **PART 203. CREMATORIES**

(Statutory authority: Not-for-Profit Corporation Law, §§ 1501, 1504 [c])

#### **§ 203.1. Definitions**

(a) The term cremation means the technical process, using heat and flame, that reduces human remains to ashes and other residue. Cremation shall include the processing, and may include the pulverization, of such ashes and other residue.

(b) The term cremains means ashes and other residue recovered after the completion of cremation, which may include residue of foreign matter that may have been cremated with the human remains.

(c) The term casket includes coffin and means a rigid container that is designed for the encasement of human remains and customarily ornamented and lined with fabric.

(d) The term unfinished wooden box means an unornamented casket made of wood which does not have a fixed interior lining.

(e) The term alternative container means a nonmetal receptacle or enclosure, typically without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of cardboard, pressed wood, composition materials (with or without an outside covering) or pouches of canvas or other material.

(f) The term cremation container means an unfinished wooden box, wooden casket, or alternative container which is rigid on all sides, which can be closed to completely cover the remains of the deceased human being, which is sufficiently sturdy to lift and handle with ease and to support the weight of the deceased and which is fully combustible and intended to be incinerated with the human remains.

(g) The term ceremonial casket, also known as a rental casket, means a casket which is not intended to be incinerated with the human remains.

(h) The term crematory means a facility in which the remains of deceased human beings are processed by cremation, the business or entity operating the facility, or both, as the context requires.

(i) The term retort means the crematory furnace and chamber(s) by which and in which cremation occurs.

(j) The term temporary storage facility means an area that:

- (1) is a separately enclosed room or a separately enclosed area within a room;
- (2) is designated for and used exclusively for the retention of human remains prior to cremation;
- (3) is adequately ventilated;
- (4) complies with all applicable public health laws regarding the proper handling and storage of human remains and body fluids;
- (5) is operated and maintained in a manner which protects the health and safety of crematory personnel;
- (6) is secure from access by anyone other than authorized persons; and
- (7) the interior of which is not visible from any area accessible to the general public.

(k) The term cremation permit means the burial and removal permit required pursuant to section 4145 of the Public Health Law that is annotated for disposition of the remains of a deceased human being by cremation.

(l) The term person in control of disposition means the person who has the right to control the disposition of the remains of a decedent pursuant to Public Health Law section 4201.

(m) The term funeral firm means an individual, partnership, corporation or estate representative engaged in the business and practice of funeral directing.

(n) The term funeral home, also known as a funeral establishment, means a single physical location, address or premises devoted to or used for the care and preparation of a body of a deceased person for disposition and for mourning or funeral ceremonial purposes.

**§ 203.2. Maintenance and privacy**

(a) A crematory shall be used exclusively for the cremation of human remains.

(b) A crematory shall be maintained in a clean, orderly and sanitary manner, with adequate ventilation and shall have a temporary storage facility.

(c) Every crematory must at all times follow accepted policies and procedures with respect to infection control, including standard precautions developed by the Centers for Disease Control and Prevention.

(d) The general retort area and the temporary storage facility shall be separately enclosed areas and when fully closed, the interior of one area shall not be visible from within the other area.

(e) Every crematory shall use its best efforts to cremate remains within 24 hours of accepting delivery of such remains. Good cause, such as the need to confirm the identity of the deceased human being, must be demonstrated if remains are cremated more than 48 hours after delivery is accepted.

(f) Notwithstanding the foregoing, if any remains exhibit an objectionable odor either at delivery or at any time thereafter, such remains shall be cremated as soon as possible after they have been accepted by the crematory or as soon as possible after the objectionable odor is first detected. If any remains are known by crematory personnel not to have been embalmed, such remains shall be cremated as soon as possible after they have been accepted by the crematory.

(g) A crematory may also have a ceremony room available for viewings and ceremonies. The ceremony room shall be separately enclosed from the general retort area and the temporary storage facility. The temporary storage facility interior shall not be visible or accessible from the ceremony room. Only members of the immediate family of the deceased or their authorized agents and designated representatives may be present in the ceremony room during the cremation of the remains of the deceased.

(h) Entrances and exterior windows of the crematory shall be maintained at all times to secure privacy, including:

(1) doors shall be tight closing and rigid;

(2) windows shall be covered;

(3) entrances shall be marked "private"; or "authorized entry only"; to preclude entry by unauthorized persons; and

(4) entrances shall be locked and secured when not actively attended by authorized crematory personnel.

(i) No crematory may impose a charge for the cremation of the remains of a deceased human being based on the combined weight of the remains and the cremation container unless it shall have in place a scale capable of accurately determining their combined weight. The scale shall be of suitable size and capacity and shall be installed, used and inspected in conformance with article 16 of the Agriculture and Markets Law and regulations promulgated thereunder.

(j) Every crematory shall annually certify to the Division of Cemeteries that the condition and operation of the crematory comply with Not-for-Profit Corporation Law article 15 and with this Part and shall submit with such certification its most recent annual Department of Environmental Conservation (DEC) inspection report. The crematory certification and DEC inspection report shall be filed on or before the 15th day of January of each year and shall be retained in the permanent file of the crematory.

**§ 203.3. Crematory access**

(a) No persons except authorized persons shall be admitted into the temporary storage facility while human remains are being stored and no persons except authorized persons shall be admitted into the retort area while the remains of deceased human beings are being cremated. Authorized persons shall enter and remain in the temporary storage facility or retort area only as necessary to perform or assist with the performance of crematory business and operations. On admittance, authorized persons shall comply with all rules of the crematory and not infringe upon the privacy and dignity of the remains of deceased human beings.

(b) The following are authorized persons:

- (1) licensed, registered funeral directors, undertakers, registered residents, and enrolled students of mortuary science;
- (2) officers and trustees of the crematory;
- (3) authorized employees or agents of the crematory;
- (4) public officers acting in the discharge of their duties;
- (5) authorized instructors of funeral directing schools;
- (6) licensed physicians or nurses; and
- (7) members of the immediate family of the deceased and their authorized agents and designated representatives.

**§ 203.4. Identification of deceased human beings**

(a) No crematory shall accept the remains of any deceased human being without a cremation permit and a cremation authorization form as provided in section 203.13 (c) of this Part. The cremation permit shall constitute presumptive evidence of the identity of the remains.

