

(d) Capital gains from the sale of items in a trust fund shall not be treated as income of the Maintenance and Preservation Fund and shall be retained as principal of the Maintenance and Preservation Fund.

Amended by R.1995 d.581, effective November 6, 1995.

See: 27 N.J.R. 3122(a), 27 N.J.R. 4437(a).

Recodified from N.J.A.C. 13:44J-5.3 and amended by R.2000 d.487, effective December 4, 2000.

See: 32 N.J.R. 3261(a), 32 N.J.R. 4265(a).

Deleted a former (c); recodified former (d) as (c); and deleted former (e) through (g). Former N.J.A.C. 13:44J-5.4, Litigation involving a cemetery company, recodified to N.J.A.C. 13:44J-5.5.

Amended by R.2006 d.203, effective June 5, 2006.

See: 37 N.J.R. 4877(a), 38 N.J.R. 2502(a).

In (a), substituted “‘Prudent Investor Act,’ N.J.S.A. 3B:20-11.1 et seq.” for “‘Prudent Investment Law,’ N.J.S.A. 3B:20-12 et seq.”.

Amended by R.2010 d.092, effective June 21, 2010.

See: 41 N.J.R. 4184(a), 42 N.J.R. 1238(a).

Added (d).

### 13:44J-5.4A Co-mingling of trust funds for building maintenance

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

“Private mausoleum fund” means a trust fund created for the maintenance of the structure of a private mausoleum and the area on which it is located as required by N.J.S.A. 45:27-14a.

“Public mausoleum fund” means a Building Maintenance Fund created for the maintenance of a public mausoleum as required by N.J.S.A. 45:27-14b.

(b) A cemetery company may co-mingle private mausoleum funds established pursuant to N.J.S.A. 45:27-14 in a co-mingled private mausoleum trust fund.

(c) A cemetery company may co-mingle public mausoleum funds in a co-mingled public mausoleum trust fund.

(d) If a cemetery company co-mingles private or public mausoleum trust funds pursuant to (b) or (c) above, the cemetery company shall ensure that the income of the co-mingled trust fund is allocated for the maintenance of each individual mausoleum based upon the initial contribution to the co-mingled fund. For example, if the public mausoleum trust funds for mausoleum one and mausoleum two are co-mingled, such that mausoleum one contributes 75 percent of the initial contribution to the co-mingled fund, 75 percent of the income of the co-mingled fund shall be allocated to mausoleum one.

(e) If additional money is deposited in a co-mingled trust fund created pursuant to (b) or (c) above, either from mausoleum trust funds that are already part of the co-mingled trust fund or new mausoleum trust funds being added to the co-mingled trust fund, the cemetery company shall recalculate the allocation of income from the co-mingled trust fund

in proportion to the contributions from the individual private or public mausoleum trust funds.

(f) Income allocated from a co-mingled trust fund created pursuant to (b) above to an individual mausoleum shall be redeposited in the co-mingled trust fund or used for the maintenance of that mausoleum. Such income shall not be used to maintain other mausoleums or for other cemetery expenses.

(g) If the income allocated from a co-mingled trust fund created pursuant to (c) above to an individual mausoleum exceeds the cost of maintaining that mausoleum, the excess income shall be reserved for future maintenance of that mausoleum and shall not be used to maintain other mausoleums or for other cemetery expenses.

(h) A cemetery company that co-mingles trust funds pursuant to (b) or (c) above shall include in its annual report:

1. A list of private mausoleum funds that have been co-mingled in a co-mingled private mausoleum fund and the amount each private mausoleum fund has in the co-mingled fund;

2. A list of public mausoleum funds that have been co-mingled in a co-mingled public mausoleum fund and the amount each public mausoleum fund has in the co-mingled fund;

3. Documentation indicating the allocation made from each co-mingled trust fund to the individual mausoleums that are part of the co-mingled fund; and

4. Bank statements from the co-mingled private mausoleum fund and the co-mingle public mausoleum fund.

New Rule, R.2010 d.035, effective May 17, 2010.

See: 41 N.J.R. 3029(a), 42 N.J.R. 941(a).

### 13:44J-5.5 Litigation involving a cemetery company

In any action or proceeding affecting or instituted by a cemetery company the cemetery company shall file a copy of the complaint, the answer, the final judgment, order, notices of appeal, petitions for certification or settlement agreement resolving the matter with the Board, addressed to New Jersey Cemetery Board, PO Box 45031, Newark, NJ 07101, and the Attorney General, addressed to RJ Hughes Justice Complex, PO Box 112, Trenton, NJ 08625-0112.

Amended by R.1994 d.579, effective November 21, 1994.

See: 26 N.J.R. 3785(a), 26 N.J.R. 4597(a).

Recodified from N.J.A.C. 13:44J-15.4 and amended by R.2000 d.487, effective December 4, 2000.

See: 32 N.J.R. 3261(a), 32 N.J.R. 4265(a).

