

State of New Jersey

N J L R C

New Jersey Law Revision Commission

FINAL REPORT

relating to

CEMETERIES

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NEW JERSEY LAW REVISION COMMISSION
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Introduction

Over the last year and a half, the Law Revision Commission has engaged in a comprehensive study of the cemetery laws now compiled as Title 8A of the New Jersey Statutes. This report is the result of that work. The Commission benefited from a previous recommendation for revision by a committee of the Cemetery Board, "Recommended Amendments to The New Jersey Cemetery Act, N.J.S. Title 8A, Report of the Title 8A Revision Committee, January 30, 1995" and from the cooperation of the Cemetery Board and of members and representatives of the cemetery and funeral industries.

In many areas, the current New Jersey Cemetery Act, N.J.S. 8A, does not constitute a comprehensive treatment of the subject. In these areas, the Commission Report fills gaps. See, for example, Section 7-1 which covers ownership and transfer of graves, crypts or niches. In other areas, current law is not consistent. Here, the Commission Report harmonizes the current conflicting provisions. See, for example, Section 7-3 which covers rights of burial in graves or crypts.

Title 8A contains 133 sections within 12 chapters. Many sections are poorly written and organized; overlapping and duplicative provisions abound. The Law Revision Commission has reduced the 12 chapters to nine, and the 133 sections to 38, and produced a clearer, simpler statement of the law. In a few places, the Commission has made small substantive changes. For example, Section 5-7 clarifies that if a person has decided on his own funeral or burial arrangements, the decisions are binding, but those decisions must be in a signed writing. The Commission also tightened the requirements for records of ownership of cemetery spaces and gave cemetery companies more discretion in the management of maintenance and preservation funds.

Pursuant to N.J.S. 8A:1-1 et seq. (L. 1971, c. 333), the New Jersey Cemetery Board regulates cemetery companies. By statute, the Board was within the Department of Banking. Reorganization Plan No. 001-1995, effective May 12, 1995, transferred the Cemetery Board to the Division of Consumer Affairs in the Department of Law and Public Safety. As a result of that transfer, the Attorney General oversees the Cemetery Board to the same extent that it does the other professional and occupational boards in the Division of Consumer Affairs. However, statutory changes were never made to complete the relationship between the Cemetery Board and the Division of Consumer Affairs. As a result, the Commission recommends that reference to the Cemetery Board be added to 45:1-2.1, 45:1-2.2, 45:1-3.1 and 45:1-15.

Cem:1-1. Title

This act shall be known and may be cited as the “New Jersey Cemetery Act.”

Source: 8A:1-1

COMMENT

This section is identical to the source provision.

Cem:1-2. Definitions

The following definitions, unless the context indicates otherwise, apply to this Act:

“Board” means the New Jersey Cemetery Board.

“Burial” means disposition of human remains by placing them above or below ground, but does not include their temporary storage.

“Burial right” means a right for the burial of human remains in a particular grave or crypt created by contract between a person and a cemetery.

“Cemetery” means any land or place used or dedicated for use for disposition of human remains or cremated human remains, and also includes a crematory.

“Cemetery company” means a person, corporation, association or other entity that owns or operates a cemetery, but does not include a religious organization that owns a cemetery which restricts burials to members of that religion or their families unless the organization has obtained a certificate of authority for the cemetery.

“Columbarium” means a building or structure containing niches for disposition of cremated human remains.

“Crematory” means a structure containing retorts used to incinerate human remains.

“Crypt” means a burial place in a mausoleum or other structure.

“Embellishment” means an item contributing to beauty or comfort in a cemetery which does not contain a representation or name of the deceased person or the deceased person’s family.

“Grave” means a place for underground disposition of human remains or cremated human remains. A grave may include spaces for the disposition of human remains of more than one person, arranged by depth.

“Human remains” means the body, or part of the body, of a deceased person.

“Maintenance” means all activities of a cemetery company which further care and upkeep of a cemetery, including cutting of lawns, and preservation and repair of drains, water lines, roads, buildings, fences and other cemetery-owned structures.

“Mausoleum” means a permanent building in a cemetery, built in accordance with Department of Community Affairs regulations, above or below ground, containing crypts to be used for burial. A mausoleum is distinguished from a single or multiple vault in that it is a

single integrated structure It shall not consist of one or more vaults constructed off the cemetery premises and installed singly or in series at the cemetery premises. A private mausoleum is one not owned by the cemetery company. A public mausoleum is one owned by a cemetery company with the intention of use of cemetery spaces in it by the general public.

“Memorial” means a marker located at a grave containing the name of a deceased person or the family name of a deceased person, or an effigy or other representation of a deceased person buried in the grave. It does not include an embellishment.

“Niche” means a space in a columbarium or mausoleum for placement of cremated human remains.

“Person” includes an individual, corporation, partnership or other entity.

“Plot” means an area of cemetery ground containing two or more adjoining graves.

“Vault” means a prefabricated outer burial case, opening at the top, installed in the ground to receive one or more burials.

Source: 8A:1-2

COMMENT

This definition of “Board” is identical to that of the Report of the Title 8A Revision Committee of 8A:1-2. The definition of “burial” has been changed to avoid the circularity of the Report provision which defines “burial” as “the interment of remains in a grave” and “interment” as “disposition of remains by burial, entombment or inurnment” The expanded definition of “burial right” is consonant with Section 7-1(a) which requires a cemetery company conveyance transferring a grave, crypt or niche to state whether title or right of burial is being transferred. The definition of “cemetery” streamlines the source and Report provision. As defined, the term includes cemeteries not regulated by the Cemetery Board. Provisions that apply to “cemeteries” rather than “cemetery companies” affect all cemeteries whether owned by a cemetery company or not. See e.g. Sections 2-3; 3-1; 4-3(c); 5-5(b), (c) and (e); 5-6(a); 5-7(c); 6-1; 7-1(c); 7-2(a); 7-4(a); and 8-1. The definition of “cemetery company” is substantially similar to its source but has been simplified in language.

The definition of “Columbarium” is substantially identical to its source but deletes the word “inurnment.” The definitions of “crematory” and “crypt,” though reworded, are substantially similar to their sources. The definition of “embellishment” is new. It is a greatly streamlined version of the one in the Report. The main significance of the definition lies in the distinction between a “memorial” and an “embellishment;” cemeteries are permitted to sell embellishments but not memorials. The definition of “grave” has been changed to state explicitly that it can accommodate spaces for the remains of more than one person.

The definition of “human remains” follows the Report of the Title 8A Revision Committee provision in deleting cremated remains from the source provision. The distinction of “human remains” from “cremated human remains” is important; there are few restrictions on the disposition of cremated remains. The definition of “maintenance” is substantially similar to the source provision but simplifies its language. The definition of “mausoleum,” while simplified, is substantially similar to its source, except for the additional mandate that the Department of Community Affairs oversees construction of mausoleums. The definition of “memorial” is based on the source provision, but emphasizes the distinction with “embellishment.” The definitions of “niche” and “plot” are substantially identical to their sources. “Person” is defined as including more than a natural person. The current statute includes definition of the term only in the cemetery salesmen chapter. The simplified definition of “vault” is similar to its source but has been augmented by the descriptive phrase “opening at the top.”

Definitions of some terms in 8A:1-2 are deleted. The definition of “cemetery official” is unnecessary; that precise phrase is not used. The definition of “cremation” is unnecessary because the word is not in the

text, though its meaning is made clear through the definition of “crematory.” The definition of “governing body” is unnecessary; the phrase is used in its ordinary sense. The definitions of “interment” and “interment space” are unnecessary because the words are not in the text. The definition of “Maintenance and preservation” is replaced by a definition of “maintenance.” The definition of “Maintenance and preservation funds” is unnecessary as Cem:4-1, 4-2 and 4-3 explain the Maintenance and Preservation Fund requirements. The definition of “Owner” is unnecessary. The text, in Cem:5-4(b), 5-8(b) and 5-9, refers to “owners” of graves or crypts and makes the meaning clear contextually. The phrase, “religious corporation” has been replaced by “religious organization.” The latter phrase is used only in its natural sense and therefore it is better to leave the phrase undefined.