(b) If a crematory has a reasonable, well-grounded basis to doubt the identity of the remains, the cremation shall not commence until reasonable confirmation of the identity of the deceased human being has been made.

(c) The crematory shall, by a written plan available for inspection by the Division of Cemeteries, assure that the identification of the deceased, as established by the cremation permit or subsequent confirming document, accompanies the remains of the deceased human being until the identity of the deceased is accurately and legibly inscribed on the containers in which the cremains are placed. From the time the crematory accepts delivery of the remains of a deceased human being until the time the crematory delivers the cremains as directed, the crematory shall be responsible for the remains of the deceased human being and for maintaining the identification of the remains.

(d) If a document confirming the identity of the deceased is required, it shall be provided by the person in control of disposition and may be in the form of, but not limited to:

- (1) a signed affidavit from a licensed physician, a member of the family of the deceased human being, or the person in control of disposition; or
- (2) a court order from the State Supreme Court within the county of the crematory.

(e) A copy of the cremation permit and the document confirming the identity of the deceased shall be retained in the permanent file of the crematory.

**§ 203.5. Suitable container**

(a) A crematory shall not accept delivery of the remains of a deceased human being unless delivered in either a ceremonial casket or a cremation container.

(b) A crematory shall only cremate remains in a cremation container.

(c) If the remains are not delivered in a cremation container, the crematory shall not accept delivery of the remains unless at the time of delivery the crematory receives a written acknowledgment and authorization signed by the person in control of disposition that said person has been notified that transfer of the remains to a cremation container will be required prior to cremation and that said person authorizes such transfer of the remains.

(d) The signed acknowledgment and authorization of the person in control of disposition shall be retained in the permanent file of the crematory.

**§ 203.6. Opening container or removing or transferring remains**

(a) The container holding the remains of the deceased human being shall be opened after delivery to the crematory only for the following purposes and only after the crematory first receives signed authorization for such action:

- (1) to confirm the identity of the deceased;
- (2) to assure that no material is enclosed which might cause injury to employees or damage to crematory property;
- (3) to transfer the remains to a cremation container;
- (4) to comply with any reasonable demand by members of the immediate family or the person in control of disposition;  
or
- (5) to comply with the demand of a public officer in the discharge of the officer's statutory duty.

(b) After delivery of the remains of a deceased human being to a crematory, any opening of the container or transfer or removal of remains may only be conducted by the licensed, registered funeral director, undertaker or registered resident delivering the remains of the deceased human being with the assistance of crematory personnel if necessary. The opening, transfer, or removal shall be performed in the presence of a witness who may be an employee or representative of the crematory. A record shall be made of the action taken, which record shall include the reason for such action, the signature of the person authorizing the action, the names of the persons conducting the opening, transfer or removal and the names of the witnesses thereof. In the case of a transfer of remains, the record shall also set forth the manner of disposition of the original container. The record shall be retained in the permanent file of the crematory.

(c) The person providing the signed authorization must be someone other than an employee, officer, trustee or other representative of the crematory. In the case of a removal of remains, the signed authorization shall be provided by the person in control of disposition or by a public officer discharging the officer's statutory duty.

(d) The opening of a container or the transfer or removal of remains shall be conducted in privacy with dignity and respect and shall comply with all rules and regulations intended to protect the health and safety of crematory personnel.

**§ 203.7. Commingling human remains**

The cremation of remains of more than one deceased human being in a retort at any one time is unlawful, except upon written authorization signed by the persons making funeral arrangements and the persons in control of disposition, and the signed consent of the crematory, which record shall be retained in the permanent file of the crematory.

**§ 203.8. Cleaning of retort**

Upon the completion of the cremation of the remains of a deceased human being, the interior of the retort shall be thoroughly swept so as to render the retort reasonably free of all matter. The cremains and other remains shall be collected for final processing and placed into an individual container and not commingled with other cremains. The cremation permit shall be attached to the individual container prior to final processing.

**§ 203.9. Final processing**

(a) A magnet and sieve, or other appropriate method of separation, may be used to divide the cremains from incidental or foreign material.

(b) The incidental and foreign material of the cremation process shall be disposed of in a safe manner in compliance with all applicable Federal, State and local government sanitary rules and regulations.

(c)

(1) Unless the person in control of disposition and the crematory otherwise agree as set forth in paragraph (2) of this subdivision, the entire cremains shall be pulverized until no single fragment is recognizable as skeletal tissue.

(2) If the person in control of disposition requests in a signed and witnessed writing that a fragment of the cremains be preserved as recognizable skeletal tissue and provides a religious or cultural reason for the request, the crematory may

consent in a signed writing to such a request. In that event, prior to pulverization of the cremains, the crematory may set aside a single fragment which is recognizable as skeletal tissue and which does not have any dimension greater than three inches. The remainder of the cremains shall be pulverized until no single fragment of the remainder is recognizable as skeletal tissue. The single fragment that is set aside must be combined again with the remainder of the cremains immediately after the remainder has been pulverized. The signed and witnessed writing from the person in control of disposition and the signed written consent of the crematory shall be retained in the permanent file of the crematory.

**§ 203.10. Container size**

After pulverization, the cremains shall be transferred to a sealable container or containers which shall have inside dimensions of suitable size to contain the entire cremains of the deceased human being.

**§ 203.11. Identity label**

The prescribed sealable container shall be accurately and legibly labeled with the identification of the human being whose cremains are contained therein, in compliance with the crematory's approved written plan for identification of the deceased required by section 203.4(c) of this Part.

**§ 203.12. Disposing of cremains**

The cremains, enclosed in the manner prescribed by sections 203.10 and 203.11 of this Part, shall be disposed of in strict accordance with the direction of the person in control of disposition of the remains as set forth in the cremation authorization form, and in accordance with the provisions of section 4202(4) of the Public Health Law.

**§ 203.13. Crematory records**

(a) Every crematory shall maintain a cremation log which shall set forth for each delivery of human remains received by the crematory:

- (1) the name of the deceased;
- (2) the place of death and the estimated combined weight of the remains and the container;
- (3) the date and time the remains arrived at the crematory;
- (4) the cremation number;
- (5) the name of the funeral director, undertaker or registered resident delivering the human remains and the name and address of the funeral firm which the funeral director, undertaker or registered resident represents;
- (6) the date and time the remains were cremated;
- (7) if the remains were cremated more than 48 hours from the time the crematory accepted delivery of the remains, a detailed explanation showing good cause for the delay;
- (8) the retort number in which the remains were cremated; and
- (9) the type of container in which the remains were received and in which the remains were cremated.

