



New York State  
DEPARTMENT OF STATE

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

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# CEMETERY BULLETIN

## Director's Notes —

The Division of Cemeteries and the Cemetery Board are pleased to resume publication of the Cemetery Bulletin in their efforts to inform cemeterians of important issues and recent events. Publication was suspended since last year due to two significant deaths that have impacted operations. The Division has been recovering both personally and operationally from the loss of Mike Itzo and Ed Hand - both contributed greatly to the Division and are missed by all.

A number of issues have been discussed and decided upon by the Cemetery Board and progress made on legislative matters. The Reclamation Bill, which will give cemeteries the right to reclaim graves that are older than 75 years and to be able to then sell those empty graves of an existing lot, seems to be on track for final passage. The selling of pre-need interment services has been discussed by the Cemetery Board and a position taken.

We hope that you find this issue informative. We will strive to bring the newsletter to you on a more regular basis in the future.

— By Richard D. Fishman  
*Director*

## REMINDER—

Cemeteries are not allowed to automatically close for winter months. Burials must be made if weather conditions allow. An additional charge may be made for snow removal or penetration of frost based on the actual additional costs to the cemetery.

## Right of Second Interment

Cemeteries are sometime asked to place a person's cremated remains in a grave that already contains another person's remains. A question has arisen concerning how to charge for such second interments.

The answer depends on whether the charge is for the cost of a burial space, or for the cost of a service, the interment. The price of a burial space must be posted in the office of the cemetery corporation and filed with the Cemetery Board. The price of a service, such as interment, must also be approved by the Cemetery Board.

The number of interments that may be made in a single grave is a matter of contract between the cemetery and the purchaser of a lot or plot. The number should be specified in the deed or other contract instrument, or in the rules and regulations of the cemetery corporation in effect at the time of purchase.

If a purchaser was clearly granted the right to only one burial, then the cemetery may charge for the right to a second interment. However, if the original agreement did not limit the number of burials allowed, then the right to a second interment has already been granted, and the cemetery may not charge for the right.

When dealing with a request for a second interment, the cemetery must review the original purchase contract or deed and the rules in effect at the time to determine whether or not it may sell a right of second burial.

In any event, a cemetery may impose its approved charge for providing the service of interring the remains.

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## Prepaid Interment Services

Some cemeteries offer lot owners the opportunity to pre-pay the cost of interment services. While cemeteries are required to place in trust monies paid prior to need for merchandise, there is no comparable requirement in Section 453 of the General Business Law for handling monies paid for services prior to the time they are rendered. However, cemetery corporations are advised that they must take certain steps to ensure compliance with Article 15 of the Not-for-Profit Corporation Law when they collect money prior to need for interments or other services.

*(Continued, see PREPAID INTERMENT SERVICES)*

## **Veterans' Markers**

In our December 2001 *Cemetery Bulletin*, we reported that "...veterans' markers are provided...for the *un-marked graves of veterans only*." At the time the article was written, that was a correct statement. Subsequent legislation reversed that policy.

Section 502 of the Public Law 107-103, *Veterans Education and Benefits Expansion Act of 2001*, "...requires Veterans' Association to provide, upon request, government markers for marked graves at private cemeteries..." This applies to cases in which the death occurred on or after December 27, 2001. The authority to furnish a marker under this section expires on December 31, 2006.

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**New ECI = 3.7%**  
**(Employee Cost Index)**

## *PREPAID INTERMENT SERVICES ...*

Section 1509(b) of the Not-for-Profit Corporation Law requires cemetery corporations to make reasonable charges for services that are based on the fair and reasonable cost and expense of rendering such services. To comply with this provision of law, a cemetery must collect enough money to pay the cost of an interment at the time it is provided.

One way for cemeteries to comply with Section 1509(b) of the Not-for-Profit Corporation Law is to place any pre-need payments for services into an interest-bearing escrow or trust account. At the time the service is provided, an amount equal to the approved charge for the service can be withdrawn. If there is not enough to cover the cost of the service at that time, the balance should be collected. Similarly, if the money in the account exceeds the cost of the service, the excess should be refunded.

The Cemetery Board would find it unacceptable for a cemetery to collect money for pre-need interments and merely place the money in the general fund. Such a practice would put a financial strain on the cemetery at the time it must provide the interments, and is not in the best interest of the lot owners. Such a practice also increases the risk that a cemetery will be abandoned and become a public charge.