



STATE OF NEW YORK
DEPARTMENT OF STATE
DIVISION OF CEMETERIES

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TO: ALL NEW YORK NOT-FOR-PROFIT CEMETERIES

FROM: The New York State Division of Cemeteries

DATE: January 21, 2015

RE: 2015 Division of Cemeteries Bulletin No.1

The Division of Cemeteries wishes you all the best for this new year. This bulletin highlights some important developments and information for regulated cemeteries for this new year.

Personnel Change at the Division of Cemeteries

One of our valued staff members left the Division in mid-December. Suzanne Dressel, who has managed our Albany office and communications with cemeterians and consumers statewide since December 2012, has accepted a promotion to another division within the Department of State. We wish her well in her new position, and look forward to introducing all of you to her replacement soon. In the interim, more administrative functions will be handled out of our New York City office, but you should continue to call Albany if that has been your point of contact in the past.

The Non-Profit Revitalization Act: What is it and what does it mean for our cemetery?

The New York Non-Profit Revitalization Act took effect on July 1, 2014. The Division sent out a memorandum in June 2014 highlighting some of the ways in which that legislation affects cemeteries. That memorandum is available at:

<http://www.dos.ny.gov/cmt/pdf/Non-Profit-Revitalization-Act-memo.pdf>

Answers to some frequently-asked questions on the subjects of conflict of interest appear

below:

Q: In our cemetery, many board members also do work for the cemetery (maintenance, accounting, etc.)? Must they resign from the board or stop performing such work?

A: No, but board approval of contracts for such work must be done in accordance with the rules governing related party transactions. The next example shows how this works.

Q: Groucho, Chico, and Harpo are the Board of Marx Rural Cemetery. Groucho's son, Zeppo, provides mowing services for the cemetery. Babe has asked for an increase in his compensation. What should the Board do?

A: Groucho must disclose this conflict in writing. Chico and Harpo should meet and discuss Zeppo's compensation. They should consider alternatives to having him perform the services (get other bids, etc.). If they do decide to continue to use him, explain in writing why and how they decided to continue that contract as opposed to the alternatives, and how they decided on his level of compensation. Groucho should not be present for this discussion or vote. Chico and Harpo may ask that Zeppo provide the board with additional facts. Some things the board should consider in this regard is whether it is cheaper to outsource to a landscaping service or hire an employee, what service is cheaper, and whether the Town might be willing to assist in mowing under General Municipal Law § 165-a if the cemetery is in serious financial straits.

Q: Joan is the treasurer of Arc Cemetery and owns the local hardware store. Joan insists that all materials and tools be purchased from her hardware store based on logistics and prices. Is this permissible under the Act?

A: No. The board must consider alternatives to transactions with "related parties" such as Joan. The board should, without Joan's participation, discuss prices and service for comparable supplies with other hardware stores to determine whether it would be in the best interest of the cemetery to use a different supplier. The board should also inform Joan that she may not demand that the cemetery use her store.

Q: Larry, Curley, and Moe are the three board members of Stooge Hills Cemetery. They are all related to each other. How can they comply with the Act?

A: The best answer to this question is to attempt to expand the board by soliciting new, unrelated members. Town officials and local civic groups can be good sources of potential volunteer board members. In cemeteries that do not have more than 30 acres, a funeral director may serve on the cemetery's board. If they are unable to add unrelated board members, they should reach out to the Division and we can try to address this issue together. If all board members are related to each other, they cannot be hired by or do business with the cemetery, as they would all be "related parties" whose business dealings with the cemetery must be approved by unrelated directors.

What are internal controls and why are they important?

