

CHAPTER 41 CEMETERIES

Authority

N.J.S.A. 8A:2-2.

Source and Effective Date

R.1990 d.537, effective October 11, 1990.
See: 22 N.J.R. 2627(a), 22 N.J.R. 3363(a).

Executive Order No. 66(1978) Expiration Date

Chapter 41, Cemeteries, expires on October 11, 1995.

Chapter Historical Note

Chapter 41, Cemeteries, became effective October 16, 1980 as R.1980 d.449. See: 12 N.J.R. 380(a), 12 N.J.R. 628(a). A readoption became effective October 16, 1985 as R.1985 d.573. See: 17 N.J.R. 1704(a), 17 N.J.R. 2749(a). Pursuant to Executive Order No. 66(1978), Chapter 41, Cemeteries, was readopted as R.1990 d.537. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

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SUBCHAPTER 1. APPLICABILITY

3:41-1.1 Applicability of chapter to religious corporations

Unless otherwise noted, the provisions of the chapter does not apply to religious corporations or to cemeteries owned by religious corporations unless said religious corporation has been issued a Certificate of Authority by the Board.

3:41-1.2 Application to directors, trustees, officers and employees

Unless the context otherwise requires, the provisions of this chapter are applicable to cemetery companies, and their directors, trustees, officers and employees.

SUBCHAPTER 2. DEFINITIONS

3:41-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

“Act” shall mean the New Jersey Cemetery Act. (N.J.S.A. 8A:1-1 et seq.)

“Avenue” shall mean a public way, street or thoroughfare.

“Board” shall mean the New Jersey Cemetery Board, or when specially designated by the Board, any member of the Board or its designee.

“Entombment” shall mean the placement of human remains in a crypt in a mausoleum.

“Interment” means the lawful disposition of human remains by burial, entombment or inurnment and shall include veterans, persons receiving welfare payment or services and stillborn infants.

“Path” means a continuous course or way which has a minimum width of 30 inches and which primarily provides pedestrian access to interment spaces already sold, but a path shall not include an avenue or other roadway or areas reserved or set apart for building purposes.

“Person” shall mean and include, but not be limited to a cemetery company, cemetery, individual, partnership, limited partnership, corporation, business association, trustee, municipality, or any officer or official board or agency of a cemetery or municipality.

“Roadway” means any open way for the passage of vehicles and persons.

“Sold” means that a contract for the sale of the interment space has been executed by the purchaser.

“Total cost of structure” as used in N.J.S.A. 8A:3-14e shall mean any expense incurred by the cemetery company which would not have been incurred had not the public mausoleum been constructed. In addition to actual building costs, said costs shall include but not be limited to the following: walkways, architect fees, building permit fees, landscaping, installation of utility lines and internal furnishings.

“Underground public mausoleum” shall mean an integrated structure containing a minimum of 48 crypts set upon a poured concrete floor, providing for adequate drainage, contained within walls of masonry construction. No such structure shall be constructed without first obtaining a building permit from the local construction official and approval from the Department of Community Affairs. The crypts shall not include vaults as defined in N.J.S.A. 8A:1-2.

Amended by R.1993 d.632, effective December 6, 1993.
Sec: 25 N.J.R. 623(a), 25 N.J.R. 5462(b).

SUBCHAPTER 3. CEMETERY BOARD

3:41-3.1 Charges and fees

(a) The charge per page for copies of minutes of any New Jersey Cemetery Board meeting and for all other documents in possession of the Board which are deemed public records as defined by N.J.S.A. 47:1A-2 will be made available to the public in accordance with the schedule of fees in said N.J.S.A. 47:1A-2.

(b) All religious corporations which provide substantial proof to the Board of being legally incorporated under Title 16 are exempt from paying the fee required by N.J.S.A. 8A:4-12(b).

SUBCHAPTER 4. EXECUTIVE DIRECTOR

3:41-4.1 General duties

Under the direction of the New Jersey Cemetery board, Department of Banking, the Director shall be responsible for the administration of Title 8A, shall have charge of the field and office activities of the staff engaged in the examination and investigation of cemetery associations, and related work as required.

3:41-4.2 Bulk grave sales

In any case where a sale of interment spaces is made to a membership, religious corporation, society or other like entity in accordance with N.J.S.A. 8A:9-7, the Executive Director shall be empowered to grant such approval. The Cemetery Board shall be notified that such approval has been granted at the next meeting.

SUBCHAPTER 5. CEMETERY COMPANIES

3:41-5.1 Charges and services

(a) Cemetery companies may not sell vaults; provided, however, that cemetery companies may sell multiple depth below ground burial crypts that were installed prior to December 1, 1971. Cemetery companies may install multiple depth below ground burial crypts that were sold prior to December 1, 1971.

(b) In the event that a memorial foundation installed by a cemetery company and paid for by a lot or grave owner or other interested party sinks or otherwise falls into disrepair, causing the memorial immediately above to sink or become unlevel within 10 years from the date of installation, the cemetery company shall, as soon as practical, raise, replace or repair the foundation and properly reset the memorial at its own cost and expense. Subsequent to the aforesaid 10 year period, a cemetery company may charge a lot or grave owner or a responsible party, at its actual cost for said raising, replacing or repairing of the foundation and resetting of the memorial. This subsection shall not apply to any foundation and memorial for which a specific endowed care fund has been provided.