Cem:2-1. Establishment; members; organization; reports

a. The New Jersey Cemetery Board is hereby established in the Division of Consumer Affairs, Department of Law and Public Safety.

b. The Board shall consist of nine members including those two members appointed pursuant to C. 45:1-2.2. Five members shall be persons who have served, for a period of at least 5 consecutive years immediately preceding appointment, as a member of the governing board or an official of a cemetery company. One member shall be a person who has no interest directly or indirectly in any cemetery company or any allied industry. Each of these six members shall be appointed by the Governor with the advice and consent of the Senate, to serve for the term of 4 years and until the appointment and qualification of a successor. Vacancies shall be filled in the same manner as original appointments but for the unexpired term only. One member shall be the Commissioner of Health or the Commissioner’s designee serving ex-officio;

c. The Governor may remove any member of the Board from office for cause upon notice and opportunity to be heard.

d. The members of the Board shall elect a chairman and other officers from among their own number. The Board shall meet at least four times each year, at the call of its chairman or at the written request of two members of the Board directed to its chairman. The chairman shall fix the time and place for such meetings.

e. A majority of members serving on the Board shall constitute a quorum to transact business, and all actions of the Board shall require the affirmative vote of a majority of members serving on the Board.

f. The Division of Consumer Affairs, Department of Law and Public Safety, shall assign its employees to serve as staff for the Board.

g. The Board shall make a detailed annual report of its operations to the Director of the Division of Consumer Affairs and shall make other reports as the Director requires.

Source: 8A:2-1

COMMENT

Subsection (a) is based on 8A:2-1(a) but reflects the change in allocation of the Board as the result of the 1995 Reorganization Plan. Subsection (b) is substantially identical to 8A:2-1(b) except that it implements the change in ex-officio membership stated in the Reorganization Plan. Subsection (c) is substantially identical to 8A:2-1(d); 8A:2-1(c) has been deleted as executed. Subsection (d) is based on 8A:2-1(f), but it does not require a secretary, and it allows the selection of other officers. These changes generally follow the

recommendations of the Report of the Title 8A Revision Committee. Subsection (e) is a departure from the source subsection, 8A:2-1(i), in which six members of the Board constitute a quorum to transact business and all Board actions require an affirmative vote of at least six members. Subsections (g) and (h) of 8A:2-1 have been deleted and replaced with subsection (f). The Reorganization Plan states that an executive director and other necessary employees will be supplied by the Attorney General; the subsection implements that policy. Subsection (g) is substantially identical to 8A:2-1(j) except that it reflects the allocation of the Board to the Division of Consumer Affairs.

Cem:2-2. Powers and authority

a. The Board shall administer the provisions of this Act and shall have general supervision and regulation of, and jurisdiction and control over, all cemetery companies and their property, property rights, equipment and facilities so far as may be necessary to carry out the provisions of this Act.

b. The Board may adopt regulations to carry out the purposes of this Act. Regulations shall be adopted in accordance with the Administrative Procedure Act and may be enforced in accordance with the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq. and the Penalty Enforcement Law.

c. The Board may adjust charges and fees established by this act to defray the proper expenses of administration of this Act.

d. Nothing in this Act shall affect any of the powers regarding cemeteries heretofore exercised by the Attorney General.

e. Nothing in this Act shall authorize the Board to establish the prices at which graves or crypts may be sold or the charges made for services rendered by cemetery companies.

Source: 8A:2-2; 8A:2-4; 8A:3-20.

COMMENT

Subsection (a) is substantially identical to 8A:2-2. Subsection (b) embodies the substance of the recommendation of the Report of the Title 8A Revision Committee, and the addition of the Uniform Enforcement Act. Subsection (c) expands 45:1-3.2. The 1995 Reorganization Plan contemplates making that statute applicable to the Cemetery Board. Subsection (d) is substantially identical to 8A:2-4. Subsection (e) is substantially identical to 8A:3-20.

Cem:2-3. Actions by or against cemeteries

The Attorney General and the Board shall be served with notice of any action or proceeding by or against a cemetery or a cemetery company.

Source: 8A:2-3

COMMENT

This section is substantially identical to 8A:2-3.

Cem:3-1. Authorized owners or operators

A cemetery established after December 1, 1971 shall be owned or operated only by a governmental entity, a religious organization or by a cemetery company organized in accordance with this Act.

Source: 8A:3-1

COMMENT

This section is substantially identical to 8A:3-1, but omits the word "maintained."

Cem:3-2. Certificate of authority; requirement; method of issuance

a. A cemetery company organized in accordance with this Act shall not operate a cemetery unless the company is a nonprofit corporation organized and operated in compliance with Title 15A of the New Jersey Statutes and has been issued a certificate of authority to do so by the Board.

b. The application for a certificate of authority by a cemetery company shall be made in writing under oath in the form established by the Board. The application shall contain the information that the Board requires to determine:

(1) the necessity for the services the applicant seeks to provide, considering present or future public need and convenience, land or territorial qualifications; and

(2) the applicant's ability to: perform proposed services, conform to this Act and to Board requirements, and comply with health protection regulations of the New Jersey Department of Health, the New Jersey Department of Environmental Protection, or a local health authority.

c. The application fee and all other fees required pursuant to this Act shall set by the Board by regulation. The application fee shall not be required from any company that existed before December 1, 1971, which no longer has cemetery land to sell, and exists solely for maintenance and preservation of the cemetery.

d. The Board shall not act on an application for 60 days after receipt of an application. If the Board receives a written objection to the application, it shall hold a hearing on notice to the objector and the applicant before it acts on the application.

e. A cemetery company organized prior to December 1, 1971 shall not continue to operate a cemetery unless the company has been issued a certificate of authority by the Board. The Board shall grant the company a certificate of authority preserving any rights and obligations of its charter subject to applicable law and regulations.

Source: 8A:3-2; 8A:3-3; 8A:3-5; 8A:3-9; 8A:3-10; 8A:3-13(2)

COMMENT

Subsection (a) is substantially identical to 8A:3-2 and 3-5. Subsection (b) greatly streamlines 8A:3-3 and contains many of the clarifications suggested by the Report of the Title 8A Revision Committee. Subsection (c) is derived from 8A:3-10 and 3-13(2). Subsection (d) is a concise restatement of 8A:3-10. Subsection (e) derives from 8A:3-9.

Cem:3-3. Charter or certificate of incorporation of cemetery company; merger and dissolution

a. The charter or certificate of incorporation of a cemetery company shall state in that section of the charter devoted to the purposes for which the cemetery company is organized one or more of the following purposes:

(1) The procuring and preservation of lands to be used exclusively as a cemetery.

(2) The burial of human remains.

(3) The procurement, maintenance and operation of a crematory.

(4) The procurement, maintenance and operation of a mausoleum.

(5) The procurement, maintenance and operation of a columbarium or other place for the placement of cremated human remains.

b. The stated purposes of the cemetery company shall be considered by the Board and may be used as a basis for their determination as to whether to issue a certificate of authority.

c. For a cemetery company to amend its charter or certificate of incorporation, it first must have the amendment approved by the Board.

d. A cemetery company shall not be dissolved or merged without the Board's approval. The Board shall not approve the action unless it finds that the company has complied with regulations and has made adequate provision for maintenance and preservation.

Source: 8A:3-7; 8A:3-13; 8A:3-18; 8A:3-19.

COMMENT

Subsections (a) and (b) are substantially identical to 8A:3-13(1). These sections also serve to continue the provision of 8A:3-7 that requires that the charter of a cemetery company state specifically its cemetery purpose. Subsection (c) is derived from the balance of 8A:3-7. Subsection (d) is substantially like 8A:3-18 and 8A:3-19. The subsection adds a reference to the Board regulations on these topics of dissolution and merger.

