

# DIVISION OF CEMETERIES

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TO: ALL REGULATED NEW YORK STATE CEMETERIES

FROM: NEW YORK DEPARTMENT OF STATE, DIVISION OF CEMETERIES

DATE: JANUARY 2, 2024

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The Division of Cemeteries wishes you all the best for this new year. This bulletin highlights important developments and addresses common issues.

## **NEW DIVISION STAFF**

We have added many new staff members in the past year. Associate Accountant Natesha Salmon and Administrative Assistant Nathan McCarthy joined the Division's Albany office in August, Senior Accountant Emmanuel Blugh started in the New York City Office in September, and Senior Accountants Lisa Dooley and Brendan Dunn started in the Albany office a few weeks ago.

## **CONTACTING THE DIVISION**

Please direct all general inquiries to our Albany office, 518-474-6226. You may also contact the Albany office if you are unsure which Division accountant and investigator are assigned to your cemetery and have specific questions for them.

If you have any general inquiries, updated lot price lists, rate applications, or other applications that require Division or Cemetery Board approval (see below), we prefer that you send these to the Division at [cemeteries@dos.ny.gov](mailto:cemeteries@dos.ny.gov). Please do not follow up with a mailed copy, but feel free to call to confirm receipt. If you wish to submit paper copies, please mail them to our Albany office; the address is at the top of this page.

## **INFORMATIONAL SESSIONS FOR CEMETERIES**

This past year, we offered nearly a dozen in-person Cemetery 101 sessions for cemetery officers, directors, and staff. We have scheduled our first Spring session for March 7, at St. Agnes's Cemetery in Menands, New York starting at 3:00 p.m.; we are working on scheduling other sessions. These will appear on our website, <https://dos.ny.gov/cemeteries-101>.

We plan to offer more sessions starting in the Spring. If you would like us to present in your region and can find a venue for at least 40 people, please let us know so we can make arrangements. Suitable spaces include churches, town halls, libraries, schools, and firehouses.

This year for the first time, we will host live tutorials on how to fill out our Annual Financial Report, both in-person in Albany and via WebEx (you don't need the WebEx program to view the session). These will occur on January 11, 2024, starting at 10:00 a.m., February 8, 2024, starting at 1:00 p.m., and March 14, 2024, starting at 4:30 p.m.



Department  
of State

We are also looking to offer presentations aimed at people other than cemetery officers, directors, and staff, explaining how volunteer-run cemeteries work and how people can get involved. If you think that there would be interest in this type of presentation in your area and can host (or can identify a suitable venue), please let us know.

You can find information about upcoming Cemetery 101 sessions and other training opportunities, as well as the slides from our Cemetery 101 sessions, on our website.

## **REGULATORY APPROVAL REQUIRED**

Cemeteries must seek approval from the New York State Cemetery Board or Division for many activities: new service charges (e.g., opening and foundation charges), , changes in service charges, building a mausoleum, installing a columbarium, major alterations to the cemetery, land purchases and sales, among other things. We have forms for many of these applications. If you are unsure whether an activity requires regulatory approval, please call the Division or one of your assigned Division representatives.

## **NATURAL ORGANIC REDUCTION**

As of June 28, 2023, cemeteries may establish natural organic reduction (human body composting) facilities in New York. Currently, there are no NOR facilities in New York. However, families may seek to deposit remains at your cemetery that were naturally organically reduced out of state. Cemeteries should consider developing rules governing the receipt of naturally organically reduced remains, which, when delivered, resemble commercial mulch and can have a volume of 0.5-1.0 cubic yard. Some questions to think about include: 1. Will you accept such remains at all? 2. Will you have a special section for them? 3. What will you charge for burying, spreading etc. such remains? The Division must review and approve all proposed changes to cemeteries' rules and regulations.

## **CEMETERY FINANCES AND RELATED REGULATORY REQUIREMENTS**

### **Annual Report**

Thank you to all cemeteries who submitted last year's Annual Financial Report online! The number of online submissions continues to increase. We strongly encourage all cemeteries to use our online form, found at <https://dos.ny.gov/cemetery-operators#file-annual-financial-report>. As was the case in the last three years, this mailing **does not include a copy of the annual report form**. We encourage online filing to improve our ability to collect data, minimize manual transcribing errors, and save paper. If you do not want to complete the form online, our website, <https://dos.ny.gov/cemetery-operators#file-annual-financial-report>, has a PDF version of the form. If you use a paper form, please scan and email it to [cemeteries@dos.ny.gov](mailto:cemeteries@dos.ny.gov) or mail it to New York State Department of State, Division of Cemeteries, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231. Please mail all vandalism and assessment fees to this address as well.