(c) Cemetery companies are prohibited from selling commercially available bases of concrete, granite or marble to be attached to a bronze memorial, provided that the determination as to the need and design of subsurface support shall be governed by the reasonable rules of the cemetery company.

(d) For the purposes of N.J.S.A. 8A:5-23, the burial of a monument or a memorial shall be considered a removal of that monument or memorial.

(e) The following paragraphs shall apply to cemetery price lists:

1. Only those charges posted by the cemetery company and filed with the Board pursuant to N.J.S.A. 8A:5-4 and 8:5-5 are lawful. The collection of any charge that has not been so posted and filed with the Board is declared to be in violation of the Cemetery Act.

2. Notwithstanding (e) above, a cemetery company may provide a unique or highly specialized good or service to a customer, or to a very small number of customers, and lawfully charge for that good or service, even if the price for the good or service is not listed on the price list. The following factors shall militate toward a determination by the Board that the good or service is unique or highly specialized:

i. The cemetery company has not provided the good or service in recent years, or has provided it only rarely;

ii. The cemetery company should reasonably expect not to provide the good or service in the future, or should reasonably expect to provide it only rarely;

iii. The good or service is only rarely provided by similar cemetery companies in this State; or

iv. The nature of the good or service makes it reasonable that it be priced individually, for example, removing a tree.

3. A cemetery company which has no office on the cemetery grounds and which sold fewer than 10 interment spaces during its immediately prior fiscal year, as reflected on its annual Maintenance and Preservation Trust Fund Report, may satisfy the requirement to post its price list at the cemetery office by having copies of the price list available at the off-premises office and giving each prospective customer a copy of the price list when it is reasonably anticipated that the prospective customer may purchase an interment space, good or service from the cemetery company.

4. A price list shall be on the letterhead of the cemetery company, or on a flyer, pamphlet, or other similar document. The price list may be either printed or typed, but may not be handwritten. The price list shall set forth the name of the cemetery company, the Certificate of Authority number of the cemetery company, and it shall be dated. However, the effective date of the price list shall be no earlier than the date on which the price list is filed with the Board.

5. A cemetery company shall submit a comprehensive price list to the Board with its annual Maintenance and Preservation Trust Fund Report and shall post the price list at its office. It shall contain the prices for all of the interment spaces, goods and services which the cemetery offers, except for the goods or services which are highly specialized or unique as provided in (e)2 above. The price list shall supersede all previous price lists of the cemetery company. This requirement shall not be deemed to prohibit a cemetery company from amending its charges for individual items on its price list at times other than when its annual Maintenance and Preservation Trust Fund Report is filed, provided that it properly files such amendments with the Board and posts the amendments at the office of the cemetery company.

(f) Any monies paid to a cemetery company for future services shall be subject to requirements of N.J.S.A. 2A:102-13 through 102-17.

(g) A cemetery company may adjust increases in general maintenance charges if the increase is reasonably necessary to maintain the cemetery.

Amended by R.1994 d.19, effective January 3, 1994.
See: 25 N.J.R. 4819(b), 26 N.J.R. 197(a).

3:41-5.2 Trust funds

(a) Any maintenance, preservation, perpetual care or other trust fund, whenever established, must be commingled with the Maintenance and Preservation Fund if the income of such trust fund is dedicated to maintenance and preservation of the entire cemetery.

(b) No trust fund, whenever established, may be commingled with the Maintenance and Preservation Fund if the income of such fund is dedicated to the maintenance and preservation of an individual lot, or private mausoleum, sarcophagus or other private structure for interment or memorialization.

(c) Monies required to be deposited into the Maintenance and Preservation Fund are payable to said fund on a monthly basis. Such deposits must be made no later than the last day of the month following the month in which the monies were received.

(d) No cemetery company may take credit for overpayment into the Maintenance and Preservation Fund except with consent of the New Jersey Cemetery Board.

(e) In any case in which multiple interment of cremated remains are interred in one interment space, each individual remains shall be subject to the statutory requirements of N.J.S.A. 8A:4-5b.

(f) N.J.S.A. 8A:4-5 shall not apply where a living lot owner transfers an interment space or spaces to a charitable organization without monetary consideration. This is not a resale pursuant to N.J.S.A. 8A:4-5, provided that the charitable organization submit proof of its charitable status to the cemetery company.

(g) A cemetery company shall be required to pay fees and charges levied by N.J.S.A. 8A:4-5 into its Maintenance and Preservation Fund in any case in which it gives an interment space free of charge.

(h) Distribution of interment spaces by a society in liquidation does not constitute a resale; therefore, the cemetery company is not obliged to collect and deposit into the Maintenance and Preservation Fund the amounts set forth in N.J.S.A. 8A:4-5. A cemetery company may, however, before recording the assignment of the interment spaces, require that future maintenance charges be assumed by the grantee or may require an endowment in place of the annual general maintenance charge.

Amended by R.1990 d.537, November 5, 1990.
See: 22 N.J.R. 2627(a), 22 N.J.R. 3363(a).
Corrected cite in (e).

3:41-5.3 Trust fund management/record keeping

(a) All investments must come within the purview of N.J.S.A. 3A:15-1 et seq.