Cem:3-4. Conversion of cemetery company to nonprofit cemetery

a. A cemetery company organized prior to December 1, 1971 may amend its charter or certificate of incorporation to operate as a nonprofit cemetery subject to the provisions of this act provided a plan for the conversion of its issued stock to certificates of interest is first approved by a majority of its stockholders, and by a majority of the owners of graves or crypts in attendance at and voting at a meeting called for that purpose. The stockholders shall be given 10 days notice of the meeting by mail and the owners of graves or crypts shall be notified of the meeting by a notice published at least 10 days in advance of the meeting date in a newspaper qualified to publish legal notices and circulated in the county in which the cemetery is located. The notice shall set forth the purpose of the meeting.

b. Upon approval of its stockholders and the owners of graves or crypts, the cemetery

company shall file the amended charter with the Secretary of State and the Board, and pay the filing fees.

Source: 8A:3-6

COMMENT

This section is substantially identical to 8A:3-6, but also includes "certificate of incorporation."

Cem:3-5. Cemetery companies; organization

a. In a cemetery company organized under this Act, each owner of a grave or a crypt shall be a member of the cemetery company and shall have one vote for each grave or crypt owned wherever voting by the members is required under the provisions of any law. If the charter or certificate of incorporation of the cemetery company so provides, each owner of a niche shall be a member of the cemetery company and shall have one vote for each niche owned. Voting shall be subject to the following qualifications:

(1) If a grave, crypt or niche is owned by more than one person, then a majority of its owners shall decide among themselves who shall cast the vote.

(2) An owner shall not be entitled to vote unless all charges and assessments against the grave crypt or niche have been paid.

(3) Proxy voting shall be permitted except that a proxy shall not be valid for more than 3 years after its date.

(4) Any person who owns certificates of interest or indebtedness shall have one vote for each \$250 of the face amount of the certificates.

(5) A person who owns more than one grave or crypt shall have one vote for each grave or crypt owned, except that the person shall not have more than 100 votes.

b. The directors or trustees of a cemetery company shall report at each annual meeting on their activities and management and the condition of the property and affairs of the cemetery company. At least 20 days before the annual meeting a notice of the meeting shall be placed at some prominent place at the office of the cemetery company and shall be published in a newspaper having general circulation in the county in which the cemetery is located.

Source: 8A:3-15; 8A:3-17.

COMMENT

Subsection (a) is substantially similar to 8A:3-15, but differs in specifying that a niche owner shall be a voting member of the cemetery company only if the charter or certificate of incorporation so provides. Subsection (b) is substantially identical to 8A:3-17. The section follows the New Jersey Nonprofit Corporation Act, 15A:6-1, in eliminating the requirement in 8A:3-16 that at least one member of the governing body of a cemetery company be a state resident.

Cem:4-1. Maintenance and Preservation Fund

a. Every cemetery company shall establish an irrevocable trust fund, the income from which shall be expended for the maintenance and preservation of the cemetery called the Maintenance and Preservation Fund.

b. A cemetery company shall make the deposits to the Maintenance and Preservation Fund required by this Act and may make additional deposits.

c. The Maintenance and Preservation Fund shall be established in a financial institution regulated by a state or federal administrative agency. The fund shall be invested in accordance with the Prudent Investor Act (N.J.S. 3B:20-11.1 et seq.) and the income may be applied only to the maintenance of the cemetery. The Board shall regulate the operation and use of the fund.

d. The Board may allow a cemetery company to combine trust funds, and two or more cemetery companies to combine trust funds, if the Board is satisfied that income and principal can be allocated proportionately among the combined funds.

Source: 8A:4-2

COMMENT

Subsections (a) and (b) are substantially identical to 8A:4-2. Subsection (c) follows the Revision Report in specifying that investments be made pursuant to the Prudent Investor Act. It changes the phrase "legal investments" to "financial institution regulated by a state or federal administrative agency." Subsection (d) is new. It allows a cemetery required to keep a number of trust funds, or two or more cemeteries with trust funds to combine the funds which saves administrative costs, and requires that allocation be proportionately made.

Cem:4-2. Deposits to maintenance and preservation fund

a. As a condition for the issuance to it of a certificate of authority to operate a cemetery, a cemetery company established after December 1, 1971 shall make a temporary initial deposit of \$25,000 to its Maintenance and Preservation Fund. This deposit shall remain in the Maintenance and Preservation Fund until the principal of the fund including the initial deposit reaches \$75,000; then the initial deposit may be withdrawn by the cemetery company. A cemetery company that operates or seeks to operate only a crematory shall not be required to make the \$25,000 initial trust fund deposit.

b. A cemetery company established before December 1, 1971 shall transfer into the fund any established funds for the maintenance and preservation of the cemetery and any additional amount set by the Board.

c. A cemetery company shall collect and pay into the Maintenance and Preservation Fund the following fees and charges:

(1) 15% of the gross sales price on the initial sale by a cemetery company of each grave;

(2) 15% of the gross sales price of a grave on a resale of each grave less any amounts previously paid to the Fund on sales of that grave;

(3) \$25 of the charge for each burial or for the placement of cremated human remains;

(4) 10% of the gross sales price of a foundation;

(5) 10% of the gross sales price of a crypt or niche in a public mausoleum or columbarium;

(6) 10% of the gross sales price of a crypt or niche on a resale of a crypt or niche in a public mausoleum or columbarium less any amounts previously paid to the Fund on sales of that crypt or niche.

A cemetery company may make additional payments into the Maintenance and Preservation Fund.

d. Resale for purposes of subsections (c)(2) and (c)(6) shall not include sales to the cemetery company. The price on resale shall be set forth in an affidavit executed by the vendor and vendee. When an organization transfers a grave or crypt in exchange for a contribution or as a benefit of membership, the price shall mean the value of the grave or crypt at the time of transfer.

Source: 8A:4-3; 8A:4-4; 8A:4-5; 8A:4-6

COMMENT

Subsection (a) is similar to 8A:4-3 and simplifies the source provision by deleting as executed the return of deposits made by independent crematories. Subsection (b) derives from 8A:4-4, and from 8A:4-6 that requires deposit of maintenance funds by pre-1971 cemeteries, but omits the phrase "perpetual care." Subsection (c) is a simplified version of 8A:4-5. Subsection (c)(4) reflects the change to a percentage for the cost of a burial and of a foundation. Subsection (d) derives from 8A:4-5.

Cem:4-3. Other trust funds

a. A minimum of 5% of the construction cost of any private mausoleum shall be deposited with the cemetery company before the structure is erected in trust for the maintenance of the structure and the area on which it is located.

b. A cemetery or cemetery company shall not begin to use a public mausoleum for the burial of human remains until it has established an irrevocable trust fund of not less than 10% of the total cost of the structure. The income from the trust fund, and the income only, shall be used for the maintenance of the structure. This provision shall not apply to temporary receiving vaults.

c. Any person may create a trust fund to be held in perpetuity or for a time to be used for the care or embellishment of any, grave or crypt, mausoleum or memorial. However, any such fund, shall be consistent with cemetery regulations and shall not be larger than necessary to achieve the trust's purposes. If a court finds that the trust fund is excessive, it may reduce it to a reasonable sum.

d. A cemetery company may receive funds for the care or embellishment of any grave or crypt, mausoleum or memorial. It shall maintain these funds separate from the Maintenance and Preservation Fund. Each fund shall be administered as agreed between the grantor and the

cemetery company. The income from each of these funds shall be used for the particular purpose of the fund.

e. The funds shall be established in a regulated financial institution and shall be invested in accordance with the Prudent Investor Act (N.J.S. 3B:20-11.1 et seq.). The Board may make regulations on the operation and use of trust funds. The Board may allow a cemetery to combine trust funds, and two or more cemeteries to combine trust funds, if the Board is satisfied that income and principal can be allocated proportionately among the combined funds.

Source: 8A:3-14(e); 8A:4-6; 8A:4-7; 8A:4-8; 8A:4-10; 8A:4-11.