(b) The cremation log shall be retained in the permanent file of the crematory.

(c) The cremation authorization form required by Not-for-Profit Corporation Law section 1517(c)(1) shall be in a form established by the director of the Division of Cemeteries; shall not be more than three sheets single-sided; shall not be larger than 8 1/2 by 11 inches; and shall contain the following information:

- (1) The name and address of the crematory;
- (2) A clear, concise description of the cremation process, a statement that cremation is an irreversible and final process, and a statement that cremated remains generally are pulverized until no single fragment is recognizable as skeletal tissue;
- (3) The name of the deceased as it appears on the cremation permit and the date, and place of death;

- (4) The last address, age, sex and approximate weight of the deceased and type of container in which the remains of the deceased were delivered;
  - (5) The name of the funeral director and funeral firm that provided the cremation authorization to the crematory and the funeral director's registration number;
  - (6) The name of the person in control of disposition of the remains of the deceased and the relationship between said person and the deceased;
  - (7) A statement attesting that the person in control of disposition has the right to authorize cremation of the remains of the deceased pursuant to section 4201 of the Public Health Law;
  - (8) Authorization for the crematory to cremate the remains of the deceased;
  - (9) A statement that the body of the deceased does not contain a battery, battery pack, power cell, radioactive implant, or radioactive device and that any such materials were removed prior to the execution of the cremation authorization form;
  - (10) The name of the person authorized to receive the cremains from the crematory;
  - (11) A declaration of intent with respect to the disposition of the cremains of the decedent and notification that the crematory may dispose of the cremains in an irretrievable manner if they are not claimed by any authorized person within 120 days of the cremation in accordance with section 1517(i) of the Not-for-Profit Corporation Law;
  - (12) The signature of the person in control of disposition attesting to the accuracy and completeness of the information and representations contained in the cremation authorization form; and
  - (13) The signature of the licensed, registered funeral director who obtained the cremation authorization as a witness to the execution of the cremation authorization form.
- (d) The completed cremation authorization form shall be retained in the permanent file of the crematory.
- (e) All crematory records, including records required by any federal, state or local government law or agency, as well as price lists, authorizations, crematory rules and regulations and other documents related to the practice of cremation, shall be open and available for inspection and copying during regular business hours by the Division of Cemeteries or its authorized representatives, in the discharge of their official duties.

**§ 203.14. Disposing of cremated remains--Repealed**

**§ 203.15. Availability of records--Repealed**

**PART 204. CREMATION CERTIFICATION COURSE**

(Statutory authority: Not-for-Profit Corporation Law, § 1517 [j])

**§ 204.1. Purpose**

Paragraph (j) of section 1517 of the Not-for-Profit Corporation Law, as enacted by chapter 579 of the Laws of 2006, empowers the Division of Cemeteries to certify an organization seeking to make application for approval to conduct a cremation certification course of study. In furtherance of its statutory mandate, the Division of Cemeteries has adopted these rules and regulations to establish the training and course requirements for the maintenance and operation of crematories within the State, including but not limited to subjects for study, attendance, examinations and certification of completion.

**§ 204.2. General requirements**

(a) A crematory shall ensure that, on or after October 15, 2007, all employees operating crematory equipment have attended cremation classes and obtained the certificate required by this Part. No employee shall be allowed to operate any cremation equipment until he or she has met the requirements of this Part. Proof of such employee certification must be posted in the crematory and available for inspection at any time.

(b) No certificate or renewal certificate to operate a crematory shall be issued to any crematory employee on or after October 15, 2007 unless such employee completes a minimum of eight hours of cremation certification classes and passes a written examination.

(c) No offering of a course of study in the field of cremation operation for purposes of compliance with this Part shall be acceptable for credit unless such course of study has been approved by the Division of Cemeteries.

(d) All new crematory employees whose function is to conduct the daily operations of the cremation process must be certified within one year of employment or any reclassification as a crematory operator. No employee shall be allowed to conduct the daily operations of the cremation process until they have completed the certification course, passed the written take home examination and possess a certificate of completion. Any employee of a crematory required to be certified under this Part and retained prior to October 15, 2007 shall be certified within one year of such date. Renewal of such certification shall be completed every five years from the date of certification.

**§ 204.3. Approved entities**

Cremation certification courses may be given by an organization approved by the Division of Cemeteries. No organization seeking approval as a cremation certification course provider shall be affiliated or associated with, owned, operated or controlled by a funeral entity.

**§ 204.4. Request for approval of course of study**

(a) Applications for approval to conduct a cremation certification course of study satisfying the requirements of this Part shall be made at least 60 days before the proposed course is to be conducted. The application shall be prescribed by the division to include the following:

- (1) name and business address of the organization that will present the course;
- (2) if the organization is a partnership, the names and home addresses of all the partners of the entity;
- (3) if the organization is a corporation, the names and home addresses of persons who own five percent or more of the stock of the entity;
- (4) the name, business address, telephone number, resume and qualifications of each educational provider who will be teaching and grading the course for the organization;
- (5) regional or geographic locations where classes will be conducted;
- (6) description of materials that will be distributed;
- (7) final examination to be presented for the certification course, including the answer key;
- (8) procedure for taking attendance; and
- (9) an outline of the course content and the number of hours devoted to each subject.

(b) Educational provider qualification. Each educational provider must be qualified as follows:

- (1) is 18 years of age or over and of good moral character;
- (2) holds an associates degree in mortuary science or holds a high school diploma or its equivalent and possesses over five years experience in crematory operation;
- (3) possesses instructional experience, academic achievement, and specialty or technical experience in the field of cremation;
- (4) is capable of administering and grading written examinations following the crematory certification course.

