

PART 205. CEMETERY ABANDONMENTS

(Statutory authority: Not-for-Profit Corporation Law, §§ 1501, 1504 [c])

§ 205.1. Purpose

It is the policy of the state, as stated in N-PCL section 1501, “to prevent cemeteries from falling into disrepair and dilapidation and becoming a burden upon the community”. Many cemeteries struggle with generating enough income to maintain themselves and keeping enough board members, officers, and paid or volunteer staff to meet all their obligations. It is sometimes unavoidable that a cemetery reaches such a state of decline that it must be deemed abandoned. If a cemetery becomes abandoned and it is located in a town, the town is required to maintain the cemetery.¹ Counties² and cities³ have the option of maintaining an abandoned cemetery, but are not required to do so. A cemetery corporation may also seek to take over the care and management of an abandoned cemetery.⁴

The Cemetery Board has adopted these rules and regulations to set forth procedures to involve all stakeholders early-on in an effort to avoid abandonment, and to determine that a cemetery has become abandoned.

§ 205.2 Definitions

- (a) The term abandoned cemetery means a cemetery that has demonstrated significant and persistent difficulty with the following and does not have sufficient resources to address them:
- (1) providing for the care and maintenance of its physical property;
 - (2) meeting operational needs; or
 - (3) complying with statutory and regulatory requirements.
- (b) The term assume maintenance and management means an application by a cemetery pursuant to N-PCL section 1506-c to assume the management and maintenance of an abandoned cemetery.

§ 205.3 Steps to Avoid Abandonment

¹ Town Law section 291.1 directs the town board of any town to provide for the removal of grass and weeds from all non-private cemeteries that are “abandoned or not controlled by any existing board or body and for the care of which there exists no special fund or endowment...”

² County Law section 222.5-a permits a county’s governing board, by two-thirds vote, to provide for the care, upkeep and maintenance “of any cemetery located within the county if such cemetery is abandoned or not controlled by an existing board or body and for the care of which there exists no special fund or endowment...”

³ The New York State Comptroller (1987 Opns. St. Comp. No. 87-11) has determined that a city may by local law take over the care of an abandoned cemetery the care of which has not been taken over by a county.

⁴ N-PCL section 1506-c permits a cemetery corporation to apply to the Cemetery Board for approval to the assume management and maintenance of an abandoned cemetery.

The division may at any time determine that a cemetery is at risk of abandonment and, together with the cemetery, take the following steps, as appropriate, to avoid abandonment:

- (a) Contact local officials to seek their support and assistance and to provide them the following information:
 - (1) An explanation of cemetery abandonment;
 - (2) The written report and determination that the cemetery is at risk of abandonment;
 - (3) Options available to the cemetery and the municipality to avoid abandonment to the municipality; and
 - (4) Proposed steps to be taken by the division and the cemetery and a request for municipal participation.
- (b) Contact other cemeteries that may have the ability and willingness to merge or consolidate with, or assume the management and maintenance of the cemetery in danger of abandonment and provide them appropriate information.
- (c) Commence an audit and inspection of the cemetery as soon as practicable.
- (d) Conduct a meeting between the division and cemetery representatives to plan steps to be taken to avoid abandonment. Notice of the meeting shall be posted on the cemetery's and the division's website and local officials and other cemeteries should be invited and encouraged to attend. The attendees should consider the following:
 - (1) Adding board members and increasing board participation;
 - (2) Increasing lot owner participation and support;
 - (3) Obtaining community support and volunteers;
 - (4) Increasing revenue and decreasing expenses;
 - (5) Raising revenue other than from operations;
 - (6) Entering into joint contracts for goods or services with other cemeteries;
 - (7) Entering into a management agreement;
 - (8) Entering into service agreements;
 - (9) Municipal assistance – financial or in-kind;
 - (10) Merger or consolidation with another cemetery;
 - (11) Takeover of management and maintenance by another cemetery; and
 - (12) That abandonment funds are available when a cemetery is abandoned to a municipality or to another cemetery.

(e) The risk of abandonment shall be made part of the agenda of the next regular lot owner meeting or, if the regular lot owner meeting is more than three months after the date of the meeting required in paragraph (d) above, it shall be the agenda for a special lot owner meeting scheduled to occur within such three-month period. Prior to such meeting the cemetery shall:

- (1) Prepare a meeting agenda;
- (2) Update its list of lot owners and their addresses;
- (3) Provide notice to lot owners as required by law and additional notice to maximize attendance;
- (4) Give notice of the meeting to local officials and to other cemeteries that may have the ability to, and an interest in, merging or consolidating with, or assuming the management and maintenance of the cemetery; and
- (5) Demonstrate to the division that it has reviewed and understands procedures for the conduct of the meeting and voting.

In addition to any notices required by the Not-for-Profit Corporation Law, the division shall post notice of such meetings on its website at least 30 days before the meeting.