COMMENT

Subsection (a) departs from source provision 8A:4-10 which required a deposit in trust of \$1.00 per cubic foot, as that amount is inadequate for maintaining the structure. Subsection (b) derives from 8A:3-14(e), but substitutes "income" for the more limiting term "interest." Subsection (c) is based on 8A:4-7 but differs in two ways: it is not restricted to income of the funds, and it limits review of the size of the trust to consideration of whether the trust is larger than necessary to achieve the trust's purpose. Subsection (d) provides for separate funds for maintenance of particular graves, monuments or structures. Several current sections assume the existence of these funds and their separate maintenance. See, e.g. 8A:4-6; 8A:4-8. Subsection (e) states where cemetery trust funds shall be invested, and allows the Board to make regulations on their operation and use. It is a more general form of 8A:4-11 which regulates investment of some these funds.

Cem:4-4. Annual report; investigation; remediation

a. Every cemetery company shall file an annual report to the Board within 120 days after the close of the cemetery company's fiscal year. The report shall be filed by the cemetery company in a form established by the Board, showing the extent and sources of augmentation of the Maintenance and Preservation Fund, the manner of expenditure of the income of the fund during the preceding year, and a list of the securities in which said trust funds are invested, the total acreage available and the total number of interment spaces, by type, in the cemetery and the number of graves or crypts, by type, that have been conveyed during the preceding year. If the report filed is inadequate to apprise the Board of the information it requires to administer the provisions of this Act effectively, it shall request a supplemental report and it may order an investigation of the operations of the cemetery company. Officers and employees of a cemetery company shall exhibit the company's books, papers and securities to the Board when requested and otherwise facilitate any examination of the company. Any cemetery officer or employee may be required to testify under oath as to the conditions and affairs of the cemetery company.

b. If it appears to the Board that the corpus of any trust fund is not being invested in accordance with the Prudent Investor Act (N.J.S. 3B:20-11.1 et seq.), the Board may order the cemetery company to dispose of unauthorized securities immediately. If it appears that the Maintenance and Preservation Fund is not being maintained as required, the Board may formulate a plan for the maintenance of the fund. Failure on the part of the cemetery company to implement the plan shall be a violation of this Act.

c. At the time of filing the accounting and report as to its Maintenance and Preservation Fund, a cemetery company, other than a religious corporation shall pay a filing fee set by regulation.

Source: 8A:4-12; 8A:4-13; 8A:4-14.

COMMENT

Subsections (a) and (c) are substantially identical to 8A:4-12, except for the addition in subsection (a) of further information required in the annual report. The additional data (acreage, interment spaces, conveyances during previous year) derive from the July 3, 1997 amendment of N.J.S. 8A:4-12, P.L.1997, c.157. The first sentence of subsection (b) derives from 8A:4-13. It has been changed to refer specifically to the Prudent Investor Act. The second sentence of the subsection is substantially identical to 8A:4-14.

It has been suggested that religious organizations that file annual reports as cemetery companies should not be exempt from the filing fees as subsection (c) now provides. However, when the section was last amended in 1995, the Legislature left the provision that required religious corporations with certificates of authority to file Maintenance and Preservation reports but exempted them from paying the fee for so doing. Since the Cemetery Board fees are set to defray Board expenses, that decision transfers the cost to other cemeteries. As a result, the Legislature may wish to remove the exemption from fees but the Commission did not feel at liberty to consider deviating from such a recent Legislative decision.

Cem: 5-1. Cemetery regulations, charges and activities

a. A cemetery company shall:

(1) make reasonable regulations for the use, management and protection of the cemetery and of all graves or crypts in it; for regulating the dividing marks between graves, for prohibiting or regulating the erection of structures, for preventing unsightly monuments, effigies and structures within the cemetery, and for their removal;

(2) fix reasonable charges for goods and services offered by the cemetery company;

(3) establish the prices of graves or crypts; and

(4) keep its books, records and accounts so as to reflect accurately the conduct of its business.

b. A cemetery company may:

(1) prohibit the erection of memorials, effigies or structures on parts of the cemetery and make reasonable regulations relating to uniformity, class, composition, material, kinds and sizes of all markers, monuments and other structures within the cemetery provided that the regulations are not established to prevent competition;

(2) authorize the cemetery company to sell adornment, embellishment, sod and planting to owners of graves or crypts;

(3) regulate the introduction or culture of plants within the cemetery;

(4) prevent the use of graves or crypts for purposes that violate the cemetery restrictions and regulations;

(5) regulate the conduct of persons and prevent improper assemblages in the cemetery;
and

(6) reserve to the cemetery the exclusive right to open and fill graves, furnish necessary equipment, manufacture and install foundations, set and seal crypts and vaults, seal niches and install flush memorials.

c. A cemetery company, any person engaged in the management, operation or control of a cemetery owned by a cemetery company, and any person who receives compensation directly or indirectly from a cemetery company for the sale of graves or crypts is specifically prohibited from engaging, directly or indirectly, in any of the following activities:

(1) the manufacture or sale of memorials,

(2) the manufacture or sale of private mausoleums,

(3) the manufacture or sale of vaults including vaults installed in a grave before sale and including vaults joined with each other in the ground, and

(4) the conduct of any funeral home or the business or profession of mortuary science; provided that crematoriums operated in conjunction with funeral homes prior to December 1, 1972, are excepted from the provisions of this subsection.

Source: 8A:5-1; 8A:5-2; 8A:5-3; 8A:5-4; 8A:5-8

COMMENT

Subsection (a) is substantially identical to 8A:5-1; except that subsection (a)(2) omits the phrase specifying included services; and subsection (a)(3) is derived from 8A:5-8. Subsection (a)(4) derives from 8A:5-4(e)(1). Subsection (b) is substantially identical to 8A:5-2, but the portions of 8A:5-2(b) that allowed a cemetery company to sell spaces and to erect a crematorium or mausoleum, and the part of 8A:5-2(d) that allowed a cemetery company to restrict burial to those authorized, were deleted as duplicative. Subsection (c) is substantially identical to 8A:5-3. The Commission intends to make no change in current law regarding prohibited activities by cemeteries.

Cem:5-2. Survey and map of cemetery land

a. Land held for cemetery purposes by a cemetery company shall be surveyed and may be divided into plots of graves with those roadways, walks and building areas as the company directs. A map of the land shall be kept at the office of the company and if there is no cemetery office, then the map shall be posted prominently on cemetery grounds. The map shall be made available for inspection by grave, crypt and niche owners at request.

b. A copy of the map shall be filed with the Board. The filing shall constitute dedication of the land for cemetery purposes.

c. A cemetery company may amend a map to include areas not previously laid out or to change the layout of plots not sold. Roadways and walks to graves already sold shall be maintained. The amended map shall be filed with the board.

Source: 8A:6-7; 8A:6-11

COMMENT

Subsection (a) derives from 8A:6-7 but differs in requiring the cemetery company to survey land held for cemetery purposes whether or not "required for cemetery purposes." The posting requirement is new. Subsection (b) is substantially similar to 8A:6-7 but language has been simplified. Subsection (c) is substantially similar to 8A:6-11; again, language has been simplified.

Cem:5-3. Filing of cemetery regulations and charges

a. A cemetery company shall file in the office of the Board the name and address of the cemetery company and a copy of its regulations and its charges for services. New cemetery companies shall file within 90 days after the date of the filing of the certificate of incorporation in the office of the Secretary of State. New and amended regulations and changes in charges for services shall be filed before they take effect. Each filing shall be accompanied by the filing fee set by regulation.

b. The rules, regulations and charges for services shall be suitably printed and shall be conspicuously posted by the cemetery company in each of its offices and on cemetery grounds.

Source: 8A:5-4; 8A:5-5

COMMENT

Subsections (a) is substantially identical to the parts of 8A:5-4 that deal with cemetery company regulations. The balance of 8A:5-4 is the source of the next section. Subsection (b) is based on 8A:5-5 but while the posting requirement has been retained, the specific penalty has been deleted.

Cem:5-4. Cemetery records

a. A cemetery company shall keep a record of every burial and placement of cremated human remains, which shall include the date; the name and age of the person; the cause of death when shown on the burial permit; the location of the burial or disposition, and the name and address of the funeral director.

b. A record shall be kept by a cemetery company of the owner of each grave, crypt or niche that has been conveyed by the cemetery company and of each transfer of a grave, crypt or niche to which the cemetery company has consented. A transfer of a grave, crypt or niche or a right of burial, shall not be complete or effective until it is recorded on the books of the cemetery company and any fees required are paid.

c. The instrument of conveyance of a grave, crypt or niche shall include the actual amount paid for it and a description of the grave, crypt or niche sufficient to identify it, including its number as it appears on the cemetery map, and any other information required by Board regulation.

