



Notice of Proposed Appropriation of a Percentage of Perpetual Care Fund Net Appreciation

A cemetery seeking to appropriate a portion of net appreciation of the Perpetual Care Fund (“PC Fund”) should complete the following form. A cemetery may not apply more than once a year and may only apply for the last completed calendar or fiscal year.

I. Background

Not-for-Profit Corporation Law (N-PCL) Section 1507(c)(2) has been amended by Chapter 509 of the Laws of 2014 to permit a cemetery to:

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 5-A of this chapter, the Prudent Management of Institutional Funds Act.

Section 1507(c)(2) sets forth a procedure to be followed:

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.

II. Cemetery Board Discretion to Object

The Cemetery Board retains its discretion to object to a proposed appropriation as permitted by the amendment of N-PCL Section 1507(c)(2) by Chapter 509 of the Laws of 2014. The following form sets forth the minimum standards a cemetery must meet to avoid automatic objection by the Cemetery Board to its Notice of Proposed Appropriation. However, even if the form is properly completed and the application meets the minimum standards, the Cemetery Board may still object to and disapprove an application on other grounds.

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For Calendar/Fiscal Year _____ (most recently completed year)¹

NY State - Cemetery Five Digit ID Number and County Name
Cemetery Name And Federal ID Number
Location of Cemetery (Street Address, Town, City or Village, and Zip)
Mailing Address (If different – Include name if address is of an officer)
Contact Person Name, Title, Telephone Number

REQUIRED INFORMATION

A. Total Perpetual Care unadjusted Endowed Principal (amounts endowed, without consideration of realized/unrealized gains/losses) at end of most recent completed year – Cost. \$	D. Percentage of Net Appreciation proposed to be appropriated (from Calculation, Page 9, Line 8) %
B. Total Perpetual Care Principal at end of most recently completed year (Market Value) from broker statements. Do not include accrued income. \$	E. Amount of Proposed Appropriation (from Calculation, Page 9, Line 9) \$
C. Appreciation of Perpetual Care Assets as of most recently completed year (Market Value vs. Unadjusted Endowed Principal) (Box B minus Box A) \$	F. Total Perpetual Care Principal (Market Value) after Proposed Appropriation (Box B minus Box E) \$

IF THE AMOUNT IN BOX C IS ZERO OR LESS, OR IF THE AMOUNT IN BOX E IS GREATER THAN THE AMOUNT IN BOX C, YOU MAY NOT SEEK AN APPROPRIATION.

IF YOU CANNOT PROVIDE THE REQUIRED SUPPORTING DOCUMENTS LISTED BELOW, INCLUDING THE ELECTRONIC SPREADSHEET DESCRIBED IN ITEM 5, OR IF YOU DO NOT COMPLY WITH OR SATISFY ANY OTHER REQUIREMENT SET FORTH BELOW, YOU MAY NOT SEEK AN APPROPRIATION.

¹ If you are filing this in 2016, the “most recently completed year” would be calendar/fiscal year 2015. You may seek an appropriation and submit this form with or after the filing of the Annual Report for the most recently completed year, but not before such filing.

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REQUIRED SUPPORTING DOCUMENTS

- 1) The cemetery's most recent operating statement (if not included in the most recent annual report);
- 2) The cemetery's most recent balance sheet (if not included in the most recent annual report);
- 3) Copies of the Annual Reports for the most recently completed year AND for the four years that preceded it (total of five years of annual reports); and
- 4) Copies of bank/broker account statements showing the market value of the Perpetual Care accounts: (a) as of the most recently completed month; (b) as of the end of the most recently completed year; and (c) as of the end of each of the four years preceding the most recently completed year (last month plus five years).
- 5) An electronic spreadsheet that can be searched, sorted and filtered listing the cemetery's Perpetual Care accounts for the most recently completed year including: (a) account identifier (name/number); (b) account principal (endowed amount); (c) income balance; (d) additional voluntary contributions; (e) cost of care and (f) total market value.

DEMONSTRATE COMPLIANCE WITH PERPETUAL CARE REGULATIONS

You must demonstrate that you comply with the following regulations:

1. 19 NYCRR § 200.4(a)(3) and 200.4(b)(3) which require that a cemetery's annual report include:

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.

2. 19 NYCRR § 200.4(a)(5) AND 200.4(b)(5) which require that a cemetery's annual report include:

a statement concerning the accountability for the perpetual care fund, indicating whether the cemetery's records separately identify cumulative principal of endowment, cumulative capital gains or losses, and the cumulative income retained for use in future years.

Do your annual reports comply with these regulations? YES NO

If so, set forth where in the annual reports included with this application each requirement of each regulation is satisfied (page and section number, if any).

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DEMONSTRATE COMPLIANCE WITH PERPETUAL CARE FUND NET APPRECIATION REPORTING

If you have previously been approved (not objected) to appropriate a portion of the net appreciation of the principal of the Perpetual Care Fund, you must maintain records that separately identify the accumulation of unspent allocations of net appreciation by account and your annual report must include a statement indicating that the cemetery's records comply with this requirement.

Do your records comply with this requirement and do your annual reports contain the required statement?

If so, set forth where in the annual reports included with this application the required statement is contained (page and section number, if any).