(b) A cemetery company may invest its trust funds in options for stock which said cemetery company holds in its portfolio when the exercise price of the option is in excess of the original purchase price of the stock. All other option transactions are deemed overly speculative and imprudent. In instances when an option has been written, the trust is permitted to purchase options to cover the sale of any option previously written.

(c) In the event a cemetery company enters into a trust agreement with a banking institution and said banking institution establishes a value for the securities other than the value previously reported by the cemetery company, the cemetery company shall adjust the increase or decrease in the value to coincide with that established by the banking institution and will reflect same in the appropriate column of the Maintenance and Preservation Fund report concerning the period during which the transaction occurred. Said change in value of the trust fund investment is to be substantiated by a letter from said banking institution reflecting its established value.

(d) All cemetery companies must maintain adequate records of income, expenses and investments of its general fund, Maintenance and Preservation Fund and any other trust fund administered directly or indirectly by a cemetery company so as to afford an intelligent understanding of the conduct of its business.

(e) Cemetery companies may use the services of more than one banking institution in management of their trust funds.

(f) Every cemetery company shall keep a map of the cemetery readily available for inspection at its main office but need not file a copy with the Board. Any change in the physical layout of the cemetery shall be reflected on the map annually.

(g) The gross sales price on resale and the sales price of crypts or niches in a public mausoleum or columbarium on resale shall be set forth in a duly notarized affidavit executed by the transfer and transferee. Said affidavit shall be kept on file in the main office of the cemetery company in question.

3:41-5.4 Litigation involving a cemetery company

If a cemetery company is a party to any litigation, it shall file a copy of the complaint, the answer, and the judgment, order, or settlement agreement resolving the matter with the Board and the Division of Law within the Department of Law and Public Safety.

Recodified from 3:40-6.4 and amended by R.1994 d.579, effective November 21, 1994.
See: 26 N.J.R. 3785(a), 26 N.J.R. 4597(a).

3:41-5.5 Annual reports

(a) Each year, a cemetery company shall file an annual report with the Board. The report shall be signed in the presence of a notary public and acknowledged. The report shall be filed with the Board on a form established by the Board. The report shall include:

1. The extent of, and sources of augmentation to, the maintenance and preservation fund;
2. The manner of employment by said cemetery company of the income of the maintenance and preservation fund during the preceding year;
3. A list of the securities, bonds, certificates of deposit or other instruments in which the corpus of the fund is invested; and
4. A check for the per-interment charge as required by N.J.S.A. 8A:4-12(b), made payable to the New Jersey Cemetery Board, the proceeds from which shall be used to defray the expense of the examination, investigation and administration by the Board;

(b) The cemetery company shall file the annual report required by this section no later than 120 days after the close of the cemetery company's fiscal year.

Recodified from 3:40-6.5 and amended by R.1994 d.579, effective November 21, 1994.
See: 26 N.J.R. 3785(a), 26 N.J.R. 4597(a).

3:41-5.6 Rules and regulations of a cemetery company

A cemetery company may amend or supplement its rules and regulations by filing with the Board such proposed amendments or supplements, or both. This filing shall be accompanied by a filing fee payable to the New Jersey Cemetery Board, in accordance with N.J.S.A. 8A:5-4c.

Recodified from 3:40-6.7 and amended by R.1994 d.579, effective November 21, 1994.
See: 26 N.J.R. 3785(a), 26 N.J.R. 4597(a).

SUBCHAPTER 6. INTERMENT SPACE OWNER**3:41-6.1 Memorials**

(a) Once interment has been made in a cemetery lot or grave, reasonable memorialization of the remains must be allowed in accord with the rules and regulations of the cemetery company.

(b) Removal of encumbrances such as that described in N.J.A.C. 3:40-6.8 may be removed by a cemetery company provided seven days notice by ordinary mail to the interment space owner, the next-of-kin or other interested parties be given. Should such notification not be possible the procedure described in N.J.A.C. 3:40-6.8 shall be followed.

3:41-6.2 Restrictions on closings for interments

In order to insure continued interments and cremations, no cemetery shall be closed for more than three consecutive days for the purposes of making interments and conducting cremations except for strikes, acts of God or by direction of a competent authority, e.g., court of competent jurisdiction, New Jersey Cemetery Board, Department of Health.

3:41-6.3 Transferability of interment space

Heirs, devisees and legatees of owners of unused interment spaces may grant, convey, sell or donate such interment spaces.

SUBCHAPTER 7. DISINTERMENTS**3:41-7.1 Multiple depth grave**

(a) Any cemetery company selling interment rights in a multiple depth grave to two or more unrelated purchasers shall, at the time of the sale, inform each purchaser in writing that, pursuant to N.J.S.A. 8A:5-20, remains interred in any such space may be disinterred only with the consent of the owner or owners of each interment space in which a disinterment is to be made and of the surviving spouse and children if of full age.

(b) In the event of a sale of a multiple depth grave to a single purchaser by a cemetery company, when the first interment is made the grave shall be opened to a sufficient depth to accommodate all appropriate additional interments so as to avoid additional charges for deepening and the need for a disinterment permit when subsequent interments are made, unless the person authorizing such interments shall in writing instruct the cemetery company otherwise.

3:41-7.2 Additional interment; obtaining disinterment permit

In the event the remains already in an interment space must be lowered to accommodate an additional interment, a disinterment order must be obtained permitting the lowering of the remains already in the interment space.