Source: 8A:5-6; 8A:5-7; 8A:5-8

COMMENT

Subsection (a) is substantially identical to 8A:5-6, and subsection (b), to 8A:5-7. Subsection (c) differs from source provision 8A:5-8(b), by requiring that any additional information specified by regulation be stated in the instrument of conveyance.

Cem:5-5. Exemption of cemetery property from taxes, collection of judgments and use for roads

a. Cemetery companies shall be exempt from the payment of any real estate taxes, rates and assessments or personal property taxes on lands and equipment dedicated to

cemetery purposes. Cemetery companies shall be exempt from business taxes, sales taxes, income taxes, and inheritance taxes.

b. Land dedicated to cemetery purposes owned by any person shall be exempt from all taxes, rates or assessments.

c. Charges paid by a grave, crypt or niche owner to a cemetery shall be exempt from the payment of sales or use tax.

d. Trust funds and the income from trust funds, held by a cemetery company shall be exempt from taxation and assessment, and sale, seizure or sale for collection of judgments against the cemetery company.

e. Land dedicated to cemetery purposes and structures, buildings, and equipment used for the maintenance of that land or the operation of a cemetery shall be exempt from sale for collection of judgments. Income derived from cemetery property other than income required by law to be deposited in trust funds or used for a particular purpose may be taken and used for the payment of a judgment against a cemetery company. To allow the payment of a judgment against a cemetery company, a court may also order the issuance of bonds, notes, or other evidences of indebtedness by the cemetery company.

f. A street or road shall not be laid through any land of a cemetery company that is actually in use for cemetery purposes without the consent of the cemetery company, unless otherwise provided by law.

Source: 8A:5-9; 8A:5-10; 8A:5-11; 8A:5-13

COMMENT

For the most part, subsections (a), (b) and (e) are substantially identical to 8A:5-10, but subsection (c) omits the phrase "all annual maintenance and special care," and subsection (e) has been harmonized with 8A:5-13 which makes cemetery income accessible to judgment creditors. The final sentence of subsection (e) recognizes the power of a court to order a cemetery company to issue bonds to pay a judgment. Sections 8A:5-15 and 8A:5-16 refer to such bonds. Subsection (d) is substantially identical to 8A:5-11. Subsection (f) is substantially identical to 8A:5-9.

Cem:5-6. Dedication of property to cemetery purposes valid

a. Dedication of property to cemetery purposes pursuant to this act shall not be invalid as violating any law against perpetuities or the suspension of the power of alienation of title to use of property. It shall be expressly permitted in respect for the dead and as provision for the burial of human remains and as a duty to, and for the benefit of, the general welfare.

b. After property is dedicated to cemetery purposes by a cemetery company, neither the dedication nor the title of the grave or crypt owner shall be affected by the dissolution of the cemetery company by nonuse on its part, by alienation of the property, by any encumbrances, by sale under execution, or otherwise except as provided in this Act and by law.

Source: 8A:5-17; 8A:6-8

COMMENT

Subsection (a) is substantially identical to 8A:5-17; subsection (b) is substantially identical to 8A:6-8.

Cem:5-7. Right to control disposition of human remains

a. If a decedent leaves a signed directive concerning the disposition of his or her human remains or nominating a person to control the disposition of the human remains, disposition shall be in accordance with the directive. To be valid, a directive shall be separate from an agreement for the provision of funeral services or products.

If a directive has not been left by the decedent, the right to control the disposition of the human remains shall be in the following order:

- (1) The surviving spouse of the decedent.
- (2) A majority of the surviving adult children of the decedent.
- (3) The surviving parent or parents of the decedent.
- (4) A majority of the brothers and sisters of the decedent.
- (5) Other next of kin of the decedent according to the degree of consanguinity.

b. A cemetery may permit the disposition of human remains on the authorization of a funeral director handling arrangements for the decedent, or on the written authorization of a person who claims to be, and is believed to be, a person who has the right to control the disposition. The cemetery shall not be liable for disposition pursuant to this authorization unless it had reasonable notice that the person did not have the right to control the disposition.

c. A cemetery shall not bury human remains of more than one person in a grave unless:

- (1) directions have been given for the burials in accordance with this section on behalf of all persons so buried; or
- (2) the rights to be buried in the grave were sold by the cemetery with explicit provision allowing separate sales of rights to burial at different depths in the grave.

d. An action against a cemetery company relating to the disposition of human remains left in its temporary custody may not be brought more than 1 year from the date of delivery of the remains to the cemetery company unless otherwise provided by a written contract.

Source: 8A:5-18; 8A:5-18.1; 8A:5-19; 8A:5-22

COMMENT

Subsection (a) is substantially identical to 8A:5-18. The first recourse to directions left by the decedent, implicit in the source, has been made explicit. However, the requirement of a signed directive may be more stringent than that of current law. See, Bruning v. Eckman Funeral Home, 300 N.J. Super. 424 (App. Div. 1997). The reference to court order as independent authority for disposition of remains has been deleted; any court order would be based on priorities established by this section.

Subsection (b) derives from 8A:5-19, and adds a new source of authorization, the funeral director handling the arrangements. Subsection (c) derives from 8A:5-18.1, but is more explicit than the source statute in its details of rights to burial. Subsection (d) is substantially identical to 8A:5-22.

Cem:5-8. Removal of remains

a. Human remains may be removed from a grave or crypt only if authorized by a State disinterment permit issued by a board of health.

b. Human remains buried on property that is not part of a cemetery may be removed by the owner of the property provided that the remains are then properly re-buried in a cemetery.

Source: New

COMMENT

Subsection is (a) new. It reflects current practice whereby local Boards of Health distribute State permits. Subsection (b) is new. There is now no law regulating the rights or duties of a person whose land has been used for burials.

Cem:5-9. Removal of memorials

a. A cemetery company may remove any dangerous memorial subject to the following conditions. Before removal, the cemetery company shall take photographs of the memorial and its condition and shall retain them in the permanent records of the cemetery company. After removal, the cemetery company shall place the memorial on the grave or store it in a reasonably secure place. The cemetery company shall immediately notify the grave owner, or owners or interested parties in writing of the removal. If after 6 months, the grave owner, or owners or interested parties have not communicated with the cemetery company, the cemetery company may make application to the Board for instructions on disposition of the memorial. Any interested party who claims that removal was not necessary may make application to the Board for appropriate relief.

b. A cemetery company may remove any memorial it considers unsightly or a violation of cemetery regulations subject to the following conditions. Before removal, the cemetery management shall notify the grave or crypt owner, or owners or other interested parties in writing. If the cemetery fails to secure written authorization for removal, the cemetery may apply to the Board for permission for removal. If the Board finds that the memorial is unsightly or a violation of cemetery regulations, it may give permission to the cemetery for the removal. Evidence presented to the Board shall contain photographs of the memorial sought to be removed. The Board may require that the cemetery publish notice of the proposed removal. Permission given by the Board may contain directions to the cemetery for continued memorialization of the grave or crypt. Any person whose interests are affected by any such application by a cemetery shall be afforded an opportunity to appear before the Board in opposition before permission for removal is given by the Board.

c. A cemetery company shall not engage in any renovation of cemetery areas that involves removal of memorials without the prior approval of the Board. The cemetery company shall notify grave or crypt owners and other interested parties of the proposed renovation. The Board may also require notice by publication. Before granting consent the Board may consider the interests of the cemetery, grave or crypt owners and the general public. Any interested party may appear in opposition to the application for renovation.

Source: 8A:5-23; 8A:5-24

COMMENT

Subsection (a) is substantially identical to 8A:5-23(b). Subsection (b) is substantially identical to 8A:5-23(a). Subsection (c) is substantially identical to 8A:5-24.

