

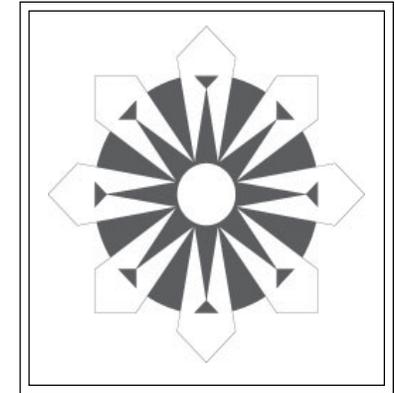
Brief Notes And Reminders

- New ECI Rate is 3.8%
- Supreme Court approval is required for ALL real property purchases and sales. This approval is contingent on the Division's investigation and the Cemetery Board's recommendation.
- Cemeteries with 30 acres or more may not have licensed funeral directors on their board of trustees/directors.

Modified Return Bill

The Modified Return Bill was signed into law on November 3, 2004. This amendment authorizes a public cemetery corporation to use a percentage of capital gains income from its permanent maintenance fund for current purposes. The formula is currently being reviewed by the Division in conjunction with cemetery representatives.

It is important to note that the use of capital gains will require Cemetery Board approval and also disclosure and reporting requirements on annual reports. This law takes effect January 1, 2005.



CEMETERY BULLETIN

December 2004, No. 11

DEPARTMENT OF STATE

George E. Pataki
Governor

Randy A. Daniels
Secretary of State

New York State Department of State

Cemetery Bulletin

December 2004

No. 11

DIVISION OF CEMETERIES

Richard D. Fishman, Director
123 William Street, 20th Floor
New York, NY 10038-3804
Voice: (212) 417-5713
Fax: (212) 417-2322

Chester Butkiewicz, Assistant Director
41 State Street, Suite 1110
Albany, NY 12231-0001
Voice: (518) 474-6226
Fax: (518) 473-0876
E-mail: cemeteries@dos.state.ny.us

Director's Notes

The Department of State is pleased to present the eleventh issue of the *Cemetery Bulletin*. Since our last newsletter, new laws have been enacted that may affect your cemetery operations. The Cemetery Law Manual has been updated with these changes and can be found on our website (www.dos.state.ny.us). Applications for the reclamation of graves can be found on the Web as well.

Please pay special attention to the issue of pre-need sales in mausoleums. Mausoleum construction must receive Cemetery Board approval before any sales can be made, pursuant to Cemetery Board Directive 201.11. If you are contemplating the construction of a mausoleum, contact your local Division Office for assistance.

We hope that you continue to find the *Bulletin* informative and we appreciate your comments and any suggestions for future publications. If you have questions on any legal or regulatory issue, please give us a call (Albany 518-474-6226 or NYC 212-417-5713). As always, we are here to serve you.

We wish you all a happy holiday season and joyous new year.

Rules and Regulations

Cemeteries should review their rules and regulations to regularly keep pace with current social changes in burial and memorialization services. For example, some cemeteries do not allow the releasing of balloons in the air because of the potential harm to trees and wildlife, while others do not allow memorialization on headstones if the remains are not interred in the lot. Rules and regulations are an integral part of managed care in a cemetery and should protect the interests of the cemetery and the lot owners, allowing families to pay their respects and memorialize properly. A thorough review of all rules and regulations is to your benefit.

Burial Societies

The Burial Society bill was signed into law on October 26, 2004. This amendment authorizes a cemetery to bury a person in a plot owned by a membership, religious corporation, or other entity if certain requirements are met. The amendment outlines different rules for different circumstances, including documentary evidence indicating that the person to be buried has a right to be buried in that particular location. The Division will be drafting regulations on the type of documentation and other criteria that a cemetery should look for when faced with a request to inter when no officer of the burial society can be contacted to authorize the burial. This amendment became effective November 25, 2004.

Pre-Need Sales

As you know there is no pre-construction mausoleum statute. However, directive 201.11- "Procedure for approval for construction of a mausoleum" must be submitted to the Division and the Cemetery Board before any and all contracts are signed. This includes consumer contracts, which would be refunded at 100% if the project is not approved. A recent experience in this area demonstrates that the Cemetery Board and the Attorney General view contracts without approval as a serious breach of fiduciary responsibilities. Further, a mausoleum is a type of "major alteration," and a cemetery contemplating the construction of a mausoleum should review, and comply with 201.16 - Cemetery Renovation, as well as 201.11.

Similarly, the pre-sale of any cemetery services is contrary to policy of the Cemetery Board and violators will be issued notices of non-compliance. All funds received will have to be refunded and contracts cancelled.

Welcome News!

The Division would like to welcome Erin Booy to the Albany staff. Erin comes to us from the private sector with several years of office experience. Working closely with Mary Lee Hedrick, Erin is quickly becoming an integral part of our office.