3:41-7.3 Photographing disinterments

(a) Cemetery companies may, by rule or regulation, prohibit photographing disinterments, except that:

1. The owner or owners of said interment space may themselves photograph such disinterment or authorize in writing another on their behalf to photograph said disinterment; and
2. Photographs may also be taken when they are a necessary part of a criminal investigation or when otherwise ordered by a court of competent jurisdiction, provid-

ed no photographs, other than the immediate gravesite shall be taken.

3:41-7.4 Temporary storage prior to final entombment or interment within a single cemetery

(a) A cemetery company may temporarily store human remains in a properly constructed receiving vault prior to final entombment or interment for not more than four years. The cemetery company may transfer the remains from the place of temporary storage to the place of final entombment or interment without obtaining a disinterment permit and without the presence of a licensed funeral director if both places are within a single cemetery.

(b) A cemetery company may conduct temporary storage and transfer under this section only if the words "temporary storage" along with the location of the temporary storage within the cemetery appear on the death certificate and burial permit.

(c) The receptacle to be placed in temporary storage which contains the human remains shall be clearly, legibly and durably marked by the licensed funeral director whose name appears on the death certificate and burial permit, with the decedent's full name and date of death as stated on the death certificate and burial permit; and with the full name, mailing address and telephone number of both the responsible next of kin as defined under N.J.S.A. 8A:5-18, and the designated licensed funeral director or funeral establishment whose name appears on the death certificate and burial permit.

(d) Prior to transfer from the place of temporary storage to the place of final entombment or interment pursuant to this section, the cemetery company shall notify in writing the licensed funeral director or funeral establishment that originally supervised the delivery to temporary storage or another licensed funeral director or funeral establishment of the next of kin's choice, and the responsible next of kin as defined by N.J.S.A. 8A:5-18, at least seven days before the transfer from the temporary storage.

(e) A cemetery company may not pursuant to this section temporarily store or transfer the body of a person who died of a communicable disease as defined in N.J.S.A. 26:6-38.

(f) For purposes of this section "properly constructed receiving vault" means a container, made of concrete, slate, brick, steel, or other similar durable material, used or intended to be used for the temporary placement of a casket in which human remains have been placed and may be a space in a mausoleum used or intended to be used to entomb human remains.

New Rule, R.1990 d.357, effective July 16, 1990.
See: 22 N.J.R. 1185(a), 22 N.J.R. 2142(b).

SUBCHAPTER 8. CREMATED REMAINS

3:41-8.1 Shipment

In the event a crematory ships cremated remains through the U.S. Postal System or any other responsible parcel service, said cemetery will label both the inside container and outside wrapper to identify the contents. The cremated remains must be securely packaged and proper insurance be provided and all necessary precautions for a safe delivery be taken.

SUBCHAPTER 9. SALESMEN

3:41-9.1 Eligibility

(a) A cemetery salesman license may not be denied to any person, regardless of profession engaged in, provided that all other provisions of the Cemetery Act are complied with.

(b) Notwithstanding the fact that an officer, superintendent, manager, or clerk of a cemetery company may act as a cemetery salesman without being licensed by the Board, this same category of individuals may be licensed by the Board if proper application is made and the Board deems them qualified to be licensed.

3:41-9.2 Investigation of applicant

(a) A New Jersey Criminal History Record Information check shall be requested from the New Jersey State Police on all applicants for a New Jersey Cemetery Salesman license.

(b) In the event the New Jersey Criminal History Record Information check discloses an arrest and conviction record of an applicant for a cemetery salesman license, the following release shall be completed by the applicant and furnished to the Board to allow the Board to have the information released by the New Jersey State Police.

• Release Form: I _____, hereby authorize the New Jersey State Police to release to the New Jersey Cemetery Board any data in its files, said data to be used in connection with my application for a New Jersey Cemetery Salesmen License.

3:41-9.3 License form

A cemetery salesman license, when issued, is to be in the form of a pocket license with a one inch by one inch recent face photograph attached.

Amended by R.1990 d.537, November 5, 1990.
See: 22 N.J.R. 2627(a), 22 N.J.R. 3363(a).

Corrected term "cemetery license" to "cemetery salesman license".

3:41-9.4 Application for renewal of license

Application forms for renewal of cemetery salesman licenses will be mailed by date of the valid license.

3:41-9.5 Multiple license

A cemetery salesman selling for more than one cemetery company must obtain a separate license for each cemetery company he sells for, provided that, if the applicant applied for a license to sell for more than one cemetery, he shall be required to pay only one examination fee pursuant to N.J.S.A. 8A:9-10.

3:41-9.6 Jurisdiction; local licensing and bonding

No county or municipality may require a validly licensed cemetery salesman to purchase or obtain any type of license or permit or to post any type of bond in connection with the sale of, or offer to sell cemetery property or services supplied or performed by a cemetery company.

3:41-9.7 Application for license as a cemetery salesperson

(a) An applicant for an initial cemetery salesperson license shall submit the following:

1. A completed application form;
2. A one inch by one inch face photograph, in good condition, and taken within the last year;
3. The examination fee as provided by N.J.S.A. 8A:9-10;
4. A completed certified consent certificate consenting to the criminal history investigation;
5. An F.B.I. fingerprint card, with legible prints, which is signed by the applicant and the officer who took the prints;
6. The criminal history investigation fee in the form of certified check or money order as set by the Federal Bureau of Investigation through the New Jersey State Police;
7. For applicants who have been convicted of a criminal offense, a completed criminal history questionnaire; and
8. For applicants who reside outside of this State, a completed designation of agent form.

