

# Cemetery Law & Cemetery Rules and Regulations

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# Every Cemetery Must Have Rules and Regulations

- Must be approved by this Division before they are effective.
- While we have guidelines each cemetery has rules that are unique to them.
- A good share of our complaints tie in to the cemetery's rules and regulations.

# Not for Profit Corporation Law 1502(a)

- A cemetery is for the disposition of human remains.
- The remains of a pet are not to be interred in a cemetery, this includes cremated remains of pets.

# Purchase of Graves

- Cemetery rules and regulations must be provided before any part of the purchase price is paid.
- Only one grave need be sold to any one person.
- Upon payment in full the purchaser must be provided with a “deed” or receipt.

It must show price, name of lot owner, location and dimensions.

Must be signed by President or VP and Treasurer or Assistant.

# What information does the cemetery need?

- No interment should be allowed unless the grave and interment charges are paid.
- The cemetery may refuse cash payments and require a business check, money order, cashier's check or credit card.
- Burial/Transit permit must accompany the remains to the cemetery.

# Information needs to be collected by the cemetery personnel

- Not for Profit Corporation Law 1510(c) 1512 (c) (e) and PHL 4145 (5) requires this information to be collected:
  - Name of deceased
  - Age of deceased/Date and place of birth
  - Place and date of death
  - Time and date of interment
  - Names and addresses of adult distributees, or those who will be in charge of the lot.
  - The name and address of the funeral home.

# Permission for Interment

- Not for Profit Corporation Law 1512 states who is eligible for interment.
- Table of Consanguinity
- The lot owner may make a designation but cannot charge for it.
- The cemetery may require the lot owner to complete an Authorization of Interment.

# Resale of a lot

- Lot owner rights can only be transferred as set forth in Not for Profit Corporation Law 1513(c).
  - Can only be transferred by the lot owner or owners.
  - Must be a vacant lot
  - First offer is back to the cemetery for original purchase price and 4% simple interest.
  - The cemetery can accept or refuse.



# What and when items can be removed from a grave?

- Can remove flowers and wreaths when they become unsightly, this usually applies to items left after a committal service.
- Need to serve due notice to remove an embellishment, effigy or inscription that is dangerous or unsightly.
- Dangerous item: notice by certified mail;
- Non dangerous by certificate of mailing.

# Who is responsible for the monument?

- The monument is the personal property of those who caused it to be placed.
  - That person should insure the monument.
- Monuments cannot be removed without written permission of the owner and lot owner or a court order.
- If it is to be removed for repair or non payment, due notice must be served.

# What about plantings and decorations?

- The planting of trees, shrubs, flowers and bushes can be restricted or prohibited.
- If they are planted without permission they can be removed.
- All other decorations can be regulated by the cemetery association.

# Memorials

- The cemetery may regulate whether or not they will allow a private mausoleum and the particulars.
- The size, shape, material and dimensions can be restricted according to section or lot size.
- Can prohibit the use of color.
- No monument should be delivered without permission of the person in charge of the cemetery.
- A work order should be sent to the cemetery association that clearly describes the monument in detail.

# Overtime

- The latest time a funeral can arrive at the cemetery can be stated in the rules.
- A NYS Cemetery Board approved overtime charge can be assessed.
- The charge will be listed in the cemetery's service charges.

# Who is in charge?

- Once a funeral enters the gates of the cemetery, it is under the supervision of the superintendent.
- The superintendent can determine the traffic pattern and what size or weight of vehicle can access the cemetery.
- It still is the responsibility of the funeral director to supervise the interment of the remains

# Contractors

- The association determines who will do work in the cemetery.
- Every contractor should provide a certificate of liability.
- Some cemeteries have asked funeral homes providing services regularly to provide this documentation.

# Availability on a Six Day Basis

- Not for Profit Corporation Law 1510(b).
  - Can restrict the number of vehicles it will allow.
  - Can charge for extra costs involved.
  - It is the decision of the superintendent and family, not the decision of the funeral director.



# Receiving Vault

- Needs to be locked when not attended.
- No other items to be stored when remains are in there.
- Can charge an approved fee for storage.
- Can set a date for removal all remains.
  - Can make interment of remains left after that date.
  - The person responsible for the remains would be responsible for payment.

# Grave liners and vaults

- A grave liner can be required as per 19NYCRR 201.6
- The requirement would apply to graves sold on or after the date the requirement was approved by this division.
- A cemetery can sell grave liners but not vaults.

# Cremated Remains

- Scattering a cremated remains can be prohibited.
- The type of container allowed for interment can be described: rigid material, such as wood, metal or plastic.
- Dimensions of the container can also be set forth in the rules and regulations.

# Interment of Cremated Remains

- It is important to provide the cemetery personnel with the dimensions of the cremation container when the grave is ordered.
- If more than one set of cremated remains is being interred, the cemetery has the right to charge for 2 interments of cremated remains. The charge is for the number of remains and not the number of containers.
- Sometimes the cemetery has a special charge for interment of 2 cremains at the same time.

# How many interments per grave?

- Each Cemetery can determine how many and what type of interments will be allowed per grave.
  - One full interment only
  - One full interment and one cremation or infant.
  - Two cremations or more.
  - With each interment comes the right to memorialize in accordance with the cemetery rules.

# Second Right of Interment

- Also known as Additional right of interment or Accommodation Fee.
  - Can be charged when an interment above the number allowed in the cemetery rules and regulations in effect at the time of purchase of the grave or in the contract is requested.
  - This charge is usually listed with the lot charges in a separate area.

# Volunteer Cemetery Maintenance

## 19NYCRR Part 202

- A municipality may request the Division of Cemeteries to assist them in organization , implementation or administration of a voluntary cemetery maintenance and cleanup program.
- We can and do provide assistance with professional and technical guidance, we share knowledge of service providers and may provide guidelines for general maintenance.

# Burial on Private Land

- Although we do not regulate them, we routinely receive calls regarding burials on private land.
- Jurisdiction lies with the municipality where the land located.
  - It can be regulated through their zoning board or legislative board.
  - Good place to start is with the Town, City or Village Clerk.



# Suggestions for Interments on Private Land

- How are they to protect the interment in the future?
  - The municipality is not responsible to care for them when abandon or overgrown.
  - Can they split that parcel of land from their residence, set aside a trust and appoint a permanent trustee?
  - Are they willing to form a Private/ Family Cemetery Corporation.

# Department of State Website

- <http://www.dos.state.ny.us>
  - Bulletins
  - List of Not for Profit Cemetery Corporations
  - Law Book and the Regulations
  - FAQ's about Cemeteries and Crematories
  - Manual for the New Treasurer
  - Several Forms
  - Web cast of NYS Cemetery Board Meetings