

1999 DRAFTING REQUEST

Bill

Received: **07/13/1999**

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Jolmnie Morris-Tatum (608) 266-3756**

By/Representing: **George Salter**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Occupational Reg. - cem reg**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Cemetery regulation

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	kunkemd 07/21/1999	chanaman 07/21/1999	mclark 07/21/1999	_____	lrb-docadmin 07/21/1999		S&L
	kunkemd 10/22/1999	chanaman 10/22/1999		_____			
/1			martykr 10/22/1999	_____	lrb-docadmin 10/22/1999	lrb_docadmin	S&L 10/26/1999

FE Sent For:

11-19-99

<END>

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FE Sent For:

CMT
10/22
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km 10/22

SJ 10/22
km 22

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/?	kunkemd	CMY /PI 7/21	MRC 7/21	MRC/JF 7/21			

FE Sent For:

<END>

George

Contact person in Florida

- Ed Huder
European Committee

- contact Ed Huder w/ Q's
(record keeping, reports)

Registration of all cemeteries

- state oversight of T. of assets & stocks

- licensure: 5-10 ac/c

✓ - 157.111 - families shd be allowed to bury kin
- shdnt be allowed to bury kin being buried in plot

✓ - 157.112 - family notified - & penalties increase penalty

✓ - 157.115 - care fund
copiable birth certif. sundry
- \$1 increase in copy cost of death certif.
- \$5 sundry on death certif.
language in Foti's office?

- compliance audits - independent w/ state guidelines

Fiscal & physical audit - management guidelines

- DORL - spot audits

- defn of cemetery

- shd include cremated remains
lawn crypt

- more inclusive

burial database

- where are cemeteries & burial

- Rk of purchaser - 157.08
"plot T" -

& defn of cemetery, nonburial

26

- explain details of ground maintenance should be specified

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Tommy G. Thompson
Governor

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Marlene A Cummings
Secretary

1400 E WASHINGTON AVENUE
P O BOX 8935
MADISON, WISCONSIN 537098935
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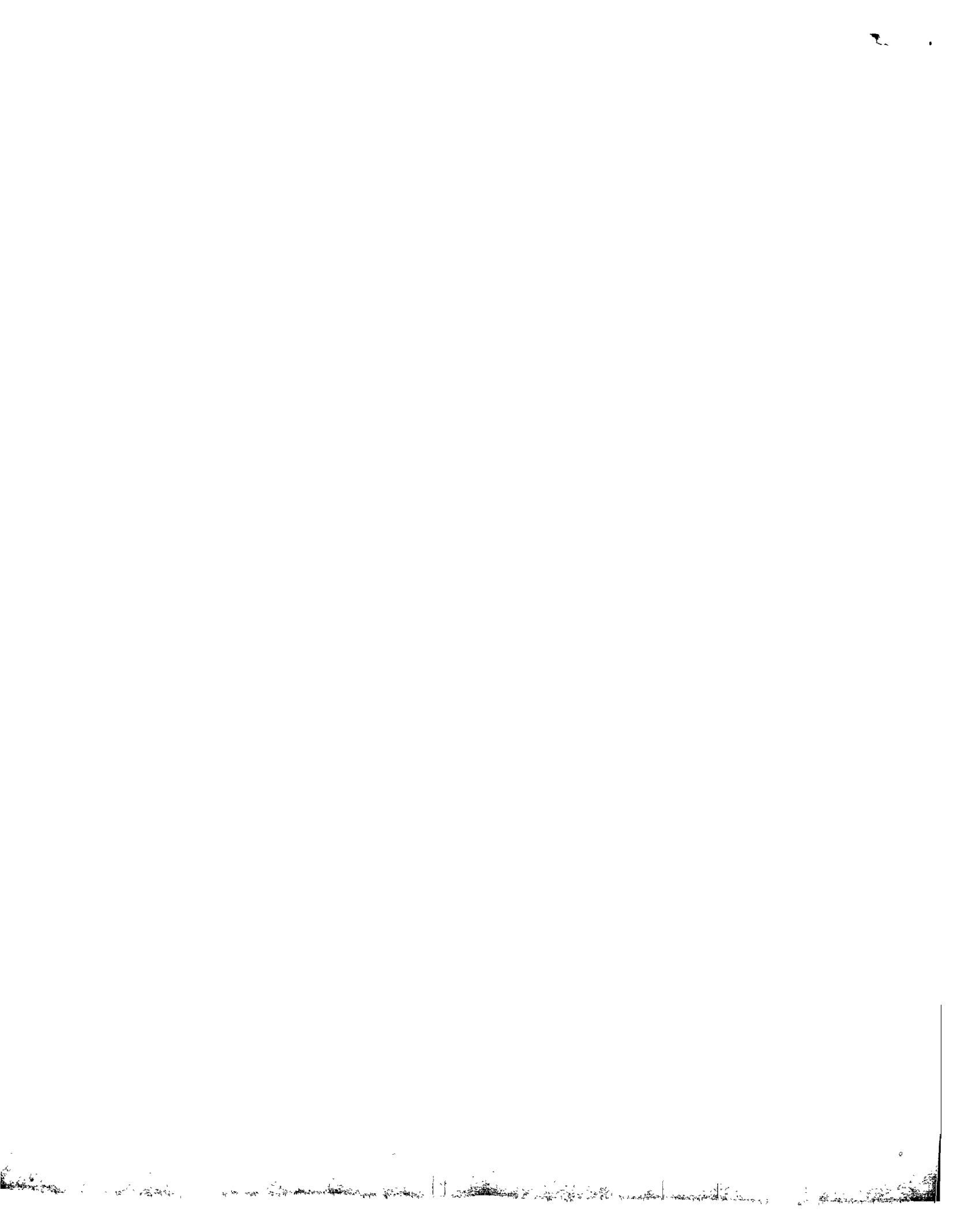
CEMETERY TASK FORCE
ROOMS 179A, 1400 EAST WASHINGTON AVENUE, MADISON WI
FRIDAY, FEBRUARY 19, 1999
9:30 A.M. TO 12:30 P.M.