(b) An applicant for a renewal of a cemetery salesperson license shall submit the following:

1. A completed application form;

2. A one inch by one inch face photograph, in good condition, and taken within the last year;

3. The renewal fee as specified by N.J.S.A. 8A:9-10; and

4. For applicants who reside outside of this State, a designation of agent form if no designation of agent form has ever been submitted to the board or if the designation of agent form previously submitted does not list the current agent for service of process.

Recodified from 3:40-6.12 and amended by R.1994 d.579, effective November 21, 1994.
See: 26 N.J.R. 3785(a), 26 N.J.R. 4597(a).

SUBCHAPTER 10. INTERPRETATION AND CONSTRUCTION

3:41-10.1 Modifications and amendments

(a) Special cases may arise in which the literal enforcement of a rule may impose an unnecessary hardship. The New Jersey Cemetery Board, therefore, reserves the right to make exceptions, suspensions or modifications in any of the rules and regulations where, in the Board's judgement, the public interest is best served. Such exception, suspension or modification shall in no way be construed as affecting the general application of such rule.

(b) The New Jersey Cemetery Board is authorized and empowered to adopt such rules and regulations, or amendments or supplements not inconsistent with the New Jersey Cemetery Act which may hereafter be adopted. Furthermore, the Board reserves the right at any time or times to adopt such rules or regulations or to amend, alter or repeal any rule, regulation, article, sentence, paragraph or section in these rules and regulations to carry out the purpose of the New Jersey Cemetery Act. Any and all such changes will be in accordance with the Administrative Procedure Act.

3:41-10.2 Situations where rules and regulations do not govern

In any matter not governed by the rules and regulations of the Cemetery Board, the Board shall exercise its discretion so as to carry out the purpose of the Cemetery Act.

3:41-10.3 Gender

Unless a different meaning clearly appears from the context, the use of the word importing the masculine shall be understood to include and to apply to the feminine as well.

3:41-10.4 Liberal construction

The rules and regulations shall be liberally construed to permit the Cemetery Board to discharge its statutory function and to secure a just and speedy determination of all matters before it.

SUBCHAPTER 11. LOCATION OF INTERMENT SPACES**Authority**

N.J.S.A. 8A:2-2 and 8A:6-11.

Source and Effective Date

R.1993 d.632, effective December 6, 1993.
See: 25 N.J.R. 623(a), 25 N.J.R. 5462(b).

3:41-11.1 Use of cemetery land

(a) A cemetery company shall maintain paths to interment spaces already sold when the cemetery company lays out portions of grounds into interment spaces pursuant to N.J.S.A. 8A:6-11. When a cemetery company resurveys, alters, changes or modifies a portion of its grounds previously laid out on a map or maps into such interment spaces, the definition of "path" at N.J.A.C. 3:41-2.1 shall apply.

(b) This subchapter shall not apply to the laying out of portions of ground in areas of cemetery property which have not previously been laid out on a map or maps into paths or interment spaces.

3:41-11.2 Applicability to existing sales and interments

(a) An unsold interment space which, on the effective date of this rule, is plotted in a manner that does not conform with this subchapter shall not be sold or used for interment purposes.

(b) If, on the effective date of this rule, a sold interment space, in which no interment has been made, is plotted in a manner which makes a path non-conforming, the cemetery company shall exercise due diligence and negotiate in good faith with the lot owner for the transfer or exchange of the lot owner's non-conforming space with other space that conforms with this provision. Thereafter, the non-conforming plot shall be replotted or eliminated. The transfer or exchange of the non-conforming plot shall be provided at no expense to the lot owner beyond what the lot owner agreed to pay for the non-conforming plot.

SUBCHAPTER 12. (RESERVED)**SUBCHAPTER 13. APPLICATIONS****Source and Effective Date**

R.1994 d.579, effective November 21, 1994.
See: 26 N.J.R. 3785(a), 26 N.J.R. 4597(a).

Subchapter Historical Note

Rules regarding Applications were originally codified as N.J.A.C. 3:40-6, but were recodified with changes as N.J.A.C. 3:41-13 by R.1994 d.579. See: Source and Effective Date.

3:41-13.1 Application for certificate of authority

(a) An application for a certificate of authority by a cemetery company organized on or after December 1, 1971 shall be filed as follows:

1. The Board shall establish a register of applications for certificates of authority for all cemetery companies organized on or after December 1, 1971;

2. Each application shall, upon its receipt at the office of the Board, be recorded in this register. An applicant shall submit with each application a nonrefundable fee of \$100.00 payable to the New Jersey Cemetery Board.

3. The register of applications shall be open to the inspection by the public during the normal business hours of the Board office.

4. If any member of the public files, at the office of the Board, a written objection to an application for a new cemetery company, the Board shall schedule a public hearing and shall notify the objector and the applicant of the time and the place for such hearing.

5. After the hearing has been held the grant or denial of the certificate of authority shall be filed in the register of applications.