DEMONSTRATE GOOD STANDING

Are you current on the filing of all documents, records and information required by N-PCL Article 15, any rules and regulations promulgated thereunder and any direction, order or request of the Division of the New York Cemetery Board? (For example: annual reports, Permanent Maintenance loan/deficit repayments) If not, please explain:

Are you current on all payments due for administration (N-PCL Section 1508(c)) and the vandalism fund (Section 1507(h)(2))? If not, please explain:

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Are your Perpetual Care accounts fully funded (there have been no withdrawals of principal and no accounts show a negative balance)? If not, please explain:

Are you the subject of a New York Cemetery Board order and/or referral to the Attorney General? If so, set forth the details of the order/referral and explain whether you are in compliance with any requirements resulting from that order/referral.

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PURPOSE OF PROPOSED APPROPRIATION

An expenditure of net appreciation may be used solely for accounts that do not generate sufficient income to provide their lots with the required perpetual care and maintenance. Net appreciation may only be allocated to and spent on the account that generated that portion of net appreciation (you cannot spend gains generated by one account on the maintenance required for another account).

Do you comply with these requirements and are your records maintained in a manner that demonstrates such compliance?

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CONSIDERATION OF N-PCL SECTION 553(a) FACTORS

1 and 2. The duration and preservation of the endowment fund/The purposes of the institution and the endowment fund.

Cemeteries serve the public as a final and lasting resting place and memorial for their remains. Perpetual Care accounts must exist in perpetuity and must experience and retain growth substantially in excess of inflation so that income and net appreciation will be sufficient to maintain the specific lots now and in the future. Cemeteries must maximize the use of income from its Perpetual Care accounts before seeking to withdraw net appreciation.

Please explain how your proposed use of net appreciation meets this standard:

3 and 4. General economic conditions/The possible effect of inflation or deflation.

Actual past and current economic conditions must be evaluated and future economic conditions must be anticipated conservatively and in a manner consistent with the standards of a prudent investor.

Please explain how your proposed use of net appreciation meets this standard and either attach a copy of or describe your investment policy:

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5, 6 and 7. The expected total return from income and the appreciation of investments/Other resources of the institution/Alternatives to expenditure of Net Appreciation on PC accounts.

Expenditure of net appreciation must not reduce the PC accounts below anticipated needs. Future growth must be planned and the PC accounts must experience and retain growth substantially in excess of inflation so that income and net appreciation will be sufficient to maintain the specific lots now and in the future. Alternative expenditures must be explored. As noted above, cemeteries must maximize the use of income from its Perpetual Care accounts before seeking to withdraw net appreciation. As the calculation below indicates, you may not appropriate more than five percent of the average market value of PC accounts over the preceding five years, absent unusual and exigent circumstances.

Please explain how your proposed use of net appreciation meets this standard:

8. The investment policy of the institution.

The cemetery must have an investment policy and must comply with the Prudent Investor Act (Estates, Powers and Trusts Law § § 11-2.2 and 11-2.3) with regard to investment of the Perpetual Care accounts and must act as a prudent investor when considering any expenditure of net appreciation.

Please explain how your proposed use of net appreciation meets this standard:

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CALCULATION OF AVERAGE NET APPRECIATION

The first step in this process is removing accounts that are less than five years old from the calculation of Fair Market Value of the PC Fund accounts. Those accounts are removed because only accounts that existed for at least five years may be considered in calculating the average. After removing those accounts, the Net Fair Market Value of the PC Fund accounts is averaged over five years. (A calculation example is provided at the end of this document).

A	B	C	D	E	F
Line No.	Calculation Year	Fair Market Value of PC Fund Account Principal in Each Year	Principal Value of New Perpetual Care Fund Accounts created in Each Year	Cumulative Principal Value of New Perpetual Care Fund Accounts	Net Fair Market Value of the PC Fund Accounts (Column B minus Column D)
1	Year 1			Year 1	
2	Year 2			Years 1 + 2	
3	Year 3			Years 1 thru 3	
4	Year 4			Years 1 thru 4	
5	Year 5			Years 1 thru 5	
6	Totals				

7 Average Net Fair Market Value of the PC Funds \$ _____
 (Line 6, Column E divided by the number 5)
 (for PC Funds, this is the "Net Appreciation")

Next, apply the percentage you seek to appropriate (up to a maximum of 5%) to the Net Appreciation in Line 7. The product is your "Proposed Appropriation".

8 Percentage of Net Appreciation sought to be appropriated _____ %
 (not to exceed 5%)

9 Line 7 multiplied by Line 8 = Proposed \$ _____

Report the numbers in Lines 8 and 9 in the appropriate boxes on Page 2.

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Certification

The undersigned certify that, to the best of our knowledge, the statements, information, data and calculations contained herein are complete, accurate, free from material misstatements and are not misleading in any respect.

Cemetery Trustee Signature **X** _____ Date _____
Name and Title (Print) _____

Cemetery Trustee Signature **X** _____ Date _____
Name and Title (Print) _____

Cemetery Accountant Signature **X** _____ Date _____
Name and Title (Print) _____

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CALCULATION EXAMPLE

A	B	C	D	E	F
Line No.	Calculation Year	Fair Market Value of PC Fund Account Principal in Each Year	Principal Value of New Perpetual Care Fund Accounts created in Each Year	Cumulative Principal Value of New Perpetual Care Fund Accounts	Net Fair Market Value of the PC Fund Accounts (Column B minus Column D)
1	Year 1	\$1,100	\$125	Year 1 \$125	\$975
2	Year 2	\$1,250	\$10	Years 1 + 2 \$135	\$1,115
3	Year 3	\$950	\$25	Years 1 thru 3 \$160	\$790
4	Year 4	\$1,150	\$50	Years 1 thru 4 \$210	\$940
5	Year 5	\$1,300	\$100	Years 1 thru 5 \$310	\$990
6	Totals	\$5,570		\$940	\$4,810