

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 3, 2025

The Division of Cemeteries extends its best wishes for a prosperous and peaceful New Year. This bulletin highlights important developments and addresses common issues.

NEW DIVISION STAFF

We have added several new staff members in the past year. Senior Accountant Jeff Hardwick and Investigator Corey Moore joined the Division's Syracuse office and Alicia Young, a 17-year veteran of the Division, returned to her role as a Senior Accountant in our Albany office, all in November.

CONTACTING THE DIVISION

If you have any general inquiries, updated lot price lists, or applications that require Division or Cemetery Board approval (see below), we prefer that you email them to the Division at 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. Please do not use overnight services or registered mail, as these do not save any time. You may also call the Albany office at (518) 474-6226 with any inquiries or to find out which investigator or accountant is assigned to your cemetery.

The Division sends most communications to the cemetery's main contact listed on its Annual Financial Report. Please share our communications with all of your officers and directors.

TECHNICAL ASSISTANCE AND TRAINING

Please visit [our website](#) to explore the resources available to help you operate your cemeteries and ensure compliance with our regulations. Items available include:

- PowerPoint presentations for basics of cemetery operations and accounting.
- A tutorial on completing the Annual Financial Report.
- Dates and locations for upcoming Cemetery 101 sessions.

The Division continues to create additional training tools. This year, we intend to add additional tutorials in subjects such as seeking State funds for repair or replacement of dangerous monuments and reviewing the Cremation Authorization Form; please check the link above for new training modules.

Finally, this year our accounting staff will provide in-person office hours at central locations in different counties. Please check the link above for dates and times. If you can offer a venue for these sessions or future Cemetery 101 presentations, please let us know!



Department
of State

CARING FOR YOUR CEMETERY DAY

The 2024 inaugural Caring for Your Cemetery Day was a great success! More than two dozen cemeteries participated in a volunteer clean-up day, which the Division helped publicize and coordinate. Some participants solicited and received in-kind donations of supplies and beverages from local businesses. This year's Caring for Your Cemetery Day will be Saturday, April 26, 2025. Please contact the Division by email if you wish to participate, would like a copy of a sample solicitation letter, or want to learn more. More details will appear on our website www.dos.ny.gov/cemeteries as we get closer to the event date.

TIPS FOR CEMETERY OPERATIONS

Here are some tips for officers, directors, and employees responsible for cemetery operations:

1. Regulations require that cemeteries post a sign stating they are regulated by the Division and provide the Divisions contact number. Please use our Albany number, (518) 474-6226, on these signs, and not your regional investigator's number.
2. Consider submitting updated rules and regulations to the Division for review and approval. You may want to review the following:
 - a. The types of memorials you allow.
 - b. The number of interments (full body and cremated remains) you will allow in each lot.
 - c. Whether you will accept naturally organically reduced (composted) human remains or pet cremated remains incidental to the burial of a deceased human, and, if so, under what conditions (these may also require updates to your service charges).
3. Things to consider if someone offers to sell back a grave:
 - a. Cemeteries do not have to buy back graves if it is not in the cemetery's best interests to do so.
 - b. All lot owners must agree to sell the grave.
 - c. Cemeteries cannot buy back cemetery lots that have a burial in them, even if there are vacant spaces. Please contact the Division for guidance if the situation involves a multi-grave plot that you believe can be divided into smaller plots.
 - d. The "statutory price" to buy back a grave is the original purchase price plus four percent simple interest per year since the owner purchased it. The cemetery can choose to offer more or less than the statutory price and should put its offer in writing.
 - e. If a cemetery is willing to buy back a grave at the statutory price (or more), the lot owner cannot try to sell it elsewhere. If the cemetery does not want to buy back a grave or will not buy it back at or above the statutory price, the lot owner can try to sell it on the open market.

TIPS AND REMINDERS FOR FINANCIAL OPERATIONS

1. Most cemeteries' fiscal years end on December 31, making their Annual Financial reports due on March 31. The website with a link to the electronic filing portal a tutorial for online completion is [here](#). We strongly encourage cemeteries to file online. If you do not want to complete the form online, the same link has a PDF version of the form. You can print, scan and email them to cemeteries@dos.ny.gov or mail it to the address on page one. Regardless of your fiscal year end, all vandalism and assessment fees are due by March 31; you must mail them to this address as well. If you need an extension of time to file, with good cause, please contact us by phone or email to provide a reason and propose a new submission date. Vandalism and assessment payments are due even if you receive an extension for filing your Annual Financial Report.
2. Cemeteries may be exempt from paying New York State sales tax on purchases. Contact the New York State Department of Taxation and Finance or the Division for more information.

3. Cemeteries must issue IRS Form 1099's to independent contractors by January 31.
4. The New York State Department of Environmental Conservation may have funds available for tree maintenance. There are also various historical grants that may be relevant to cemeteries. Because cemetery corporations are 501(c)(13) organizations, they may be excluded from some funding opportunities. However, if you have an associated "friends of" or "conservancy" group that is a 501(c)(3) corporation, that group may be eligible to apply on the cemetery's behalf. Other cemeteries have partnered with local historical societies or other charitable organizations to seek such funds.
5. New York law generally prohibits cemeteries from using the principal in their permanent maintenance and perpetual care funds and allows them to use the income on those funds to, respectively, maintain and preserve the cemetery and provide care for lots for which perpetual care trusts exist. Brand new legislation allows cemeteries to treat a portion of the principal of their permanent maintenance and perpetual care funds as income, on notice to the New York State Cemetery Board. The Division will add further guidance on this statute to its website soon.

APPLICABLE LAWS

The main sources of law and regulations relevant to cemetery operations are:

- [The Public Cemetery Corporations Law \(Article 15 of the Not-for-Profit Corporation Law\)](#)
- Division of Cemeteries [regulations](#).
- New York laws governing Not-for-Profit Corporations:
 - [Members \(lot owners\) and annual meetings](#)
 - [Officers and directors](#)
- The Public Health Law, including:
 - [The requirement](#) that cemeteries collect burial-transit permits and issue body delivery receipts.
 - [The law](#) explaining who controls disposition of human remains.

REGULATORY APPROVAL REQUIRED

Cemeteries must seek approval from the New York State Cemetery Board or Division for many activities: new or increasing service charges, adding a public mausoleum or columbarium, major alterations, and land purchases and sales, among other things. If you are unsure if an activity requires regulatory approval, or how to obtain such approval, contact the Division or one of your assigned Division representatives.

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 steps you can take to prevent this from occurring 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 receive and review all bank and brokerage statements and canceled checks regularly and keep records of that review, such as by initialing the statements.
- 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.

Commercial Crime Insurance

The Division requires all cemeteries to carry commercial crime insurance to protect cemetery assets, should theft or misappropriation occur. Cemeteries must insure the greater of \$15,000 or 10% of total financial assets, up to a maximum of \$500,000. If you have been unable to secure the required insurance at a rate you can afford, please contact us and ask about our ability to waive or modify this requirement. If we grant a waiver or modification, we will send you a letter stating how long it is good for; it is not a permanent exemption.

Fundraising

The time to raise money is now, not after your operating fund is low or depleted. 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.

If you have not filed any version of Form 990 in several years, or were never registered with the IRS as tax-exempt, you will need to apply or reapply for recognition of tax exemption via IRS Form 1024. Instructions can be found [here](#). You may wish to contact 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, and invite competing proposals from multiple financial professionals. Seek advice from an outside accountant or CPA if 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.

Unclaimed Funds

Several cemeteries have located unclaimed funds. Please periodically check the website of the [Office of the State Comptroller](#) to see if your cemetery has any such funds.