6. An application for a certificate of authority shall include the following:

i. A completed application form for a certificate of authority;

ii. A completed information sheet;

iii. An application fee of \$100.00, made payable to the New Jersey Cemetery Board;

iv. A copy of the certificate of incorporation pursuant to Title 15A of the New Jersey Statutes;

v. A copy of articles of incorporation and/or charter, and bylaws;

vi. A copy of the applicant's rules and regulations;

vii. A copy of the applicant's charges for interment spaces and services;

viii. A map of the area (for example, a tax map) which delineates the cemetery;

ix. A statement and supporting evidence, if any, that the cemetery company will be able to meet the requirement of N.J.S.A. 8A:4-3 to establish an Initial Balance Fund of \$25,000, except that a cemetery company operating as a crematory wholly independent and physically separated from any cemetery shall not be required to provide such a statement, nor shall a cemetery company which has been engaged in the operation of a cemetery prior to December 1, 1971 be required to provide such a statement; and

x. Any additional information which the Board may require relevant to the application.

(b) An application for a certificate of authority by a cemetery company organized before December 1, 1971 shall be filed as follows:

1. An applicant shall submit with each application a nonrefundable fee of \$100.00, payable to the New Jersey Cemetery Board, except that the applicant shall not be required to pay the application fee if it can demonstrate to the satisfaction of the Board that it no longer has cemetery land for sale and that it exists solely for the maintenance and preservation of the cemetery.

2. An application for a certificate of authority shall include the following:

i. A completed application for a certificate of authority;

ii. A completed information sheet;

iii. An application fee of \$100.00, made payable to the New Jersey Cemetery Board, except as provided in (b)1 above;

iv. A copy of the certificate of incorporation or registration as a limited partnership, if applicable;

v. A copy of articles of incorporation, charter, and bylaws, and other fundamental organizational documents of the entity;

vi. A copy of the applicant's rules and regulations;

vii. A copy of the applicant's charges for interment spaces and services; and

viii. Any additional information which the Board may require relevant to the application.

3:41-13.2 Application for dissolution of a cemetery company

(a) A cemetery company which wishes to dissolve shall file an application with the Board. The application shall include, but not be limited to, the following:

1. A certified statement by the board of managers or trustees of the cemetery company which:

i. Sets forth the reasons for dissolution;

ii. Identifies all of the assets and liabilities of the cemetery company, including any outstanding legal actions or matters which may result in legal actions, and sets forth the amounts of all such assets and liabilities;

iii. States that the cemetery company is transferring its cemetery property in good faith, and has concluded that, to the best of its knowledge, the transfer would not work an injustice on any party; and

iv. States that, when the dissolution becomes effective, the cemetery company will surrender its certificate of authority to the Board and cease cemetery activities;

2. A certified statement of the successor in interest which states that:

i. It agrees to accept all of the duties, liabilities, obligations, rights, and assets of the cemetery company, including the duty to maintain the cemetery;

ii. It holds a certificate of authority issued by the Board, or it is a religious corporation organized pursuant to either Title 16 of the New Jersey Statutes or a special act of the Legislature, or it is a religious society;

iii. If it is a religious corporation organized pursuant to either Title 16 of the New Jersey Statutes or a special act of the Legislature, or it is a religious society, burials in the cemetery will be restricted to members of the faith and families of members of the faith; and

iv. The successor in interest is accepting the transfer of the cemetery property of the cemetery company in good faith, and has concluded that, to the best of its knowledge, the transfer would not work an injustice on any party; and

3. A copy of the resolution of dissolution approved by a majority of the board of managers or trustees and by a majority of the lot owners voting at a lot owners meeting for which adequate notice was given, in accordance with N.J.S.A. 8A:3-17.

3:41-13.3 Merger or consolidation of cemetery companies

(a) A cemetery company which wishes to merge into another cemetery company shall file an application with the Board which shall include the following:

1. A copy of the agreement which would effect the merger;

2. A copy of the plan of merger, if any;

3. A description of the benefit to each cemetery company as a result of the merger; and
4. An information fact sheet from each cemetery company reflecting the following:
 - i. A list of officers;
 - ii. A list of the board of managers or trustees;
 - iii. The total acreage of the cemetery;
 - iv. The total acreage of cemetery which is developed;
 - v. The total acreage of the cemetery which is developed but not sold;
 - vi. The total acreage of the cemetery which is undeveloped; and
 - vii. A copy of the resolution of merger approved by a majority of the board of managers or trustees of each cemetery company, and by a majority of the lot owners of each cemetery company voting at a lot owners meeting for which adequate notice was given; and
5. Any other information relevant to the application.

3:41-13.4 Application for sale of cemetery lands

(a) A cemetery company which wishes to sell any land dedicated to cemetery purposes shall file an application with the Board, which application shall include the following:

1. A statement by the board of managers or trustees setting forth the size of the parcel to be sold, whether the parcel has been developed for cemetery use, the total acres of cemetery property prior to the sale, and the total acres of developed cemetery property prior to the sale; and
2. A statement by the board of managers or trustees that the land is not in the judgment of the cemetery company necessary or suitable for interment purposes;
3. A statement by the board of managers or trustees that there are no interments within the lands requested to be sold;
4. A statement by the board of managers or trustees that when a deed is drawn for the land it will include a prohibition against using the land for any activity in which a cemetery company is prohibited from engaging by N.J.S.A. 8A:5-3;
5. A statement by the board of managers or trustees that at least 15 percent of the proceeds of the sale of the land will be paid into the maintenance and preservation fund of the cemetery;
6. A resolution approving of the sale which is approved by a majority of the board of managers or trustees;