(f) The division will attend the lot owner meeting and be available to assist the cemetery with the following:

- (1) Explain the risk of abandonment;
- (2) Share the report on the risk of abandonment and the division's audit and inspection reports;
- (3) Explain options and what can be done to avoid abandonment to the municipality;
- (4) Provide local officials and representatives from other cemeteries an opportunity to be heard;
- (5) Answer lot owner questions and concerns;
- (6) Conduct board nominations and elections; and
- (7) Conduct officer nominations and elections.

(g) At least quarterly, the division shall report to the board any actions taken pursuant hereto.

205.4 Procedure for Cemetery Takeover of Abandoned Cemetery

A cemetery corporation proposing to assume the management and maintenance of a cemetery pursuant to N-PCL § 1506-c shall submit an application to the Cemetery Board with the following information included:

- (a) The proposed assumption of management and maintenance, for which approval of the lot owners of the applicant has been obtained at a special or regular meeting. If not, a description of the authorization or approval that has been obtained. A copy of the minutes of the meeting of the lot owners or board of directors, or of the resolution, shall be included.
- (b) Support for the following representations: that the applicant has the resources, ability and commitment of directors and officers to ensure that the combined cemeteries will be properly operated and maintained, that they shall not fall into disrepair and dilapidation and become a burden upon the community, that they shall be operated for the mutual benefit of lot owners, and that they shall continue to serve and benefit the local communities in which they are located.
- (c) A financial plan for the combined operations of the cemeteries. The plan shall include:
 - (1) A provision that the permanent maintenance funds of the cemeteries shall be combined into one permanent maintenance fund for maintaining and preserving the combined cemetery;
 - (2) A provision that the perpetual care funds of the cemeteries shall be combined into one perpetual care fund, with each separate donated fund applied to each separate lot for which funds were received;
 - (3) A provision that funds and property received and held in trust shall continue to be held in trust in accordance with the trust instrument;
 - (4) A provision that all rights of lot owners of the cemetery to be abandoned and all rights of burial and memorialization will be honored and will not be affected by the assumed maintenance and management;
 - (5) An explanation of adjustments to prices and charges for the combined cemeteries, if any;
 - (6) An explanation of how the rules and regulations shall be applied to the combined cemeteries; and
 - (7) An identification of any significant liabilities and obligations of the cemetery to be abandoned and what treatment they will receive after the assumption of management and maintenance.

- (d) Whether the applicant will assume the name under which the cemetery to be abandoned is organized or any other names by which it is known, and if so, that the applicant will file a certificate of the assumed name or names with the appropriate entity.
- (e) Any planned immediate repairs, maintenance or improvements to the property or facilities of the cemetery to be abandoned, the cost of same and source of funds and terms of payment.
- (f) The proposed deed by which the applicant shall take title to the real property of the cemetery to be abandoned or an explanation of why title to the real property shall not be transferred.
- (g) Whether the cemetery to be abandoned is affiliated with any religious denomination or tradition or if the majority of the persons whose bodies are interred in such cemetery are affiliated with any religious denomination or tradition, and whether the applicant follows or will follow the customs and practices of the same religious denomination or tradition.
- (h) Compliance with the following public posting requirements. No earlier than 10 days prior to filing such application, post notice of the proposed assumption of management and maintenance at any offices of the cemeteries and, in a manner so as not to violate local zoning ordinances or to create a traffic hazard, all entrances to the cemeteries. The notice at each cemetery shall provide the name and address of the other cemetery. It shall also provide the telephone number and address and, where available, email address where comments may be received and the last date on which such comments will be accepted, which shall be no earlier than 60 days following the date the notices are posted.

205.5 Procedure for Determination of Abandonment –Town Maintenance

- (a) Determination by the Division. At any time after initiating steps to avoid abandonment, the division, on its own or at the request of the cemetery, may issue a written determination that the cemetery has become abandoned. The written determination shall be sent to directors and officers of the cemetery corporation and to any town in which any part of the cemetery is located.
- (b) The determination shall include the following information:
 - (1) The name and address of the cemetery corporation and contact information for directors and officers of the cemetery corporation;
 - (2) A description of the standard for determining that a cemetery is deemed abandoned;
 - (3) A description of the factors that led to the determination of abandonment;
 - (4) A description of any efforts taken to avoid abandonment and the results of those efforts;

- (5) A list of financial accounts showing the name of the entity with whom the account is maintained; the type of account; the account number; and the last known balance;
 - (6) A statement that the funds in the account are the property of the town, unless the determination of abandonment is overturned, and that the town should seek guidance from the Office of the New York State Comptroller regarding the use of such funds;
 - (7) A description of the other assets and liabilities of the cemetery; and
 - (8) A statement that the town is not obligated to take title to the real property of the abandoned cemetery.
- (c) Within sixty (60) days of the date of the determination letter, the determination shall be presented to the Cemetery Board for final determination. The cemetery and the town or towns shall be given written notice of the date, time and place of the meeting of the Cemetery Board at which it will be presented for final determination and representatives from same shall be heard. The board shall either confirm or reverse the determination or may seek additional information.