Please make sure that when you complete the annual report (whether online or paper) you provide us with an email address for contacting the cemetery **about all compliance and regulatory matters**. It is the cemetery's responsibility to forward emails from the Division to the appropriate cemetery representative(s). We do not have the resources to select one email from many based on subject matter or issue. We encourage you to notify us of any trustee changes and contact information as they occur. We appreciate your cooperation in this matter.

For cemeteries required to submit a CPA review or audit report, you should still submit your annual report on time, even if you need an extension to file the CPA report.

Regardless, if you need additional time to file, please contact us to seek an extension. If you do so, please explain why you need additional time and propose a realistic new deadline for submission.

Please call the accountant assigned to your cemetery or our Albany office with any questions.

### **Internal Controls (Preventing Misuse of Funds)**

Even small rural cemeteries can become the victims of misappropriations of funds or outright theft by rogue officers, directors, and staff. Some easy steps you can take to prevent such misappropriations include:

- Requiring two signatures on all checks and not pre-signing checks.
- Depositing all funds received into the cemetery's general fund checking account and paying all expenditures out of that account.
- Not accepting cash and not paying any expenditures in cash.
- Utilizing at least two officials in every transaction (for example, if the Secretary or Sexton coordinates a lot sale, pass the payment to the Treasurer for proper financial recording and depositing funds.
- Promptly depositing funds received.
- Having two officers (preferably the President and Treasurer) receive and review all bank and brokerage statements regularly and keeping records of that review, such as by initialing the statements (periodically ask the bank for copies of canceled checks and review those as well).
- Not giving officers, directors, or staff access to credit or debit cards on the cemetery's account.
- Maintaining and following a conflict-of-interest policy (the office of the New York Attorney General has more information about this subject at [https://ag.ny.gov/sites/default/files/regulatory-documents/Charities\\_Conflict\\_of\\_Interest.pdf](https://ag.ny.gov/sites/default/files/regulatory-documents/Charities_Conflict_of_Interest.pdf))

### **Commercial Crime Insurance**

The Division requires all cemeteries to insure against misappropriation or theft by officers, directors, and employees via our requirement that cemeteries carry commercial crime insurance. Cemeteries must insure the greater of \$15,000 or 10% of total financial assets, up to a maximum of \$500,000. The Division may waive or modify this requirement for good cause. If you have not been able to secure the required insurance at a rate you can afford, please contact us. If we waive or modify this requirement, our letter will state how long that waiver or modification is good for; it is not a permanent exemption.

### **Fundraising**

Many smaller cemeteries do not make attempts at fundraising until their funds are already depleted. The time to raise money is now, not when you are very low on operating funds. Do not underestimate the power of an ask. If you do not ask, you are unlikely to receive. Cemeteries have successfully raised funds through direct mail solicitation, at annual lot owners' meetings, by having a table at a community event, or through raffles and barbecues, to name a few ideas. Cemeteries can also partner with other organizations to host events, whether for fundraising or raising community awareness of the cemetery.

### **IRS Filings**

As not-for-profit corporations, cemeteries must file annually with the federal Internal Revenue Service. Most small cemeteries are only required to file a Form 990-N (e-postcard). The IRS website contains guidance on this requirement. <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>

If you have not filed some type of Form 990 in several years, or were never registered with the IRS as tax-exempt, you will need to apply for recognition of tax exemption via IRS Form 1024. The form's instructions are here: <https://www.irs.gov/forms-pubs/about-form-1024>. If you need to (re-)establish your tax-exempt status, you may wish to consider contacting a certified public accountant to assist you. Your assigned Division accountant can also provide helpful tips.

## **Investing Cemetery Funds**

Cemeteries must invest for both growth and income to survive. If you have not already done so, you should contact a financial professional and consider investing in a diversified portfolio. If you already have an investment portfolio, you should monitor investment fees and rate of return, seek higher earning investment vehicles when appropriate, invite competing proposals from multiple financial professionals. Seek advice from an outside accountant or CPA if you or someone on your board lacks the expertise to assess the portfolio yourselves. Cemeteries may not turn over their permanent maintenance funds to community or private foundations, and investing with individuals unaffiliated with a larger firm or in illiquid assets are almost always bad ideas.