

CHAPTER 44J
CEMETERIES

Authority

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

Source and Effective Date

R.1995 d.581, effective November 6, 1995.
See: 27 N.J.R. 3122(a), 27 N.J.R. 4437(a).

Executive Order No. 66(1978) Expiration Date

Chapter 44J, Cemeteries, expires on November 6, 2000.

Chapter Historical Note

Chapter 44J, Cemeteries, was originally codified in Title 3 as Chapter 41, Cemeteries. 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, effective October 11, 1990. See: 22 N.J.R. 2627(a), 22 N.J.R. 3363(a). Subchapter 11, Location of Interment Spaces, was adopted as new rules by R.1993 d.632, effective December 6, 1993. See: 25 N.J.R. 623(a), 25 N.J.R. 5462(b). Subchapter 13, Applications, was recodified from N.J.A.C. 3:40-6 and amended by R.1994 d.579, effective November 21, 1994. See: 26 N.J.R. 3785(a), 26 N.J.R. 4597(a). Pursuant to Executive Order No. 66(1978), Chapter 41, Cemeteries, expired on October 11, 1995. Chapter 41, Title 3, was adopted as new rules and recodified as Chapter 44J, Title 13, and Subchapter 10, Interpretation and Construction, was repealed by R.1995 d.581, effective November 6, 1995. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. APPLICABILITY

13:44J-1.1 Applicability of chapter to religious corporations

Unless otherwise noted, the provisions of the chapter do 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.

Amended by R.1995 d.581, effective November 6, 1995.
See: 27 N.J.R. 3122(a), 27 N.J.R. 4437(a).

13:44J-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

13:44J-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.
See: 25 N.J.R. 623(a), 25 N.J.R. 5462(b).

SUBCHAPTER 3. FEE SCHEDULE

13:44J-3.1 Charges and fees

(a) The following fees shall be charged by the Board:

1. Cemetery company fees:
 - i. Annual interment fees (except for religious corporations)\$5.00
per interment in excess of 25 interments
 - ii. Certificates of authority500.00
 - iii. Filing amendments to charters/rules and regulations 25.00
 - iv. Application fees:
 - (1) Sales of excess land 500.00
plus .5 percent of gross sales in excess of \$100,000
 - (2) Merger/consolidation 500.00
 - (3) Removal of unsightly monument 100.00
 - (4) General renovation of grave areas 100.00
 - (5) Acquisition of land 250.00
 - (6) Lease of cemetery land to non-profit organization 100.00
 - (7) Bulk sale of graves 75.00
2. Salesperson fees:
 - i. Application fee/temporary license 40.00
 - ii. Initial license 75.00
 - iii. Biennial license renewal 30.00
 - iv. Transfer of license 20.00
 - v. Duplicate license 10.00
 - vi. Late renewal fee 10.00

(b) 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 Board of being legally incorporated under Title 16 are exempt from paying fees in N.J.S.A. 47:1A-2.

(c) All religious corporations which provide substantial proof to the Board of being legally incorporated under Title 16 are exempt from paying the annual interment fees set forth in (a)1i above.

Amended by R.1995 d.581, effective November 6, 1995.
See: 27 N.J.R. 3122(a), 27 N.J.R. 4437(a).

SUBCHAPTER 4. EXECUTIVE DIRECTOR

13:44J-4.1 General duties

Under the direction of the New Jersey Cemetery Board, Division of Consumer Affairs, the Executive Director of the Board 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.

Amended by R.1995 d.581, effective November 6, 1995.
See: 27 N.J.R. 3122(a), 27 N.J.R. 4437(a).

13:44J-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

13:44J-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).

13:44J-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).

13:44J-5.3 Trust fund management/record keeping

(a) All investments of cemetery trust funds must be made pursuant to the "Prudent Investment Law," N.J.S.A. 3B:20-12 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 transferor and transferee. Said affidavit shall be kept on file in the main office of the cemetery company in question.

Amended by R.1995 d.581, effective November 6, 1995.
See: 27 N.J.R. 3122(a), 27 N.J.R. 4437(a).