**§ 204.5. Subjects of study for crematory operator certification course**

The certification course shall be divided into two subject matter areas. One subject matter area will address the New York statutes and regulations. Such statutes shall include all applicable sections of article 15 of the Not-for-Profit Corporation Law (N-PCL) relating to cremations with an emphasis on N-PCL section 1517 and the New York State Public Health Law, sections 3441, 4145, 4200, 4201, 4202, 4210(a), 4216, and 4218. Such regulations shall include Part 203 of this Title and Part 219-4 of the New York State Department of Environmental Conservation Air Quality Regulations. The approved organization shall devote 20 percent of the total time allotted for the course to the New York statutes and regulations. The other subject matter area of course shall address the general and technical aspects of

crematory operations. The subject matter area shall include but not be limited to the cremation process, cremation equipment, operation of cremation chamber, cremation terminology, crematory operator safety, and the identification of cremated human remains. The approved organization shall devote 80 percent of the total time allotted for the course to the general and technical aspects of crematory operations.

**§ 204.6. Computation of instruction time**

The certification course for crematory employees shall be a one day course for a total of a minimum of eight hours of instruction to be provided by the approved organization.

**§ 204.7. Attendance and examinations**

(a) No applicant to receive certification as a crematory employee shall receive certification if he or she is absent from the class room for a period totaling more than 10 percent of the time during any instructional period. No crematory employee shall be absent from the class room except for a reasonable and unavoidable cause.

(b) Any crematory employee who fails to attend the required scheduled class hours may, at the discretion of the approved organization, make up the missed subject matter during subsequent courses presented by an approved organization.

(c) Final examinations may only be taken by a crematory employee who has satisfied the attendance requirement.

(d) The final examination shall be a take home examination in which each employee must attain a score of 70 percent in order to obtain certification as a crematory operator. A failing grade on the final exam shall constitute failure of the course. All final exams are to be reviewed and graded by the approved organization and a copy of all tests with scores shall be provided to the Division of Cemeteries.

(e) Individuals who complete a course of study offered outside of the State of New York, which course has not been approved by the division, may file a request to the division for review and evaluation. Evidence of satisfactory course completion must be submitted by the applicant.

**§ 204.8. Facilities**

Each course shall be presented in such premises and in such facilities as shall be necessary to properly present the course. Such facilities shall be pre-approved by the division.

**§ 204.9. Examination requirement and record retention**

(a) All approved organizations shall retain the attendance records, the final examinations and a list of crematory employees who successfully complete each certification course for a period of five years after completion of each course. All such documents shall during normal business hours be available for inspection by authorized representatives of the Division of Cemeteries.

(b) All examination required for certification shall be in the form of a written take home examination and shall be returned to the educational provider within two weeks after distribution.

**§ 204.10. Change in approved course of study**

There shall be no change or alteration in any approved course of study of any subject or in any instruction staff or provider without prior written notice and approval by the Division of Cemeteries.

**§ 204.11. Auditing**

A duly authorized representative of the Division of Cemeteries may audit any course offered, and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

**§ 204.12. Suspensions and denials of course approval**

Within 30 days after the receipt of the application for approval of an offering, the Division of Cemeteries shall inform the organization as to whether the offering has been approved, denied, or whether additional information is needed to determine the acceptability of the offering. The division may deny, suspend, or revoke the approval of a certification course of an organization, if it is determined that they are not in compliance with the law and rules, or if the offering does not adequately reflect and present current cremation knowledge as a basis for a level of cremation practice.

**§ 204.13. Certificate of completion**

Evidence of successful completion of the course must be furnished to each crematory employee in certificate form. The certificate must indicate the following: name of the cemetery corporation; crematory operator certification course; a statement that the employee, who shall be named, has satisfactorily completed a course of study in the cremation subjects approved by the Division of Cemeteries in accordance with the provisions of chapter 579 of the Laws of 2006, and that his or her attendance record was satisfactory and in conformity with the law, and that such course was completed on a stated date. The certificate must be signed by the approved organization and dated, and must have affixed thereto the official seal of the approved organization. Copies of such certification shall be filed with the Division of Cemeteries at 41 State Street, Albany, New York.

**§ 204.14. Fees**

Each approved organization shall establish the registration fee for the certification course offered.

## APPENDIX

*Affirmed on appeal: 205 A.D.2d 511 (2<sup>nd</sup> Dept. 1994)*

New York Law Journal

Volume 210, Number 68

Copyright 1993 by the New York Law Publishing Company

Wednesday, October 6, 1993

Court Decisions

Second Judicial Department

Westchester County

Supreme Court

### MT. EDEN CEMETERY ASSOCIATION, INC., V. TOWN BOARD OF THE TOWN OF MOUNT PLEASANT

Justice Murphy

Mt. Eden Cemetery Association, Inc. ("Mt. Eden") and Mount Pleasant Westchester Cemetery Corporation ("Cemetery Corp.") have respectively commenced a hybrid action for declaratory and injunctive relief and an article 78 proceeding, seeking inter alia a declaration that a 1993 amendment to section 46.49 (renumbered 218.51) of the Zoning Ordinance of the Town of Mt. Pleasant, the Tree Preservation Ordinance and the Excavation and Topsoil Removal Ordinance are unconstitutional as applied to their premises. The Town of Mt. Pleasant ("Town") has also commenced an action, seeking to enjoin the Cemetery Corp. from cutting, removing or disturbing any trees or vegetation or from grading and/or excavating any of its lands without obtaining appropriate permits pursuant to zoning. Ordinance §218.51, the Tree Preservation Ordinance and the Excavation and Topsoil Removal Ordinance. In a stipulation executed July 28, 1993, the parties agree that there are no triable issues of fact regarding the cemetery's claim that the aforementioned ordinances are unconstitutional as applied to their parcels and have consented to the conversion of Mt. Eden's pending motion for a preliminary injunction into one for summary judgment. Based on the foregoing facts and analysis of this issue, summary judgment is granted in favor of Mt. Eden and the Cemetery Corp.

Both the Cemetery Corp. and Mt. Eden are incorporated under the Not-For-Profit Corporation Law of this State. Mt. Eden owns approximately 32 acres of land within the Town of Mt. Pleasant, which it has continually operated as a cemetery since January 30, 1939. All the property located within Mt. Eden, with the exception of administration buildings and roadways, has, at all times, been exclusively dedicated for the purpose of burial of members of the Jewish faith. Similarly, the property owned by the Cemetery Corp. is dedicated to cemetery use and has been so used continuously and without interruption since 1899. State Law effectively restricts the use of the property owned by Mt. Eden and the Cemetery Corp. for burial purposes, with certain exceptions not applicable to these hybrid actions and proceedings. (See Not-For-Profit Corporation Law §1506(i), 1501 et seq).

