

DIVISION OF CEMETERIES

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TO: ALL REGULATED NEW YORK STATE CEMETERIES

FROM: DIVISION OF CEMETERIES

DATE: JANUARY 12, 2018

The Division of Cemeteries wishes you all the best for this new year. This bulletin highlights an important developments and answers questions cemeteries have asked the Division in 2017.

Online Submission of Annual Report

This year, for the first time, you may submit your annual report online. The online form works best when using Google Chrome. The Division will host on-line training for the new online submission system on Thursday, February 1, 2018, from 6:00-8:00 p.m.; registration will soon be available on the Division's website, www.dos.ny.gov/cmty/forms.htm. This training will also be recorded and available on our website shortly after the session. The Division will also host in-person sessions to demonstrate the new system and answer any other questions you may have; we will post the dates and times on our home page, www.dos.ny.gov/cmty/.

If you prefer not to use the online system, there are two options available to you:

1. a fill-in version of the annual report that complete certain calculations for you; you must still print this version out when done;
2. a version of the form to complete by hand (copy enclosed and available on our website).

Both versions are available at www.dos.ny.gov/cmty/forms.htm. If you do not use the online submission system, you may email your annual report to cemeteryreports@dos.ny.gov or mail it to New York State Division of Cemeteries, One Commerce Plaza, Albany, New York 12231.

Changes to Annual Report Form

Last year, we revised our annual report form. We received many comments concerning last year's form, and have revised it again in response to those comments in an effort to make it simpler and more understandable. Some of the most important changes:

1. The form has been reduced from 12 to five pages for most cemeteries.
2. We have simplified the schedules for General Fund, Permanent Maintenance Fund, and Special Trust assets.
3. We have eliminated last year's "EZ" form because it was not easier to complete.
4. We have eliminated the requirement that cemeteries provide the Division with copies of their IRS Form 990, 990-EZ, or 990-N. Cemeteries that file Forms 990 or 990-EZ must send the Division only the page showing compensation of officers, directors or trustees; cemeteries that file Form 990-N (e-postcard) need not provide anything to the Division. None of these changes affects a cemetery's obligation to file with the IRS.
5. There are additional schedules available online for cemeteries that:
 - a. offer or have offered perpetual care**;
 - b. have an outstanding Permanent Maintenance Fund loan;
 - c. sell lots on an installment basis;
 - d. sell merchandise (such as bronze markers) or interment services on a pre-need basis.

These schedules can be found at <http://www.dos.ny.gov/cmty/forms.htm>. You must complete these schedules if they are applicable.

****Note:** Many cemeteries outside the New York City area use the terms “permanent maintenance” and ‘perpetual care” interchangeably. They are not the same. Perpetual care is optional, at the request of the lot owner, and is a way to purchase additional care of a lot beyond the ordinary care that every lot receives. Perpetual care requires Division-approved charges; the Permanent Maintenance Fund deposits are required by statute. Cemeteries that have never offered perpetual care should not complete the Perpetual Care schedule. If you are unsure how to characterize a fund, please check with the Division accountant assigned to your cemetery.

Disinterments

Disinterments (removals) are governed by Section 1510(e) of the Not-for-Profit Corporation Law. A person seeking to disinter remains must obtain the consent of:

1. all current lot owners;
2. the decedent’s spouse, parents, or adult children, if they are alive; and
3. the cemetery from which the decedent will be disinterred.

If the person seeking the disinterment cannot obtain the consent of all these individuals, she may apply to the Supreme Court in the county where the cemetery is located for a disinterment order.

There is no rule that says that a Court order is required whenever there is no living spouse, parent, or child who can consent. On the other hand, courts generally require that the parties seeking to disinter and move remains demonstrate that they are acting in accord with the wishes of the decedent. Even when all other required consents have been obtained, if the cemetery is unsure that the individuals are acting in accord with the decedent’s wishes, the cemetery may object to disinterment. If a cemetery objects, a court order is required. The cemetery should object and require a Court order when it believes the decedent’s wishes are not being honored, when there is a dispute among interested persons as to whether to perform the disinterment, or when there is a dispute as to the new destination for the decedent’s remains or cremains.

Lot Repurchases and Transfers

We have learned that some cemeteries are unaware of 2015 statutory changes in the procedure for resale of lots by lot owners. The New York State Cemetery Board no longer approves the resale of lots. Consequently, cemeteries should not file lot transfer applications with the Division. The Division is happy to answer any questions you may have about lot repurchases and transfers.

The following are things cemeteries should know about lot transfers:

1. Only vacant lots may be transferred;
2. A lot is not vacant if there is even one interment, even where there are multiple graves;
3. A cemetery is not required to repurchase a lot;
4. Generally, if the lot owner offers to sell the lot back to the cemetery at the original purchase price plus four percent simple interest (not compounded) annually and the cemetery refuses the offer or counter-offers less than that amount, the lot owner may **then** attempt to sell the grave to a third party;
5. A cemetery is permitted, but not required, to offer more than the original purchase price plus four percent simple interest when it is in the cemetery’s interest to do so.

Out of State Burial-Transit Permits

Division has been advised by the Department of Health that cemeteries may accept out-of-state burial-transit permits provided that they contain the (1) name of deceased; (2) age of deceased; (3) place of death; (4) date for burial, entombment, or cremation; (5) name and address of the funeral home and director from whom the remains were received; (6) place of final disposition in New York; and (7) method of final disposition (burial, entombment, or cremation).

If there are any questions about a particular permit, please call the Division.

Legislative Update

In November 2017, the Governor signed a bill allowing cemeteries to reacquire graves purchased by a “non-sectarial burial society” under certain circumstances. The Division anticipates posting guidance on its website soon; however, this change affects very few regulated cemeteries.