Cem:6-1. Establishment of cemetery

a. A cemetery shall not be established or enlarged in any municipality without first obtaining the consent of the municipality by resolution.

b. No more than five cemeteries may be established in any one municipality, and not more than 3% of the area of any municipality shall be devoted to cemetery purposes. The governing body of a municipality, by resolution, may waive the limitations of this subsection if it finds that there is a public need for additional cemetery lands and that it is in the public interest to waive them.

c. A cemetery shall not be established or expanded to exceed 250 acres at any one location.

Source: 8A:6-1; 8A:6-1.1; 8A:6-5; 8A:6-6

COMMENT

Subsection (a) is substantially identical to 8A:6-5. Subsection (b) is substantially identical to 8A:6-6. The exception allowing a sixth cemetery where a cemetery is filled has been deleted as obviated by the waiver provision. The language at the end of 8A:6-6 allowing pre-existing cemeteries to continue in operation has been deleted as unnecessary; each subsection is now worded as a limitation on the establishment of cemeteries, not their operation. Subsection (c) is substantially identical to 8A:6-1. Each subsection has been broadened to reflect 8A:6-1.1.

Cem:6-2. Acquisition of lands; enlargement; issuance of certificates

If the Board approves, a cemetery company may issue certificates with fixed face value and a specified interest rate to pay for land acquired for cemetery purposes and for the initial improvements to that land. The Board shall specify the number and terms of the certificates so as to assure the financial soundness of the cemetery company. The certificates shall be paid from the proceeds of sales of graves and crypts after withdrawal of the amounts fixed by contract or law for maintenance of the cemetery.

Source: 8A:6-3

COMMENT

This section is substantially similar to 8A:6-3. The language of the section has been simplified and the standard used by the board in determining the amount and terms of an issue of certificates has been made explicit.

Cem:6-3. Construction of mausoleums, etc.

a. A person shall not construct a public mausoleum or other structure intended to hold human remains, without obtaining a permit from the construction official of the municipality in

which it is to be constructed. Failure to issue a permit is reviewable by the Board of Appeals established pursuant to the "State Uniform Construction Code Act" (52:27D-119 et seq.).

b. Construction shall not begin until detailed plans and specifications of the structure have been approved by the State Department of Community Affairs and the certificate of approval is filed in the office of the municipal enforcing agency where the structure is to be constructed. The State Department of Community Affairs shall not grant a certificate of approval unless it is satisfied that the proposed structure can be operated without constituting a hazard to public health or safety.

c. Construction of the structure shall be under the supervision of the municipal construction official, who shall see that the approved plans and specifications are complied with. No departure from the original plans and specifications shall be permitted, unless an amended certificate of approval is granted and filed.

d. A structure constructed under the provisions of this section shall not be used for burial until the construction official of the municipality has issued a certificate indicating that the plans and specifications as filed have been complied with fully.

e. The Department of Community Affairs shall adopt regulations concerning the construction of mausoleums or other structures intended to hold human remains. The regulations shall be the standards adopted in the subcodes of the Uniform Construction Code, or other national model codes or standards, but the commissioner may adopt additional standards if, after a public hearing, the commissioner finds that they are necessary to protect the public interest. A municipality may enact zoning ordinances which provide for reasonable height and setback requirements in keeping with such standards established for property immediately abutting a cemetery, but any other ordinance regulating the construction of mausoleums shall be of no effect.

Source: 8A:3-14; 8A:3-14.1.

COMMENT

Subsections (a) through (d) are substantially similar to 8A:3-14(a) through (d). The subject of subsection (e) of 8A:3-14 is now covered by section Cem:4-3. Subsection (f) of 8A:3-14 has been deleted as unnecessary. Subsection (e) is substantially similar to 8A:3-14.1.

Cem:7-1. Ownership and transfer of graves, crypts or niches

a. When a cemetery company transfers a grave, crypt or niche and records the transfer, the person or persons to whom it was transferred become the owner of the grave, crypt or niche. The conveyance issued by a cemetery company shall indicate whether the company is transferring title to the grave, crypt or niche or only a right of burial in it. The conveyance may:

(1) provide that the owner take title subject to existing and future reasonable regulations of the cemetery company; and

(2) contain other reasonable restrictions on use or transfer consistent with this law.

b. Except as limited by subsection (c), the owner of a grave, crypt or niche or an interest in one in a cemetery owned by a cemetery company may transfer the space or interest to any person or to the cemetery company. Transfers may be made on agreed conditions provided the conditions are recorded in the office of the cemetery company. The cemetery company shall record a transfer in its records when a document of transfer is presented to the company and any other requirements imposed by law or cemetery regulations are met. The transfer shall be effective on recordation by the cemetery.

c. After human remains have been buried in a grave or crypt, that grave or crypt may not be transferred except as provided in this subsection.

(1) Ownership of the grave or crypt may be transferred by will if it is identified in the will specifically rather than by a residuary clause or by general reference to real property. Otherwise, on the death of the owner, ownership shall descend to those persons specified in N.J.S. 3B:5-3 and 3B:5-4 who would inherit if the owner died intestate.

(2) If the grave or crypt is owned by more than one person, one owner's share may be transferred to another owner.

(3) Ownership of the grave or crypt may be transferred to any heir at law of the person buried in the space.

(4) The owner may convey the grave or crypt in trust to a bank or trust company or to the cemetery company for the benefit of the owner of the grave or crypt and the protection of the human remains already buried in it, pursuant to the terms of the deed of trust. Acceptance of the conveyance in trust by the cemetery company shall require a majority vote of its governing board.

(5) If additional burials are permitted to be made in the grave, the grave may be transferred to allow for those burials.

d. A cemetery company shall maintain records of transfers of ownership of graves or crypts. Records shall be kept in the manner specified by the Board in its regulations. Records shall be indexed both by the number of each grave or crypt and by the name of each owner.

Source: 8A:7-1; 8A:7-2; 8A:7-3; 8A:7-4

COMMENT

Most of subsection (a) is substantially identical to 8A:7-1. The requirement that a transfer be recorded by the cemetery company to be valid, is new. That addition is derived from the Report of the Title 8A Revision Committee. Subsection (a)(2) is derived from 8A:4-6.

Subsection (b) is based on 8A:7-3. It follows the Report of the Title 8A Revision Committee in deleting the requirement that any transfer be approved by the cemetery company. However, the subsection follows the source section rather than the Report in confining its scope to cemeteries operated by cemetery companies. The subsection also specifically requires that the cemetery company record a transfer. The Report of the Title 8A Revision Committee includes in its redraft of 8A:7-3 the similar requirement that recordation not be "unreasonably withheld."

Subsection (c)(1) through (c)(3) is substantially identical to its 8A:7-2, but it has been simplified by combining or generalizing provisions. The provision in the source section allowing transfer of unused cemetery spaces has been deleted as irrelevant to the subsection and covered by subsection (b). Subsection (c)(4) is substantially similar to 8A:7-4, but the current requirement of a 3/5 vote of the governing Board of a

cemetery has been reduced to majority as proposed by the Report of the Title 8A Revision Committee. Subsection (c)(5) is new.

Subsection (d) is new. It has been added because the determination of ownership of spaces depends on the records of the cemetery company.

Cem:7-2. Maintenance of graves or crypts by owners, or others

a. Owners of graves or crypts, or other interested persons may maintain their own graves or crypts, or provide for maintenance by an independent contractor provided that the maintenance is subject to the supervision of the cemetery management to insure compliance with the rules and regulations of the cemetery.

b. The cemetery company may not charge for maintenance by others. The cemetery company may impose a reasonable fee for actual supervision of maintenance if the fee has been filed with the Board.

Source: 8A:7-3.1

COMMENT

This section is substantially identical to 8A:7-3.1 except for the explicit acceptance and regulation of charges for supervision of maintenance in subsection (b). That provision is derived from the Report of the Title 8A Revision Committee.