In March of 1958, the Town adopted an ordinance establishing zoning regulations for the unincorporated area of the Town ("Zoning Ordinance"). The property owned by the cemeteries was zoned residential R-20. Section 218-76 of the zoning ordinance provides:

"Except as otherwise provided in this article, the lawfully permitted use of land or buildings existing at the time of adoption of this chapter may be continued although such use does not conform to the regulations specified by this chapter for the district in which such land or building is located. Such uses shall be deemed nonconforming uses."

Upon enactment of the 1958 Zoning Ordinance, Mt. Eden's and the Cemetery Corp.'s burial activities upon their land became a valid, non-conforming use. Both continued to use their land for cemetery purposes at the time section 46.49 (renumbered 218.51) of the Zoning Ordinance was amended in February of 1993. Prior to the adoption of this amendment, section 46-49 provided:

"Religious, Charitable and Eleemosynary Institutions, not including a correctional institution, shall be subject to the same special standards established in this chapter for a hospital."

Religious, charitable and eleemosynary institutions are specially permitted uses within the R-20 zoning district.

The 1993 amendment included cemeteries as among the uses in the R-20 zoning district that require a special permit and imposed restrictive set-back requirements. The amendment reads:

Section 46.49 (renumbered 218.51)

Religious, Charitable and Eleemosynary Institutions.

A religious, charitable or eleemosynary institution including cemeteries, but not including a correctional institution, shall be subject to the same special standards in this charter as for a hospital.

With respect to cemeteries, the following additional standards apply:

1. Yards shall be measured from grave sites to property lines unless a building/structure is proposed in which case the yard is measured from the building/structure to the property line as defined in section 218-3.
2. All grave sites shall be set back at least one hundred (100) feet from the property line of any adjacent parcel of land in a residential district.
3. All building/structures on cemeteries, including accessory buildings and including mausoleums, shall be set back at least two hundred (200) feet from the property line of any adjacent parcel of land in a residential district.
4. The Board of Appeals, in issuing a special use permit for a cemetery, shall require suitable fencing, landscaping and screening as deemed necessary to provide a buffer from adjacent land uses:
5. The yard requirements identified in #2 and #3 above shall not apply with respect to the boundary of any adjacent property owner by any public entity or corporation including the State of New York, County of Westchester or Town of Mt. Pleasant in which case the yard requirements provided in the schedule of regulations for the district in which the cemetery is located shall apply with the definition of yard as identified in #1 above. Under these circumstances," the Board of Appeals, in issuing a special use permit for a cemetery, shall require suitable fencing, landscaping and screening as deemed necessary to provide a buffer from adjacent land uses.

The amendment to Section 218-3, added the following definition of cemetery between the definitions of "Building, Main" and "Club membership":

Cemetery - Land used or intended for use for the interment of human remains, including, but not limited to, a burial park for earth interments, a mausoleum for vault or crypt interments, or a combination of one or more of the above. For the purpose of this chapter, cemeteries shall be considered a religious, charitable or eleemosynary institution and must comply with the regulations pertaining to such uses as herein defined.

At public hearings on the proposed amendment, Mt. Eden, as well as other cemeteries within the Town of Mt. Pleasant, expressed its objection to the proposed amendment. The Town Board maintained that the amendment did not constitute an unconstitutional taking of cemetery property, because it only regulated the use of undeveloped property. The Board also concluded that the proposed amendment would not have a significant effect on the environment and determined that a draft Environmental Impact Statement was not required. The Board recited the following reasons in support of their negative declaration:

1. The impacts associated with the proposed action do not exceed the criteria for the determination of significance listed in section 617.11 of SEQRA.

2. The amendment would clarify the set-back provisions and provide for an increased buffer between cemetery activities and adjacent residential uses.

3. The potential for contamination of groundwater wells from cemetery activities would be reduced by increasing the distance between such activities and the property line to adjacent residential districts.

The effect of this amendment has precluded Mt. Eden from excavating and expanding its unused property for additional grave sites. By complying with the set-back requirements, Mt. Eden has lost a substantial portion of its property [FN1] and buffered serious financial harm. Mt. Eden cannot enter upon the set-back area and engage in burial practices as it would normally be able to do as a legal nonconforming use. As such, Mt. Eden seeks an injunction against the Town of Mount Pleasant prohibiting the town from enforcing the newly enacted zoning amendment as against it.

Similarly, since August of 1992, the Cemetery Corp. has been prevented from developing a needed section of its property. The Town Building Inspector ordered the cemetery not to remove trees or otherwise clear its proposed new section until after it obtains the permits purportedly required by the Town's Zoning Code, its Tree Preservation Ordinance and/or its Excavation and Topsoil Removal Ordinance. The ensuing delay of approximately ten months has caused and is causing the cemetery serious financial hardship. It estimates the loss of 2 acres and 1,500 grave sites if compliance with the setback restriction is mandated.

The cemeteries contend that the amendment to section 46.49 (renumbered 218.51) of the Zoning Ordinance as applied to them constitutes an unconstitutional deprivation of the use of their property. Their claim is predicated upon the fundamental rule that nonconforming uses in existence when a zoning ordinance is enacted are constitutionally protected and must be permitted to continue notwithstanding any contrary provisions of a subsequently enacted zoning ordinance (*People v. Miller*, 304 NY 105). Mt. Eden and the Cemetery Corp. maintain that they constitute lawful nonconforming uses and that their use of yet undeveloped sections of their land, including the subject set back areas, for burial purposes does not constitute an impermissible expansion of their nonconforming uses. Since the extent of protection afforded by their nonconforming use status extends to their entire parcel, the cemeteries argue that they are not subject to set-back requirements and special use permits imposed by the amended zoning ordinance. Consequently, the cemeteries seek to enjoin the Town from enforcing this ordinance against their respective parcels.

In defense of the amended ordinance, the Town concedes that the cemeteries are lawful nonconforming uses, but maintain that section 218.51, as amended, does not preclude their use as cemeteries. Rather, the town claims that the Board may legally regulate the further development of the cemetery as an inconsistent extension of a nonconforming use. Furthermore, even if the entire cemetery is a nonconforming use, the Town argues that it may restrict the use to preserve the environment, prevent health hazards to its citizens and shield the adjoining property owners, to the most reasonable extent possible, from the unpleasantness of cemetery use.

