

Public Cemetery Regulation in New York State



New York has a number of different types of cemeteries: religious cemeteries operated by a religious corporation; private or family cemeteries operated for the benefit of a specific family or small group of persons; municipal cemeteries operated by local governments; and finally public cemeteries that serve the general public. For the most part, the laws and regulations relating to cemeteries in New York apply only to this last group, public cemeteries.

New York's public cemeteries are non-profit corporations that have a board of directors who are elected by the cemetery's lot owners. A lot owner is a person who owns the right to have a body or cremated remains buried, entombed or placed in a burial lot, a mausoleum, a columbarium or other designated space (cemeteries sell these rights but do not sell the land where the final resting place is located). Usually the lot owner is the person or persons who paid the cemetery for the right of burial, but that right can be transferred in a number of ways. These public cemeteries operate for the benefit of their lot owners and are regulated by the state is for the purpose of:

1. protecting the well-being of its citizens;
2. promoting the public welfare;
3. preventing cemeteries from falling into disrepair and dilapidation; and
4. preventing cemeteries from becoming a burden upon the community.

Since 1949, the oversight of public cemeteries and enforcement of the laws and regulations that apply to them has been delegated to the New York State Cemetery Board. The Cemetery Board is made up of the Secretary of State, the Attorney General and the Commissioner of Health, or people designated by them. There are about 1,700 public cemeteries, including crematories, under the jurisdiction of the Cemetery Board. The Division of Cemeteries within the Department of State helps the Cemetery Board carry out its responsibilities. For example, the Division reviews cemetery finances, investigates complaints, does site visits, and helps the Cemetery Board review applications from cemeteries. The Division of Cemeteries' website is www.dos.ny.gov/cemeteries.

Because public cemeteries are non-profit corporations, they do not have shareholders and do not pay dividends. All the money they raise must be used for the operation and maintenance of the cemetery. Cemeteries raise money from the sale of burial lots, the sale of space in a mausoleum or columbarium, interment (burial) fees, the sale of cemetery-related products and services, and from investment income. Many cemeteries also actively seek donations and conduct fund-raising events to help cover their costs.

One of the unique and most important duties of a public cemetery is to put part of its income in a Permanent Maintenance Fund. This Fund has been required since 1949 and is treated by law as a trust fund that is intended to provide perpetual income for future cemetery maintenance. The money belongs to the cemetery but there are restrictions on how it can be used. When a cemetery sells a burial lot or space in a mausoleum or columbarium, at least 10% of the proceeds must be deposited into the Fund. Also, when a cemetery places a body in a grave or mausoleum, or puts cremated remains in a columbarium, \$35 from those proceeds must be deposited into the Fund. Each year the cemetery can use income from the Fund to help pay for cemetery maintenance, but the principal of the Fund (except in some circumstances) must stay in the Fund and is intended to grow each year by prudent investment and by deposits of additional funds. The goal of the Fund is to provide enough annual income to maintain the cemetery once it no longer is selling burial space or conducting burials.

A great deal of cemetery activity is regulated and requires approval either from the Cemetery Board or the Supreme Court. The Cemetery Board meets at least once a month (usually on the second Tuesday of the month) to review

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applications from cemeteries. The following are some of the activities that require approval:

- incorporation of new cemeteries;
- changes to a cemetery's certificate of incorporation;
- purchase or sale of land;
- establishment of or changes in service charges;
- construction of public mausoleums, columbariums, and lawn crypts;
- construction and operation of crematories; and
- any significant project or alteration of cemetery property.

Cemetery Board meetings are open to the public. You can find information about past and upcoming meetings at https://dos.ny.gov/events?f%5B0%5D=filter_term%3A1506 or by calling the Division of Cemeteries at 518-474-6226. You can find a list of members of the Cemetery Board at <https://dos.ny.gov/cemetery-operators#cemetery-board>.

In addition to submitting applications for certain activities, cemeteries are required to file the following documents with the Division:

- an annual financial report;
- a copy of the cemetery's rules and regulations;
- a current list of charges for services and prices for burial;
- a current map showing the burial lots, roads and paths in the cemetery; and
- proof that cemetery employees who operate the cemetery's crematory (if it has one) have successfully completed a course of instruction on the operation of crematories.

Cemeteries are also required to keep their business records at their office, if the cemetery has an office (some do not). Many records are required to be publicly posted or available to the public, including the following:

- a list of current charges for all services;
- a list of current prices for burial lots (including space in a mausoleum or columbarium) and goods sold by the cemetery;
- the cemetery's rules and regulations;
- a current map showing the burial lots, roads and paths in the cemetery;
- this consumer disclosure form and other forms that discuss other topics; and
- a sign with the name of the cemetery, a statement that the cemetery is regulated by the Cemetery Board, and the phone number and address of the Division.

If the cemetery does not have an office on its property, a sign with the phone number and address of the Division and cemetery superintendent must be posted at the cemetery entrance and must also have the name, title and office telephone number of the cemetery superintendent. If you are a lot owner you are also entitled to receive other documents and records from the cemetery. Those rights are discussed in the Department of State's publication called Rights of Lot Owners.

If a cemetery fails to make any document or information available, or imposes a charge or price that is not listed or that is more than what is listed, or if you have any other dispute with the cemetery that you and the cemetery cannot resolve together, you should contact the Division of Cemeteries at the address or phone number listed below and we will look into the matter. The Division of Cemeteries' complaint form can be found at <https://dos.ny.gov/cemetery-complaint-form>.

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