Cem:7-3. Rights of burial in graves or crypts.

a. A cemetery company may adopt reasonable regulations on burial in graves or crypts. In the absence of regulation, the cemetery company shall allow human remains of the following persons to be buried in an available grave or crypt:

- (1) a deceased person who at the time of death owned the grave or crypt;
- (2) the spouse of the deceased person who owned the grave or crypt at the time of death; and
- (3) any other person at the direction of the owner of the grave or crypt.

b. The right of a person to be buried in a grave or crypt may be waived. The right terminates if the person is buried elsewhere.

c. If more persons have a right to be buried in a grave or crypt than may be buried there, any person with a right to burial in the grave or crypt may be buried in it even though that will make the grave or crypt unavailable to others.

Source: 8A:7-5; 8A:7-6; 8A:7-7; 8A:7-8.

COMMENT

Current 8A:7-5 is as follows:

The body of any deceased person or the incinerated remains thereof shall not be buried in any cemetery space unless the deceased person had, at the time of his decease, an ownership interest in the cemetery space, or was the relative of some person having such an

interest, or was the spouse of such person or relative of said spouse, except by the consent of the owner or one of the owners of such cemetery space.

This current law appears to give authority to use a cemetery space contrary to the wishes of its owners in a wide range of circumstances. The provision in the Report of the Title 8A Revision Committee solves some of these problems but it still allows the use of a space, for or at the direction of, one co-owner without agreement of others. As subsection (a) is drafted, the only person who may be buried in a space without the consent of the owner of the space is the spouse of a deceased owner. That limitation on owner control is intended by current law. See, 8A:7-6 which gives a spouse rights in a cemetery space that are not defeated by subsequent transfer of the space. This section does not go that far, but (a)(2) allows, for example, a husband to be buried in the space owned by his deceased wife at the time of her death if the space has not been transferred.

The word, "available" in the second sentence of subsection (a) is intended to make it clear that a right to burial does not mean that a person has the right to be buried in a space that has been filled. While that point may be evident from context, it was the subject of a separate section, 8A:7-8. Subsection (c) deals with the same issue in situations where more than one person has the right to be buried in the space.

Subsection (b) is substantially identical to 8A:7-7.

Cem:7-4. Joint ownership of a grave or crypt; rights of burial

a. When there are two or more owners of a grave or crypt:

- (1) each individual owner's interest may be transferred only by that owner;
- (2) each individual owner has a right of burial in the grave or crypt.

b. When there are two or more owners of a grave or crypt, they may designate one or more of the co-owners to represent them by filing written notice of the designation with the cemetery company. If such a notice has been filed, the cemetery company shall follow the direction of the representative as to burial in the grave or crypt, and in regard to memorials, embellishments and care for the grave or crypt. In the absence of such notice the cemetery company may rely on the direction of any co-owner as to burial, memorials, embellishments or care and shall not be liable to any person for doing so.

Source: 8A:7-9, 8A:7-10

COMMENT

Subsection (a)(2) is substantially identical to 8A:7-9. Subsection (a)(1) has been added in response to the draft of 8A:7-10 in the Report of the Title 8A Revision Committee. That draft specifically distinguishes authority to transfer ownership which may not be delegated to a representative. See, subsection (b).

Subsection (b) is substantially identical to 8A:7-10 as redrafted in the Report of the Title 8A Revision Committee. The subsection differs from current law in allowing the cemetery company to follow the instructions of any co-owner when a notice of delegation is not filed.

Cem:7-5. Sale of graves or crypts for resale prohibited

a. Except as provided in subsection (c), a person shall not purchase a grave or crypt for the sole purpose of resale, and a cemetery company shall not sell a grave or crypt to a person

whom it reasonably should know is purchasing for the purpose of resale. The Board shall adopt regulations to enforce this provision.

b. A membership or religious corporation or unincorporated association or society may purchase graves or crypts in bulk for the purpose of resale or transfer provided that:

- (1) it has received approval from the Board to do so;
- (2) it sells or gives the graves or crypts only to its members and the graves or crypts are intended for the use of its members and their families;
- (3) at the time it sells or transfers a grave or crypt, it provides notification of the transfer to the cemetery company for recording; and
- (4) it designates an agent to the cemetery company with authority to consent to burials in graves or crypts owned by it.

If the corporation or association fails to meet its obligations under this subsection, the cemetery company may reclaim the graves or crypts owned by it in the manner and with the restrictions set by the Board.

Source: 8A:7-12; 8A:9-7

COMMENT

Subsection (a) is substantially similar to 8A:7-12, but the wording is closer to the section as redrafted by the Report of the Title 8A Revision Committee, except for the concluding sentence which is new. Subsection (b)(1) is derived from 8A:9-7. Subsection (b)(2) derives from source provision 8A:7-12. Subsections (b)(3), (b)(4), and the final sentence of subsection (b) are new. At present, there are associations which fail to inform the cemetery company of transfers of ownership and do not keep adequate records of who may be buried in spaces owned by the association. Under these proposed statutes, transfers are not effective unless recorded by the company. The requirement that transfers by the association be presented to the cemetery company for recording should assure that the cemetery company has records of ownership. If the association keeps title to the spaces and allocates burial rights to its members, what is important is that there be a clear designation of the person on whose decision the cemetery company may rely as to burial rights. Subsection (b)(3) requires such a designation. It is based on Section 7-4(b), which allows co-owners to designate a representative, but because of the nature of the problem has been made mandatory.

Cem:7-6. Reclamation and sale of vacant graves or crypts

- a. A cemetery company may reclaim a grave or crypt as provided in this section if:
- (1) the cemetery company sold the grave or crypt before December 1, 1971;
 - (2) no provision has been made for the adequate maintenance of the grave or crypt;
 - (3) no burial has been made in the grave or crypt; and
 - (4) no burial has been made for 30 years in the plot that includes the grave or crypt.

For the purposes of this section, “adequate maintenance” has been provided if the grave or crypt was sold with perpetual care, endowed care, or a similar level of care, or if the owner of the grave or crypt has made other provision for such care.

b. To reclaim a grave or crypt, a cemetery company shall:

(1) make a diligent effort to locate the owners and notify them that they may prevent the cemetery from reclaiming the grave or crypt by sending a written objection to the company within 30 days;

(2) if the cemetery company cannot locate the owners, publish a notice in a newspaper circulating in the county in which the grave or crypt is located, directed to the owners as registered in the cemetery company's records containing the names of each deceased person buried in the plot that includes the grave or crypt and date of each burial, where such information is ascertainable. The notice shall advise that if the owners do not send a written objection within 30 days the grave or crypt will be subject to resale.

c. If written objection has not been filed with the cemetery within 30 days after notice or publication, the cemetery may sell the grave or crypt. The sales price less sales commissions and expenses of sale, but in no event less than three-fourths of the gross sales price, shall be deposited in the Maintenance and Preservation Fund.

d. At any time, a person proving ownership of a grave or crypt reclaimed and sold in accordance with this section may either agree to take a comparable grave or crypt in the cemetery or may make application to the Board for an order directing the trustees of the cemetery's maintenance and preservation fund to reimburse the owner the proceeds of the sale that were deposited in the fund.

Source: 8A:7-13

COMMENT

This section is substantially identical to the proposed redraft of 8A:7-13 by the Report of the Title 8A Revision Committee. It varies in a few details from the current law. This section applies only to unoccupied spaces that were sold before 1971 and where there has been no burial in the plot for 30 years. Unlike the current section it defines "adequate maintenance," and it does not require publication when other attempts at notification are successful. It requires that at least three-quarters of the sales price be deposited in the preservation and maintenance fund, and it allows the owner whose space was sold to take an equivalent space instead of petitioning for the proceeds of sale that were deposited in the Fund.