Initially, the Court notes that the Town of Mt. Pleasant has the jurisdictional authority to enact a general zoning ordinance. It is well settled in this State that a locality may enact a regulatory zoning ordinance in spite of a State law regulating the same area (see *Beverly Hills Cemetery Corp. v. Town of Putnam Valley*, 136 AD2d 669). The State law does not preempt the local zoning ordinance.

Complete with this authority, however, are the due process limitations placed on all zoning regulations. One such limitation is the recognition and protection of substantial preexisting land uses. In New York, the rule is fundamental that nonconforming uses in existence when a zoning ordinance is enacted are constitutionally protected and must be permitted to continue, despite the enactment of a prohibitory zoning ordinance if enforcement of the ordinance would cause the property owner serious financial harm (*People v. Miller*, supra, 304 N.Y. 105).

Similarly, it is well settled in New York that the right to continue a nonconforming use applies only to the uses so existing prior to the enactment of the zoning ordinance and does not include a right to extend or expand it (See *Garcia v. Holze*, 94 AD2d 759; *Todem Homes, Inc. v. Board of Zoning Appeals of the Town of Southampton*, 52 NY2d 972; *Village of Waterford v. O'Brien*, 39 AD2d 490). [FN2]

"To establish a right to a nonconforming use, the person claiming the right must demonstrate that the property was indeed used for the nonconforming purpose, as distinguished from a mere contemplated use, at the time the zoning ordinance became effective [citations omitted]. Moreover, although not every inch of the property need be embraced by the use in order to entitle the entire parcel to exemption from a restrictive ordinance, by the same Coke use of a limited portion of the premises will not necessarily serve to preempt the entire parcel as against a later prohibitory zoning ordinance [citations omitted]. The test most often employed in determining the extent of a nonconforming use is whether the nature of the incipient nonconforming use, in light of the character and adaptability to such use of the entire parcel, manifestly implies an appropriation of the entirety to such use prior to the adoption of the restricted ordinance [citation omitted]" (Syracuse Aggregate Corp. v. Weise, 51 NY2d 278, 284-285). Stated another way, a nonconforming use can be extended to the entire parcel provided it can be shown that (1) it was an expansion of a nonconforming use of lands owned prior to enactment of the restrictive ordinance and (2) it has always been the intent of the property owner to develop and use the entire lands owned by it, for the questioned purpose and that this was known or should have been known to all involved (Matter of Dolomite Products Co., Inc. v. Kipers, 39 Misc 2d 627, 633).

Courts have recognized that some uses of land are unique and by their very nature manifest an intention on the part of the landowner to extend or expand the use to the entire parcel (see Matter of Syracuse Aggregate Corp. v. Weise, supra 51 NY2d 278). In *Weise*, the Court of Appeals determined that the owner of a quarry - a nonconforming use - could excavate his entire 25 acre parcel although only five acres had been excavated at the time of enactment of the prohibitory ordinance. The Court noted that by its very nature, quarrying involves a unique use of land because "quarrying contemplates the excavation and sale of the corpus of the land itself as a resource.... [A]s a matter of practicality as well as economic necessity, a quarry operator will not excavate his entire parcel off land at once, but will leave areas in reserve, virtually untouched until they are actually needed" (id at 285). Thus gravel mining implies the gradual extension of excavation into reserve areas to supply customer needs. The Court of Appeals further noted that quarrying constitutes a "diminishing asset" and, thus, manifests an intention on the part of the operator to appropriate his entire land to gravel mining at the time of enactment of the restrictive ordinance (id at 285). Where the operator made a substantial investment with a view toward quarrying the entire land, such extension or expansion is a constitutionally protected vested right (cf. *New York Trap Rock Corp. v. Town of Clarkstown*, 1 AD2d 890, aff'd 3 NY2d 844).

Cemeteries, like quarries, constitute the use of land as a diminishing asset. The use of land for cemetery purposes also contemplates the excavation and sale of the land itself as a resource. Cemeteries naturally expand to the property boundary as a result of additional deaths and increased purchases of grave plots. As with quarries, it is impractical for cemeteries to use the entire parcel for burial purposes, from the original date of purchase. Yet, this does not preclude the operators of a cemetery from manifesting an intent to use the entirety of their property for such use prior to passage of a restrictive ordinance. It is quite clear in this case that the undeveloped portion of cemetery property constituted an integral part of the original parcel and, like unused quarry property, was intended to be used for burial purposes. From the initial commencement of activities, Mt. Eden and the Cemetery Corp. have intended and substantially utilized their property for cemetery purposes only. Through the years they have both gradually developed their property to meet the demand for burial space and have expanded the use of the cemetery towards its outer property boundaries. Their substantial investment and intent to use the entire parcel, coupled with the inherent expansiveness of cemeteries, has made it clear that eventually the cemeteries would have to extend their activities to the property boundaries. The Town of Mt. Pleasant and the neighboring home owners knew, or should have known, that the cemeteries intended this expansion (see *Dolomite Prods. v. Kipers*, 39 Misc.2d 627). Accordingly, the Court concludes that the entire cemetery property constitutes a legal nonconforming use (see also, *Matter of Syracuse Aggregate Corp. v. Weise*, supra; *Matter of Rodrigues v. Rosenthal*, 112 AD2d 1000).

Respondent's reliance upon *Breed v. Town of Clay*, 21 Misc2d 856, is misplaced. In *Breed*, the Court refused to allow a tenant to extend his auto junking business from two to fourteen acres because he did not show a sufficient intent to expand, before the adoption of the zoning ordinance. That case is distinguished from the case at bar in the inherent nature of the activities being conducted on the property. The land on which a junkyard is located is merely incidental and not integral to the junkyard activities conducted upon it. A junkyard may also be transitory. Its owner may pick up and leave. A junkyard is not a unique use of land, like quarrying or use of land for burial purposes, where the land is an integral part of the operation and, of necessity and over time, will be entirely used or occupied. As such, the holding in *Breed* is not applicable to the inherently expansive nature of cemetery use and does not preclude the cemeteries from extending their nonconforming use.