Internal controls are policies and procedures put in place to protect the assets of the cemetery, create reliable financial reporting, promote compliance with laws and regulations, and help achieve effective and efficient operations. The following is a list of some possible internal controls for cemeteries to implement:

1. requiring multiple signatures for checks and withdrawals (or checks above a certain amount);
2. requiring multiple authorizations for wire transfers (note that this does not automatically follow even if your financial institution requires multiple signatures on checks);
3. monthly reconciliations of bank and investment statements by someone other than the individual who writes the checks and makes deposits;
4. providing copies of bank and investment statements to multiple individuals;
5. requiring multiple signatures on deeds (this is required by statute, see Not-for-Profit Corporation Law § 1513(b));
6. retaining records;
7. keeping accurate and complete minutes of board, lot owner, and finance or audit committee (if any) meetings; and
8. documentation of procedures implementing internal controls.

Our cemetery continues to struggle financially. What can we do?

The Division can serve as a resource for struggling cemeteries. Representatives of the Division are happy to meet with cemetery boards and representatives to assist them in complying with our regulations and suggest ways of improving their financial positions. Please contact the Division to set up a meeting with our staff. Here are some general suggestions (many of these are not new) for ways that struggling cemeteries can improve their position:

1. **Creating a yearly budget.** A budget does not have to be a complicated process. Take each item on your annual report and make an educated guess as to what your receipts and expenses will be in the following year. Because your expense side will be larger if you anticipating operating at a loss, look for ways to reduce each item until you have a balanced budget. Get multiple bids for maintenance, insurance and other major items. As a last resort, cut back on the number of times you mow to a level that will provide adequate care.
2. **Fundraisers.** Because cemeteries are not-for-profit corporations, they are allowed to accept donations. Many trustees use bake sales, chicken dinners, or mailings to lot owners or local residents asking lot owners for donations. Some fund raising projects may trigger a taxable event for your cemetery. Consult with your accountant to be sure this does not apply to you.
3. **Municipal assistance.** General Municipal Law § 165-a allows towns, villages, and cities to aid local cemeteries with funds and/or services on a voluntary basis. Such services could include mowing, tree or snow removal, bookkeeping services, or cash payments. Such services may in fact save a town money, as the alternative to such services is often abandonment of the cemetery to the town in which it is located, at which point all obligations for maintaining the cemetery fall on the town.
4. **Reduced expenses.** In some cases, reducing maintenance or eliminating employee positions may be necessary to preserve financial viability. Reduced maintenance or services is preferable to continuing an unsustainable level of service. **In no circumstances may trust fund principal (permanent maintenance or perpetual care) be expended for any purpose.**

Why did the Division of Cemeteries cite us for a violation for not posting a sign?

The regulations of the Division of Cemeteries (19 NYCRR § 201.7) require that every cemetery display, in its office, a sign, in no less than 20 point type, stating its name, that it is regulated by the New York State Cemetery Board and the telephone number of the regional Division of Cemeteries office. If the cemetery does not have an office, the sign must be in at least 40 point type, be displayed at the main entrance and include the name of the person in charge and his/her telephone number. To state the obvious, the sign must include a telephone number that will allow lot owners, potential lot owners, and visitors to reach someone expeditiously.

How do we publicize our rules and regulations?

Not-for-Profit Corporation Law § 1513(b) states that a cemetery must provide the purchaser with a copy of the cemetery's Rules and Regulations before any part of the purchase price is paid. In addition, Not-for-Profit Corporation Law § 1510(a) requires cemeteries to post their prices, service charges, and rules and regulations at the corporation's office. If the cemetery does not have an on-site office, it should post the rules and regulations on a sign or gate post or other conspicuous location.

Statutory Change Concerning Net Appreciation of Permanent Maintenance Funds

The Governor recently signed legislation that permits cemeteries to use a percentage of net appreciation in their permanent maintenance funds and perpetual care funds. The Cemetery Board will implement this amendment to Not-For-Profit Corporation Law §§ 1507(a)(2) and 1507(c)(2) by adopting regulations and an application process. Until that occurs, the Cemetery Board must hereby object to and therefore disapprove any proposed appropriation of any percentage of the net appreciation in a cemetery's permanent maintenance fund and/or perpetual care fund pursuant to those provisions.