Rewrote the section. Former N.J.A.C. 13:44J-5.5, Annual reports, recodified to N.J.A.C. 13:44J-5.6.

### 13:44J-5.6 Annual reports

(a) Each year, a cemetery company shall submit a check for all charges due the Board pursuant to N.J.A.C. 13:44J-3.1

and file a notarized annual report on a form provided by the Board with the Board. The report shall include:

1. The extent of, and sources of augmentation to, the Maintenance and Preservation Fund;
2. The designation of the income of the maintenance and preservation fund as operational expenses, retained income or both; and
3. A list of the securities, bonds, certificates of deposit or other instruments in which the corpus of the fund is invested.

(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.

(c) Except as provided in (d) below, a cemetery company may request that the Board waive the filing fee required by N.J.A.C. 13:44J-3.1(a)3. A request for waiver shall be included with the report filed pursuant to (a) above. The Board shall grant the waiver if it determines that the annual report indicates that the cemetery company requesting the waiver does not have sufficient income from the Maintenance and Preservation Fund and from any other sources to cover the costs of maintaining the cemetery and paying the fee. If the Board determines that the fee should not be waived, it shall inform the cemetery company that the fee has not been waived and the cemetery company shall pay the fee within 60 days of receiving notification.

(d) Any cemetery company whose income from the maintenance and preservation fund, as indicated in the annual report filed pursuant to (a) above, is \$1,000 or less shall not be required to pay the filing fee required by N.J.A.C. 13:44J-3.1(a)3 and shall not be required to request a waiver pursuant to (c) above.

Amended by R.1994 d.579, effective November 21, 1994.

See: 26 N.J.R. 3785(a), 26 N.J.R. 4597(a).

Amended by R.1995 d.581, effective November 6, 1995.

See: 27 N.J.R. 3122(a), 27 N.J.R. 4437(a).

Recodified from N.J.A.C. 13:44J-5.5 and amended by R.2000 d.487, effective December 4, 2000.

See: 32 N.J.R. 3261(a), 32 N.J.R. 4265(a).

Rewrote (a). Former N.J.A.C. 13:44J-5.6, Rules and regulations of a cemetery company, recodified to N.J.A.C. 13:44J-6.1.

Amended by R.2007 d.289, effective September 17, 2007.

See: 38 N.J.R. 4169(a), 39 N.J.R. 3944(a).

Added (c) and (d).

### 13:44J-5.7 Reclamation of interment spaces or niches

(a) A cemetery may reclaim an individual interment space or niche sold prior to December 1, 1971 if:

1. No interment has been made in the grave or crypt and no inurnment has been made in the niche;
2. No provision for annual, endowed or special care or maintenance has been made; and

3. No burial has been made for 30 years in the plot that includes the interment space.

(b) A cemetery that intends to reclaim an individual interment space or niche pursuant to (a) above shall, prior to reclaiming such interment space or niche:

1. Send a certified letter, return receipt requested, to the owner of the interment space or niche, or any heirs of the owner listed in the cemetery's records, at the address listed in the cemetery's records, which informs the owner or heirs that they may prevent the cemetery from reclaiming the interment space or niche by sending a written objection to the cemetery company within 30 days; and

2. Publish a notice in a newspaper if the cemetery company cannot locate the owner of the interment space or niche, or any heirs of the owner listed in the cemetery's records, at the address listed in the cemetery's records. The newspaper's circulation shall include the county in which the interment space or niche is located. The notice shall indicate the owner and any heirs of the owner listed in the cemetery's records and contain the names of each deceased person buried in the plot that includes the interment space and the date of each burial, if these names and dates are ascertainable. The notice shall state that, in the absence of written objection received within 30 days from the publication of the notice, the vacant interment space or niche will be subject to sale.

(c) If the owner of the interment space or niche or the heirs of the owner fail to respond to the letter or notices sent pursuant to (b) above, the cemetery may sell the reclaimed interment space or niche no sooner than 30 days from the date of publication of the notice.

(d) The cemetery company shall deposit at least 75 percent of the gross proceeds received from the sale of the reclaimed interment space or niche in the Maintenance and Preservation Fund. Up to 25 percent of the gross proceeds of the sale of the reclaimed interment space or niche may be allocated by the cemetery to administrative costs, which shall include sales commission. The cemetery shall indicate these costs in its records, which shall be made available to the Board and the owner or the heirs of the owner upon request.

(e) A reclaimed interment space or niche shall be sold for the same price as other interment spaces or niches in the section in which the interment space or niche sold is located. If there are no interment spaces or niches available for sale in the section in which the reclaimed interment space or niche is located, the reclaimed interment space or niche shall be sold for the same price as interment spaces or niches in a comparable section of the cemetery.

(f) The original owner of a reclaimed interment space or niche or the heirs of the owner may request reimbursement from the cemetery company for the reclaimed interment space or niche. Upon proving ownership, the owner or heirs shall have the option of either accepting a comparable interment