Since the protection afforded to nonconforming uses extends to the entire land owned by Mt. Eden and the Cemetery Corp., the cemeteries are not subject to subsequently enacted set back restrictions and special use permit requirements of section 218.51 or the regulations of sections 218-3, as amended in 1993 (see *Rodrigues v. Rosenthal*, supra 112 AD2d 1000, see also *Matter of Syracuse Aggregate Corp. v. Weise*, supra; *People v. Miller*, supra, cf. *Castore v. Breite*, 167 AD2d 799; *Andersen New York Zoning Law and Practice* [3rd ed] §6:36 [where a nonconforming use does not apply to the entire parcel, special use permits are an appropriate means for regulating the expansion of a nonconforming use].) The Town's Tree Preservation Ordinance and Excavation and Topsoil Removal Ordinance are also unconstitutional as applied to Mt. Eden and the Cemetery Corp. based upon the same rationale. It cannot be seriously disputed that the root system of trees adversely impacts upon grave sites. The density of trees required by the Tree Preservation Ordinance, assuming arguendo, its applicability to Mt. Eden and the Cemetery Corp., [FN3] would, in practical effect, preclude Mt. Eden and the Cemetery Corp. from using substantial portions of their reserve areas for burial purposes, which they have a lawful right to do given their protected status as a nonconforming use. Section 15-4 of the Excavation and Topsoil Removal Ordinance prohibits the regrading, removal or excavation of topsoil or other natural resources from any parcel of land in the Town, except as provided for in the ordinance. After exempting normal farming activities, the ordinance enumerates in section 15-5 the only uses and purposes for which a topsoil excavation permit can be issued. Excavation of a grave site is not encompassed within the literal meaning of any of enumerated uses or purposes. Prohibiting the cemetery from excavating for the purpose of preparing its property for use as grave sites is an unconstitutional limitation on the sole use to which the cemetery may put its property. Assuming, arguendo, the ordinance would authorize the issuance of a permit for excavating grave sites as a landscaping activity, it constitutes an onerous burden upon fit. Eden and the Cemetery Corp. The ordinance unreasonably deprives the subject cemeteries of a vested right and relegates them to the position of seeking permission to do that which they had a legal right to do (see *Town of Somers v. Camarco*, 308 NY 537, 541).

Nor can the set back restrictions and special permit requirements of the amend-ed-ordinance (sections 218.51 and 218.3), as argued by the Town, be sustained as a valid exercise of the police power upon the theory that it merely regulates the nonconforming use in the interests of public health and aesthetics (cf. *Town of Hempstead v. Goldblatt*, 9 NY2d 101). To be reasonable, a police power regulation must be kept within the limits of necessity (*Matter of Charles v. Diamond*, 41 NY2d 318, 324). In *Matter of Belle Harbor Realty Corp. v. Kerr*, 35 NY2d 507, the Court of Appeals established a three-pronged test for measuring whether necessity limits have been exceeded to justify interference with the beneficial enjoyment of property. The municipality must establish (1) that it acted in response to dire necessity; (2) that its action is reasonably calculated to alleviate or prevent the crisis condition; and (3) that the municipality is presently taking steps to rectify the problem. Here, the Town seeks to justify the set back restrictions and special permit requirements upon two grounds, (1) to reduce the potential of contamination of groundwater wells and (2) for aesthetic reasons, i.e. to provide a buffer between cemetery activities and adjacent residential uses. The Town has not even alleged that any empirical studies were conducted as to the number if any, of residences in the vicinity of the Town's cemeteries which obtain their water from private wells rather than the public water supply; whether interments in compliance with State regulations have an adverse impact on the purity of the groundwater; and whether a 300 foot set back restriction will prevent any such contamination from occurring. Without such empirical data, the Town cannot begin to justify the amended ordinance as a proper police power regulation designed to abate a dangerous health hazard.

With respect to aesthetic considerations, it is well settled that so long as such regulations are reasonable, a zoning ordinance may be justified purely on aesthetic grounds (*People v. Stover*, 12 NY2d 46.2). However, in determining the legitimacy of aesthetic regulations, the public good derived from aesthetics must be balanced against the private economic interest in property rights. Where, as here, the private interest outweighs the public benefit, an aesthetic regulation of this magnitude cannot be justified (see, *Householder v. Town of Grand Island*, 36 Misc2d 862, aff'd 280 App. Div. 874 aff'd 305 NY 805; *Modjeska Sign Studios, Inc. v. Berle*, 43 NY2d 468, 478 [noting that absent the urgency present in a safety-motivated regulation, the immediate benefit gained by an aesthetic regulation does not outweigh the loss suffered by those individuals adversely affected]). Here, the cemeteries would lose the substantial economic value of their land and would be deprived of its intended use if compelled to abide by a 100 foot set back restriction for grave sites. For instance, the Cemetery Corp. estimates that the 100 foot set back requirement would result in a loss of the use of more than two acres of its land, a reduction of 1500 burial sites and a pecuniary loss of \$1,050,000, with no opportunity to offset the loss by an alternative use of the land. Moreover, a buffer of 100 feet for graves and 200 feet for mausoleums does not appear reasonably calculated to preserve the aesthetic character of neighboring residences when compared with other set back restrictions imposed by the Town (see Zoning Ordinance §218-9 [commercial lot

that abuts a residential district need only screen its lot by placing and maintaining an evergreen strip at least 6' high and 5' in depth]; and §218-33 [gas station adjacent to residential lot must provide a minimum landscaped area of 10 feet or a 6' fence]). Clearly, the public benefit gained from the set back restrictions does not outweigh the loss to the subject cemeteries and, thus, cannot be justified as a reasonable aesthetic regulation.

In view of the aforementioned disposition, the Court has neither considered nor addressed the other issues, asserted in the motion papers.

Accordingly, for all the aforementioned reasons, section 46.49 (renumbered 218-51) and 218-3 of the Zoning Ordinance of the Town of Mt. Pleasant, as amended in February of 1993, as well as the Town's Tree Preservation Ordinance and the Excavation and Topsoil Removal Ordinance are declared unconstitutional as applied to the property of Mt. Eden and the Cemetery Corp.; the Town is permanently enjoined from enforcing said ordinance against Mt. Eden and the Cemetery Corp.; and the temporary restraining order granted the Town in an order to show cause, dated December 30, 1992 (Ruskin, J.) is hereby vacated.