7. A certified statement by the board of managers or trustees and the officers of the cemetery company attesting whether or not any of them has a direct or indirect interest in the purchasing entity;

8. A certified statement by the purchasing entity, its officers, and its stockholders having a 20 percent or more share of issued voting stock or a 20 percent or more share of a partnership, attesting whether any of them has a direct or indirect interest in the cemetery company;

9. One appraisal of the property by an appraiser having no interest in either the cemetery company or the purchasing entity, except that if either the cemetery company or the purchasing entity or the principals of either have an interest in the other, two independent appraisals shall be submitted; and

10. Any other information which may be required by the Board regarding the application.

(b) A committee of the Board may, if it deems it necessary, visit a cemetery submitting an application pursuant to this section to verify that the land to be sold is not necessary or suitable for interment purposes.

3:41-13.5 Application for removal of unsightly monumentation

(a) If a cemetery company wishes to remove an unsightly monument, railing, box or other form of monumentation from an interment space or lot, it shall notify the interment space owner, owners or other interested parties and secure their written consent to the removal; however, if the cemetery company is unable to obtain the written consent, either because the owner failed to consent or because the cemetery after diligent effort was unable to locate the owner, it may submit an application to the Board, which application shall include the following:

1. The reasons for removal of the monument, railing, box or other form of monumentation;
2. A statement by an officer of the cemetery company that the cemetery company was unable, after diligent effort, to obtain written permission from the owner of the interment space or lot;
3. A photograph of the monumentation sought to be removed; and
4. Any other information relevant to the application.

3:41-13.6 Application for enlargement of cemetery area by purchase

(a) A cemetery company which wishes to purchase land and dedicate that land for cemetery purposes shall file an application with the board. The application shall include the following:

1. A statement by the board of managers or trustees that the total area of the cemetery, after the new land is added, will not exceed the statutory limits set forth in N.J.S.A. 8A:6-1 and 8A:6-6, unless in the latter case the municipality has waived the limit. In the case of a merger between two or more existing cemeteries, such a statement shall not be required;

2. A copy of the contract for the purchase of the property, which shall include, but shall not be limited to, the purchase price, the method of payment, the interest rate if any, and the size of the parcel to be purchased;

3. A copy of the resolution of consent by the municipality where the cemetery is located, as required by N.J.S.A. 8A:6-5; and

4. Any other information relevant to the application.

3:41-13.7 Application to lease or license unused cemetery lands

(a) An application to lease or license unused cemetery lands shall include the following:

1. In the case of a lease to a nonprofit, religious, educational or charitable organization pursuant to N.J.S.A. 8A:6-12:

i. A certified statement by the board of managers or trustees that the lands to be leased will not be plotted for burial lots or, if already plotted, that burial lots therein will not be sold for burial purposes or otherwise used for cemetery purposes within two years following the meeting of the board of managers or trustees approving the application;

ii. A tax map, or other equivalent official map, of the land in question which indicates that it abuts a public street or highway;

iii. A certified statement by the prospective lessee that it is a nonprofit, religious, educational or charitable organization;

iv. A certified statement by the prospective lessee describing the expected use to be made of the portion of land and addressing the question of whether this use would be distasteful to those who visit that portion of the cemetery presently used for burial purposes which abuts the land in question;

v. Evidence that there is an access from the abutting public highway or street;

vi. A copy of the lease; and

vii. Any other information relevant to the application; and

2. With regard to a lease to a for-profit entity pursuant to N.J.S.A. 8A:6-2:

i. A statement by the board of managers or trustees that the parcel has not been laid out into burial plots or lots;

ii. A statement by the board of managers or trustees that the proceeds of the lease will be used to pay the debts and liabilities of the cemetery company or to improve the cemetery, or both;

iii. A statement by the prospective lessee that it does not engage, directly or indirectly, in an activity that which a cemetery company is prohibited from engaging in pursuant to N.J.S.A. 8A:5-3; and

iv. Any other information relevant to the application.

3:41-13.8 Applications for bulk sales of interment spaces

(a) A certified statement by an officer of the cemetery company which wishes to sell interment spaces in bulk to a membership or religious corporation or society, or to an unincorporated association or society pursuant to N.J.S.A. 8A:9-7, shall submit an application to the Board, which application shall include the following:

1. A copy of the contract of sale, which shall include the names of the parties, the number of interment spaces to be sold, the location of each, and the sales price;

2. A statement by the cemetery company that:

i. The transaction will conform to N.J.S.A. 8A:9-7 and N.J.A.C. 3:41-4.2;

ii. It will deposit into its maintenance and preservation fund at least 15 percent of the gross sales price of the interment spaces, or \$25.00 per grave, whichever is greater, as payments are received;

iii. It is aware that, if the purchaser resells an interment space in the future, at least 15 percent of the gross sales price for similar interment spaces established by the cemetery company at the time of resale, or \$25.00, whichever is greater, must be deposited into the maintenance and preservation trust fund of the cemetery company, except that a credit shall be given for any money previously paid into the maintenance and preservation fund in connection with the interment space; and

iv. It is selling the interment spaces in good faith and does not have any knowledge of any speculative intent on the part of the purchaser which would violate N.J.S.A. 8A:9-7;