Cem:8-1. Sale of cemetery land or leases of cemetery land

a. A cemetery may lease or transfer any land or interest in land free from dedication for cemetery purposes if;

(1) it has not conveyed any part of the land as graves,

(2) it determines that the land or the interest in the land to be transferred is not necessary or not suitable for burial purposes or it determines that the land to be leased will not be necessary for burial purposes during the term of the lease, and

(3) the Board approves the transaction as made in good faith and for fair consideration.

b. The cemetery may transfer land free from dedication for cemetery purposes in which any person has acquired a right of burial, if, at the discretion of the Board, the cemetery either:

(1) refunds to the person who has the right of burial, the amount paid for the right, with interest computed at the pre-judgment interest rate stated in the Rules of Court, or

(2) conveys to the person who has the right of burial, graves of equal size in the cemetery.

c. A cemetery may transfer land in which human remains have been buried only if the cemetery:

(1) receives consent from the owner of each grave in which human remains have been buried; or an order from the Superior Court, to remove the human remains;

(2) removes the human remains and reburies them in substantially similar graves in the cemetery or in another cemetery and defrays the expense of removal and reburial;

(3) removes any property of the owner from the grave and restores it to the owner; and

(4) if owned by a cemetery company, obtains the written consent of the Board.

d. The Superior Court shall not approve the removal of human remains from lands to be transferred unless notice and an opportunity to be heard in opposition has been given to the owners of all affected graves or crypts. If the owner of a grave or crypt is not known or cannot be located, the court may order notice by publication.

e. The deed of conveyance for any transfer of cemetery land under this section shall include a 25-year prohibition on any use of the land which cemetery companies are specifically prohibited from engaging in by this Act. Any lease of cemetery land under this section shall prohibit any use of the land which cemetery companies are specifically prohibited from engaging in by this Act. The Board shall order not less than 15% of the proceeds of the sale or lease deposited in the maintenance and preservation fund.

Source: 8A:4-15; 8A:6-2; 8A:6-12; 8A:8-3; 8A:8-5

COMMENT

Subsection (a)(1) and (2) are substantially similar to the first sentence of 8A:4-15. Subsection (a)(3) is new. Subsection (a) has been broadened to include leases as well as sales of land; leases are now covered by 8A:6-2 and 8A:6-12. Subsection (b) is substantially identical to 8A:8-5, but the reference to disinterring and reintering human remains in 8A:8-5 is deleted from subsection (b) since subsection (c) now deals with all cases where a cemetery seeks to sell land that has been used for burials. Subsections (c) and (d) are derived from 8A:8-3. References to plots in which no one has been buried have been deleted as covered by subsection (b). Precise procedural requirements have been deleted as unnecessary. Those requirements may be imposed by Court Rules or by regulations of the Cemetery Board. Subsection (c)(3) is new. Subsection (e) is based on the parts of 8A:4-15 not covered by subsection (a). However, the perpetual prohibition has been changed to a 25-year prohibition. Perpetual prohibitions are disfavored in the law.

Cem:9-1. License required; exemptions

a. A license from the Board is required for a person to act as a cemetery salesperson for graves or crypts in cemeteries operated by cemetery companies or for goods or services provided by cemetery companies.

(1) Each salesperson license shall state the name and address of each cemetery company with which the salesperson is associated.

(2) A salesperson shall produce the license for inspection when requested during sales activities, and shall retain possession of the license until it expires or is canceled, revoked or suspended.

b. No municipality of this State shall require a licensed salesperson to obtain a municipal license to sell graves, crypts or cemetery goods or services.

c. The following may sell cemetery property without a cemetery salesperson license:

(1) The owner of an interest in a grave or crypt, or a person acting for the owner, making an occasional sale of the grave or crypt; or

(2) An officer or manager of a cemetery company engaging in sales activities.

Source: 8A:9-5; 8A:9-6; 8A:9-13; 8A:9-16

COMMENT

Subsection (a) derives from 8A:9-5 but deletes the word "unlawful". A later section, Cem:9-5, includes the actions of unlicensed cemetery salespersons as violations of this act. Subsections (a)(1) and (a)(2) derive from 8A:9-13. In Subsection (a)(1) the word "each" signals a change in the law by which a salesperson applies for only one license instead of applying for a separate license for each different cemetery employing him as a salesperson.

Subsection (b) is substantially identical to the Report of the Title 8A Revision Committee provision of 8A:9-16.

Subsection (c) derives from 8A:9-6. It deletes as unnecessary specific mention of court ordered sales and occasional sales required by attorneys, trustees and realtors performing their duties, which are covered by Subsection (c)(1).

Cem:9-2. License term

A license shall be issued or renewed for a two year period.

Source: 8A:9-12

COMMENT

The section allows the usual two year term for licenses issued by Boards within the Division of Consumer Affairs.

Cem:9-3. License qualification, application, fees, issuance; temporary license

a. An applicant for a cemetery salesperson license shall file a written application on the form prescribed by the Board. The application fee prescribed by Board regulation shall accompany the application.

b. The Board shall investigate the qualifications of each applicant for a cemetery salesperson license and shall issue a salesperson license if:

(1) the Board finds that the applicant is 18 years or older, of good moral character, and has not been convicted of crime which would allow the Board to deny the application pursuant to the Rehabilitated Convicted Offenders Act (2A:168A-1 et seq.);

(2) the application complies with the regulations;

(3) the applicant paid the license fee prescribed by regulation; and

(4) the applicant is not barred from making cemetery sales by other employment.

c. The Board, upon receipt of a completed application form and appropriate fees, and prior to receipt of the criminal history background check, may issue a temporary license valid for 60 days which the Board may extend for additional periods not exceeding 30 days each.

Source: 8A:9-8; 8A:9-9; 8A:9-10; 8A:9-11

COMMENT

Subsection (a) is similar to the Report of the Title 8A Revision Committee version of 8A:9-10 but differs in eliminating a specific dollar amount range for the application fee. Subsection (b) eliminates a specific dollar amount range for the license fee, and greatly condenses the repetitious source provisions 8A:9-8, 8A:9-9 and 8A:9-11. Subsection (b)(4) is new; it recognizes the rule of Section 5-1(c) which bars persons engaged in certain occupations from cemetery sales. Subsection (c) streamlines the Report redraft of 8A:9-10.

Cem:9-4. License renewal, failure to renew, duplicate

a. To renew a salesperson license, a licensee shall apply to the Board no later than 30 days prior to the expiration date, on an application form prescribed by the Board, and accompanied by the license renewal fee prescribed by Board regulation.

b. A licensee may obtain a duplicate license from the Board upon a statement attesting to the loss of the original license and payment of the fee prescribed by Board regulation.

Source: 8A:9-13

COMMENT

The provision streamlines the source provision, deleting a specific dollar amount range for the fees.

Cem:9-5. Violations; discharge for violation

a. It is a violation of this chapter for a person or cemetery company in connection with a sale, an offer to sell, or an option to purchase graves, crypts, goods, materials or services from a cemetery to:

(1) employ fraud or deceit in advertising or other activities;

(2) make a false statement of a material fact or fail to state a material fact; or

(3) fail to comply with Board orders or regulations made pursuant to this act.

b. It is a violation of this chapter for a person to act as a salesperson for graves or crypts in a cemetery operated by a cemetery company or for goods or services provided by a cemetery company, unless licensed as a cemetery salesperson or exempted from licensure.

c. It is a violation of this chapter for a cemetery company to pay or offer to pay, or for a person to receive anything of value for the sale of graves, crypts, services, or goods by the cemetery company, unless the person is a licensed cemetery salesperson or a cemetery company employee exempted from licensing.

d. When a cemetery company discharges a salesperson for violating this chapter, the cemetery company promptly shall file a written statement of the facts of the discharge with the Board.

e. This chapter shall be enforced in the manner provided for professional boards within the Division of Consumer Affairs (45:1-14 et seq.).

Source: 8A:9-2; 8A:9-3; 8A:9-4; 8A:9-5; 8A:9-14

COMMENT

This provision brings all the violations together in one section. Subsection (a) follows the proposed Report of the Title 8A Revision Committee redraft of 8A:9-2 in changing “unlawful” to “violation,” and streamlining the Report redraft of 8A:9-3. Subsection (b) is substantially identical to the Report redraft of 8A:9-5 which changes “unlawful” to “violation.”

Subsection (c), like the Report redraft of 8A:9-4, substitutes violation for disorderly person’s offense. Unlike the redraft version, it does not introduce a new entity, a “sales contractor.” Subsection (d) is substantially identical to the Report redraft of 8A:9-14. Subsection (e) is new; it refers to the uniform procedures applicable to all professional boards within the Division of Consumer Affairs.

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