In disposing of this proceeding, the Court considered the following papers:

Under Index No. 23481-92: order to show cause with temporary restraining order, dated 12/30/92; supporting affidavit of Robert Meehan dated 12/30/92 and annexed exhibits A-H; summons and verified complaint, dated 12/30/92 and annexed exhibits A-C; Consent to Change Attorney, dated, 4/12/93; stipulation, extending time to answer, dated 3/9/93; verified answer dated 3/24/93;

Under Index No. 4804-93: order to show cause, dated 3/19/93; supporting affidavit of Terence F. O'Connell, dated 3/18/93; supporting affirmation of Timothy Griffin, dated 3/18/93; summons dated 3/18/93, verified complaint and petition, dated 3/18/93, and annexed exhibit A; affidavit of service, dated 3/23/93; verified answer, dated 5/11/93;

Under Index No. 05193-93: summons dated 3/23/93, notice of petition, dated 3/24/93; complaint for declaratory relief and verified petition, dated 3/24/93, and annexed exhibits A-F; amended verified complaint for Declaratory Relief and Petition, dated 5/6/93; verified answer dated 5/11/93;

Under all three Index Nos: stipulation, dated 7/28/93; memorandum of law of Town of Mt. Pleasant, dated 5/11/93; memorandum of law of Mt. Pleasant Westchester Cemetery Corp., dated 3/24/93 and received 5/25/93; corrected memorandum of law, received 3/29/93; affirmation of Timothy G. Griffin, dated 5/21/93; letter to Justice Nicolai from David S. Lindau, dated 5/21/93 (actually a reply memorandum of law); and letter to Judge Murphy from Timothy Griffin, dated 8/9/93.

The foregoing constitutes the decision and order of the Court.

FN1. 100' set back sets aside one acre every 435' of perimeter.

FN2. There is clearly a public policy to restrict the extension of nonconforming uses in order ultimately to eliminate them. Matter of Cave v. Zoning Board of Appeals of Village of Fredonia, 373 NYS2D 932.

FN3. A strict construction of the Tree Preservation Ordinance would indicate that it applies to privately owned property for "future development proposals" (see Tree Preservation Ordinance §201-9) that the Town would have authority to review; such as: applications for site plans, special permits, variances, conservation developments and conventional subdivisions (Tree Preservation Ordinance §201-11[A]). It does not appear that the subject cemeteries are required to file such applications before developing new sections of their property, in light of the Court's ruling that the special use permit regulation is unconstitutional as applied to Mt. Eden and the Cemetery Corp.

10/6/93 NYLJ 25, (col. 2)

END OF DOCUMENT

---

In the Matter of the Petition of:  
THE KENSICO CEMETERY  
For a Variance to the New York State  
Uniform Fire Prevention & Building Code  
-----

DECISION

PETITION NO. 2018-0114

Upon the application of The Kensico Cemetery, filed pursuant to 19 NYCRR 1205 on March 5, 2018, and upon all other papers in this matter, the Department makes the following determination:

NATURE OF GRIEVANCE AND RELIEF SOUGHT

The petition pertains to the construction of a mausoleum, Occupancy Group S2, Storage, one story in height, Construction type non-combustible, approximately 10,500 square feet in gross floor area, located at 273 Lakeview Avenue, Town of Mount Pleasant, County of Westchester, State of New York.

Relief is requested from:

**19 NYCRR Part 1221, The International Building Code, Section 2902.1**, which states plumbing fixtures shall be provided in the minimum number as shown in Table 2902.1 based on the actual use of the building or space.

**19 NYCRR Part 1221, The International Building Code, Section 1008.2**, which requires that the means of egress serving a room or space shall be illuminated at all times that the room or space is occupied.

[The petitioner requests relief to not install plumbing fixtures or illuminate the means of egress.]

FINDINGS OF FACT

1. The subject building is a covered, open-air mausoleum without exterior doors that is open to weather with accessible route, landscaping and associated drainage improvements.
2. Petitioner submitted a list of other mausoleums constructed by the builder in New York State that do not include bathrooms and which were classified as Storage, Business or Utility occupancies.
3. The NYS Department of State previously determined in a Technical Bulletin that a mausoleum without an assembly space is classified as an Occupancy Group U, Utility, which does not require plumbing

Page 7

- fixtures. It has since been determined that the proper designation is an S, Storage occupancy, and the Technical Bulletin has been withdrawn.
4. Storage occupancies require plumbing fixtures and lighting, however no such utilities are proposed for the subject building, as its use will be similar to graveside burial services which have none of these amenities.
  5. The petitioner states that the building will only be daylit and will not be open after 4:30 PM, when the cemetery grounds are closed. Plumbing facilities are available in the cemetery's office for use by funeral mourners with signage directing those arriving in cars to the facilities.
  6. The petition meets the threshold of not having a substantial adverse effect on health, safety & security.
  7. The local code enforcement official has been consulted in this matter and does not object to the granting of a variance under the provisions of 19 NYCRR 1250.6.

#### CONCLUSION OF LAW

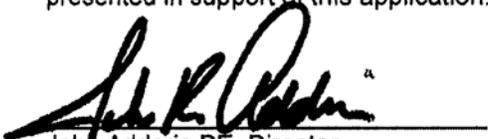
Strict compliance with the provisions of the Uniform Fire Prevention and Building Code would be unnecessary considering the alternatives which are the open-air design, limited hours of operation, and the remote bathroom facilities located in the cemetery offices. These alternatives will ensure the achievement of the code's intended objective, such that granting the variance would not substantially adversely affect the Code's provisions for health, safety and security.

#### DETERMINATION

WHEREFORE IT IS DETERMINED that the application for a variance from 19 NYCRR Part 1221, Section 2902.1, to not install plumbing fixtures, and 19 NYCRR Part 1221, Section 1008.2, to not provide egress illumination, be and is hereby PROPOSED TO BE GRANTED.

This DECISION is issued under 19 NYCRR 1205.6. Unless objected to by the petitioner in a writing received by the department the decision shall become FINAL after fifteen days of receipt of the decision by the parties.

This decision is limited to the specific building and application before it, as contained within the petition, and should not be interpreted to give implied approval of any general plans or specifications presented in support of this application.



John Addario PE, Director  
Division of Building Standards and Codes

DATE: April 11, 2018  
MC: nc