3. A certified statement by the purchaser that:

i. It is a membership or religious corporation or society, or an unincorporated association or society within the meaning of N.J.S.A. 8A:1-1 and 8A:9-7;

ii. It will purchase the spaces pursuant to N.J.S.A. 8A:9-7 and N.J.A.C. 3:41-4.2;

iii. The purchaser will resell or give the interment spaces, or the right to use the interment spaces, purchased in this bulk sale only to members, and the spaces will be provided solely for members and their families;

iv. If the purchaser resells any interment space in the future, it will transmit to the cemetery for deposit into the maintenance and preservation fund of the cemetery company at least 15 percent of the gross sales price for similar interment spaces established by the cemetery company at the time of resale, or \$25.00, whichever is greater, but the purchaser shall receive a credit for any money previously paid into the maintenance and preservation fund in connection with the interment spaces; and

v. The purchaser is purchasing the interment spaces in good faith and does not have any speculative intent which would violate N.J.S.A. 8A:9-7; and

4. Any other information relevant to the application.

(b) A membership or religious corporation or society, or an unincorporated association or society, which wishes to sell interment spaces in bulk to another membership or religious corporation or society, or to an unincorporated association or society pursuant to N.J.S.A. 8A:9-7, shall submit an application to the board, which application shall include the following:

1. A copy of the contract of sale, which shall include the names of the parties, the number of interment spaces to be sold, the location of each, and the sales price;

2. A certified statement by the selling organization that

i. It is a membership or religious corporation or society, or an unincorporated association or society within the meaning of N.J.S.A. 8A:1-1 and N.J.S.A. 8A:9-7 of the New Jersey Cemetery Act;

ii. It will sell the spaces pursuant to N.J.S.A. 8A:9-7 and N.J.A.C. 3:41-4.2;

iii. It is aware that at least 15 percent of the gross sales price of the interment spaces, or \$25.00 per grave, whichever is greater, must be deposited into the maintenance and preservation fund of the cemetery company, and that the source of such deposit has been agreed to; and

iv. It is selling the interment spaces in good faith and does not have any knowledge of any speculative intent on the part of the purchaser which would violate N.J.S.A. 8A:9-7;

3. A certified statement by the purchasing organization that:

i. It is a membership or religious corporation or society, or an unincorporated association or society within the meaning of N.J.S.A. 8A:1-1 and 8A:9-7;

ii. It will purchase the spaces pursuant to N.J.S.A. 8A:9-7 and N.J.A.C. 3:41-4.2;

iii. It will resell or give the interment spaces, or the right to use the interment spaces, only to its members, and that the spaces will be provided solely for members and their families;

iv. If the purchaser resells an interment space, it will transmit to the cemetery company for deposit into the maintenance and preservation fund of the cemetery company at least 15 percent of the gross sales price for similar interment spaces established by the cemetery company at the time of resale, or \$25.00, whichever is greater, but the purchaser shall receive a credit for any money previously paid into the maintenance and preservation fund in connection with the interment spaces; and

v. It is purchasing the interment spaces in good faith and does not have any speculative intent which would violate N.J.S.A. 8A:9-7;

4. A statement by the cemetery company that:

i. It is aware that an amount equal to at least 15 percent of the sale price for the interment spaces must be deposited into the maintenance and preservation fund of the cemetery company when a membership or religious organization resells its interment spaces in bulk to another membership or religious organization, except that a credit shall be given for any amount previously paid into the maintenance and preservation fund in connection with each particular interment space;

ii. It is aware that, if the purchasing organization resells an interment space to a member, at least 15 percent of the gross sales price for an equivalent interment space established by the cemetery at the time of resale shall be deposited into the maintenance and preservation fund of the cemetery company, less a credit for any money previously paid into the maintenance and preservation fund in connection with that interment space; and

iii. To the best of its knowledge, the transaction is being undertaken in good faith, and neither the cemetery company, nor the selling organization, nor the purchasing organization have a speculative intent which would violate N.J.S.A. 8A:9-7; and

5. Any other information relevant to the application.

3:41-13.9 Standards for approving or disapproving applications

(a) The following factors shall militate toward approval of an application:

1. Approval will benefit the financial well-being of any cemetery company affected by the transaction;

2. Approval will result in better provision of services by any cemetery company; or
3. Approval will foster a statutory purpose, whether stated explicitly or fairly read into the statute.

3:41-13.10 Provisions applicable to all applications

(a) Applications and supporting materials shall be submitted in 12 copies, except that applications for bulk sale of interment spaces shall be submitted in three copies. One original of all certifications shall be submitted, but contracts, certificates of incorporation, articles of incorporation, and bylaws may be submitted as copies.

(b) The Board may, at its discretion, waive the submission of specified materials if it determines that the absence

of those materials would have no substantial impact on its ability to make an informed decision on the application, or if the applicant submits substantially similar information in a form not specified, or if the Board already has the information in a satisfactory form.

(c) The Board may consider an application to be incomplete which lacks one of more of the items required to be submitted, and may defer processing until all of the materials have been submitted.

(d) Any misrepresentation of a material fact, or any omission of a material fact, in an application to the Board shall constitute a violation of the Act and shall make the person making the representation liable for a penalty as set forth in N.J.S.A. 8A:10-1.