

# DIVISION OF CEMETERIES

STATE OF NEW YORK  
DEPARTMENT OF STATE  
123 WILLIAM STREET  
NEW YORK, NY 10038  
TELEPHONE: (212) 417-5713  
FAX: (212) 417-2322  
WWW.DOS.NY.GOV

ANDREW M. CUOMO  
GOVERNOR

CEMETERY BOARD

ROSSANA ROSADO  
ACTING SECRETARY OF STATE  
CHAIR

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

DR. HOWARD A. ZUCKER  
COMMISSIONER OF HEALTH

TO: ALL REGULATED NEW YORK STATE CEMETERIES

FROM: LEWIS A. POLISHOOK, Director

DATE: APRIL 12, 2016

The Division of Cemeteries has amended its regulations governing annual financial reports that must be filed to the Division. These regulations are designed to reduce the expense and burden of filing such reports with the Division.

If you have already filed your annual report for 2015, you do not have to re-file your annual report. If you have not yet filed your annual report for 2015, you must follow the new regulations.

This memorandum is intended to highlight some of these changes. However, you must consult the regulations themselves to ensure complete compliance.

## **DEADLINE**

1. The annual report is due 90 days after the end of a cemetery's fiscal year. For cemeteries whose fiscal year coincides with the calendar year, the deadline will usually be March 31. If you need additional time, you must request an extension in writing and explain why you need the extension. **Late submissions automatically result in the imposition of a penalty of \$100 per day unless the Cemetery Board or the Division waives or reduces the penalty.**

## **NEW DOLLAR AMOUNT THRESHOLDS FOR CPA REVIEW AND AUDIT**

2. **All cemeteries** must file the Division's annual report on the form provided by the Division. That form is being revised but for now you may continue to use the current form, which can be found at <http://www.dos.ny.gov/forms/cecemeteries/0415-f.pdf>. Small cemeteries, defined as those that have less than \$1 million in total financial assets, need only file the Division's annual report form. The regulations define "total financial assets" as including "all general funds, permanent maintenance (PM) funds, perpetual care funds, special trust funds and other funds under the control of the cemetery, including both restricted and unrestricted funds, regardless of the form in which they are held."
3. Medium cemeteries, which are defined as those that have: (a) at least \$1 million but less than \$10 million in total financial assets; **and** (b) less than \$1 million in total receipts in the calendar or fiscal year in question, must file a CPA financial review in addition to the Division's annual report form. The review must include certain information specified in the regulations.
4. The following types of cemeteries must file a CPA financial audit in addition to the Division's annual report form:
  - a. Large cemeteries, which are defined as those that have: (a) at least \$10 million in financial assets; **or** (b) at least \$1 million in total receipts in the calendar year; and
  - b. Non-traditional cemeteries, which are defined as cemeteries that do not and have not offered full body ground burials. The regulations specify certain information that must be contained in the audit filed by a non-traditional cemetery.

The audit must include certain information specified in the regulations.

### **FILING OF IRS FORM 990**

5. All cemeteries must submit a copy of their most recently-filed IRS Form 990 (or 990-ez) (the Return of Organization Exempt from Income Tax). If your cemetery has not filed a Form 990 with the IRS in the last two years, please indicate that when you submit your annual report and contact the Division accountant assigned to your cemetery.

### **COMMERCIAL CRIME INSURANCE**

6. The Cemetery Board now requires commercial crime insurance. This requirement replaces the former requirement of obtaining a fidelity bond. Some information about this requirement appears below:
  - a. This insurance must cover the acts or omissions of cemetery directors, officers, and employees as well as volunteers who handle money, accounts or securities for the cemetery.
  - b. The annual financial report filed with the Division shall set forth the amount of commercial crime coverage, the classes of persons included, the name of the carrier/issuer, the policy number, and the expiration date of coverage.
  - c. Generally speaking, the amount of coverage required is \$15,000 or 10% of total financial assets, whichever is greater, up to a maximum of \$500,000.
  - d. A cemetery may ask in writing that the Division reduce, waive or modify the requirements under this section. Good cause for such a request may include proof that the cemetery is unable to obtain commercial crime insurance or similar coverage despite diligent effort, or that the cost of such coverage at the level required by this section is onerous and unreasonable.
  - e. In certain circumstances, the Division may require that a cemetery carry commercial crime insurance with a higher dollar limit.

### **CONTRIBUTIONS TO THE PERMANENT MAINTENANCE FUND**

7. All deposits to the PM fund required by statute must be made at least quarterly.
8. For cemeteries that receive payments in installments or over time for lot sales must do one of two things:
  - a. Deposit the full amount (10%, absent a State Cemetery Board or court order requiring more) of the required contribution into the PM fund at the time the contract is signed and the initial payment is received; OR
  - b. Deposit at least 10% of any initial payment and at least 10% of any additional payment received in to the PM fund as such payments are received, until the full amount has been deposited into the PM fund.

Cemeteries are prohibited from waiting until the last payment is received before making any contributions to the PM fund.

Should a cemetery decide to give a refund to an installment purchaser, it may withdraw any contributions to the PM fund which relate to the funds actually refunded.