

Consumer Information About New York State Cemetery Regulations

Information from the NYS Division of Cemeteries, the NYS Department of Health, and NYS Nonprofit Corporation Law that applies to cemeteries incorporated under that law

Compiled by the *Funeral Consumers Alliance of the Finger Lakes*

Cemeteries that are incorporated under New York's Not-for-Profit Corporation Law are regulated by the state through its Cemetery Board and the Division of Cemeteries. These cemeteries comprise about one-third of all the cemeteries in the state. Cemeteries not incorporated under the NPC law—many private (family), religious and municipal cemeteries—are subject to public health laws and regulations but are not otherwise regulated by the state.

The Cemetery Board oversees the Division of Cemeteries and administers the New York State Cemetery Law, which may be viewed at:

www.dos.state.ny.us/cmtty/cemlaw.html.

This Law sets standards for the establishment, maintenance and preservation of burial grounds. The Board comprises the Secretary of State (chair), the Attorney General, and the Commissioner of Health. Contact information: Department of State, Division of Cemeteries, 41 State Street, Albany, NY 12231-0001. Tel 518-474-6226.

www.dos.state.ny.us/cmtty/cemetery.html

Cemetery price lists

Prices of lots, materials, and services, as well as regulations of the cemetery association, must be printed and posted in the cemetery office. The cemetery must make available for a small charge a printed copy of its price list to any person who requests it.

Ownership of cemetery property

Cemetery property is owned by the cemetery corporation. The real property is not sold. Rather, the rights to use specific cemetery lots are sold to members of the cemetery association. A lot “owner” receives the right of burial, the right to memorialize the burial site (that is, to place a marker or headstone), and the right to vote at lot-owner meetings.

Rights of lot owners

When you purchase a lot or crypt, you should receive a deed, contract, or receipt showing your ownership along with a copy of the cemetery's rules and regulations. Lot or crypt owners are members of the cemetery corporation and are entitled to a vote at lot-owner meetings.

Cemeteries are required to hold a lot-owner meeting at least once a year. The cemetery's board of directors is elected by lot owners. Contact the cemetery office for the date and time of the next lot-owner meeting.

A cemetery can refuse burial.

There are three circumstances in which a cemetery can refuse burial. They are: (1) non-payment of the total purchase price of the grave or lot, (2) non-payment of the burial (interment) charges, or (3) nonpayment of an authorized lot tax.

Service charges

Cemeteries may charge for services performed after the purchase of a grave or lot. Any increase in service charges by a regulated cemetery must be approved by the New York State Cemetery Board. The approved charges can be found in cemetery offices.

You can choose how your remains will be cared for.

If you have specific wishes regarding burial, entombment, cremation, disposition of your ashes, or a memorial, then you should prepare a document explaining these wishes. A copy of this document should go to the family member or other person who will have legal authority to make decisions about the disposition of your remains.

You can specify who will have this authority. A form for this purpose is available at the website

of the New York State Public Health Department.
www.health.state.ny.us/professionals/funeral_director/docs/control_disposition_of_remains.pdf

Concrete vault or grave liner

These are not required by law but may be required by the cemetery. One purpose of the vault or grave liner is to prevent the collapse of the grave. Written information about any such requirement must be provided to potential lot owners prior to purchase. In the event that this requirement conflicts with one's religious beliefs, it will be waived.

Depth of a grave

There is no state requirement specifying the depth of a grave, but local regulations may apply.

Time limit for filling a grave after burial

There is no legal requirement that a grave be filled within a specific time, but the Cemetery Board does require that it be completed within a "reasonable" time. If unforeseen circumstances prevent immediate closing of a grave, it must be covered with plywood to prevent a hazardous condition.

Perpetual care

Perpetual care means care for as long as funds exist to pay for it. Some cemeteries have an approved, voluntary perpetual-care charge. Other cemeteries may accept perpetual-care gifts or bequests. A perpetual-care endowment cannot be spent; only the income can be used, and only for the endowed lot.

If a perpetual-care endowment does not yield enough income to provide adequate care, a cemetery may request an addition to the endowment. This is strictly voluntary on the part of the endowment

holder. A cemetery cannot refuse burial for non-payment of perpetual-care costs.

Inheritance of unused graves or plots

Burial rights obtained through inheritance should be recorded with the cemetery. Section 1512(b) of the Not-for-Profit Corporation Law states that unless a cemetery lot is specifically assigned by will (including reference to the lot number, section number, and cemetery name), it is inherited by the descendants of the lot owner.

Re-sale of cemetery lots

A lot cannot be sold if it contains bodies or cremated remains. If there are no bodies or remains, the owner must first offer the lot back to the cemetery corporation at the original purchase price plus 4% simple interest per year. If the cemetery corporation is not willing to pay that price, it must provide a letter of refusal, which enables the lot owner to seek a buyer. A buyer's name and address must be submitted on an application to the New York State Division of Cemeteries for its approval. Notice of that approval must be presented to the cemetery corporation, which will then prepare a new deed.

Burial on private property

This practice is restricted by county and local laws and regulations, the New York State Sanitary Code, and New York State Not-for-Profit Corporation Law. The Sanitary Code (10 NYCRR, Parts 100–158) defines distances required between cemeteries and water sources (distances vary from district to district). Also, private cemeteries may not be established near residences without written consent of the owners. If you wish to arrange for a burial on private property, you must check with county and municipal government officials.