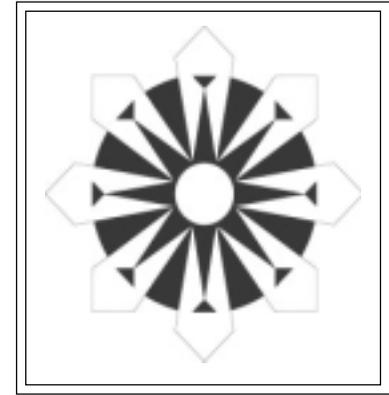


NYS Department of State
Division of Cemeteries
41 State Street
Albany, NY 12231-0001



CEMETERY BULLETIN
October 2005, No. 12

DEPARTMENT OF STATE

www.dos.state.ny.us

George E. Pataki
Governor

Removal of Remains

Cemeteries should be aware of the proper procedures involved in removing any remains from any place of interment. (NPCL § 1510(e) Removals.) Before removing any remains from a grave, crypt or niche, consent must be given by the cemetery corporation and written authorization must be given by all of the following: the owners of the lot, the surviving spouse, children if of full age and parents of the deceased. In the event that consent cannot be received, a court order is necessary.

If the remains are to be repositioned on the same grave or reinterred in the same cemetery, this is all that is required. If the remains are to be removed for transport to a crematory, or reinterment in another cemetery, a permit from the registrar of vital statistics is necessary along with the services of a licensed funeral director.

If any question exists as to the proper procedure for removals, contact the Division of Cemeteries for guidance before moving any remains.

Receipts Bill Amendment

Governor Pataki has signed an amendment to the Receipt Bill which allows cemeteries to discard receipts after four years of retention. It also provides that the receipt may be issued by any person that is designated to receive the body. The receipt may be delivered by and signed by a registered resident of the funeral home.

New York State Department of State

DIVISION OF CEMETERIES

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Modified Return Bill

Since the Modified Return Bill was signed into law on November 11, 2004, we have received several questions on how to apply to use a percentage of capital gains income from its permanent maintenance fund for current purposes. The Division has developed forms and a worksheet which when completed will help you determine if your cemetery qualifies for an appropriation of a percentage of capital gains. It is important to note that the use of capital gains will require Cemetery Board approval as well as disclosure and reporting requirements on annual reports.

Otherwise, the principal of the permanent maintenance fund is inviolate, except when an order of the Supreme Court authorizes it to be used for other purposes. (NPCL § 1507(a) Maintenance and preservation.) Accordingly, the principal should not be used to pay for custodial/trust fees.

Until such time as the forms and instructions are made available on the department's web site (www.dos.state.ny.us), call (Albany 518-474-6226 or NYC 212-417-5713) for information and copies of the forms.

Pre-Need Sales

The Cemetery Board has issued a policy that requires ALL pre-need services be escrowed 100%. Selling of pre-need merchandise must be trusted 100% in accordance with General Business Law, § 453.

Treasurer's Guide on Web Site

Newly developed Treasurer's Guide is now available on the Department of State's web site. If you do not have access to the Internet you may request a hard-copy. The purpose of the guide is to inform and educate new board members and treasurers as to the basic requirements for maintaining books and records.

The guide was originated and developed by Joseph Ambrose, Division's Senior Accountant, of our Utica Office and dedicated to Mike Itzo. Thanks, Joe.

Brief Notes and Reminders

- ▶ Please use your five digit cemetery number in ALL correspondence. This is your primary cemetery file number and without it you may not receive the timely service you deserve.
- ▶ Cemeteries should NOT sell any objects such as cannons or other items the cemetery does not own. If an item such as a cannon has been on your cemetery grounds "forever" does not necessarily mean the cemetery owns the item. If you don't own it, don't sell it! It could prove to be costly to the cemetery.

Unauthorized Permanent Maintenance Fund Invasions

At no time can a cemetery use PM fund principal without state supreme court approval and application to NYS Cemetery Board. These applications shall spell out in detail the purposes for which money will be used and a proposed repayment plan which shall be no longer than 10 years.

Applications must be submitted with appropriate court papers well in advance of the court date and Cemetery Board meetings which are usually the third Thursday of each month.

Reclamation Forms on Web Site

Lot reclamation forms are now posted on the Department's Web site: click on the Cemetery icon to view and print out a copy of the forms you require. Notice there are three separate forms depending upon the type of reclamation to be done. If you have any questions with regard to completing the forms please feel free to contact us.

Note, the Cemetery Board recently adopted a policy that the posting requirement must be at a minimum of six months from date of application.