AGENDA

FEB 15 1999

1. Call to Order (9:30 am)
2. Approval of Agenda
3. Approval of Minutes (1 /8/99) *pp. 1-2)*
4. Administrative Report
 - a. Marlene A. Cummings, Secretary of the Department of Regulation & Licensing
 - b. Cletus J. Hansen, Administrator, Division of Business Licensure & Regulation *(p.3)*
5. Discussion of Potential Statutory Changes
 - a. Define "Cemetery"
 - b. Approval of Sale or Conveyance of a Cemetery
 - c. Rights of Lot Purchasers
 - d. Maintenance and Care
 - e. Care Funds, Bonds
 - f. Abandoned Cemeteries *pp. 4-9*
 - g. Where Bodies May Be Buried & Cremains Scattered *(pp. 10)*
 - h. Who Needs to Be Regulated *(p. 11-17)*
 - i. Annual Reports *(pp. 18-19)*
 - j. Penalties for Violations *(p. 20)*
 - k. Registration of Cemeteries *(pp. 21-32)*
 - l. In-State Warehouses for Preneed Merchandise *(p. 33)*
 - m. Lawn Crypts *(p. 34)*
 - n. Platting of Cemeteries *(pp. 35-36)*
 - o. Contracts *(p. 37)*
 - p. Bonding *(pp. 38-41)*
(pp. 42-45)
6. Miscellaneous Information/Correspondence
7. Adjournment (12:30 pm).

NEXT MEETING: March 26, 1999





Tommy G. Thompson
Governor

Marlene A Cummings
Secretary

1400 E WASHINGTON AVENUE
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MADISON, WISCONSIN 53708-8935
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FAX# (606) 267-0644

**CEMETERY TASK FORCE
MEETING MINUTES
1400 EAST WASHINGTON AVENUE, MADISON
JANUARY 8, 1999**

PRESENT: Kelly Coleman, William Downs, III, Leslie Eisenberg, Dorinda Floyd, Peter Gunderson, Thomas Hanlon, Ed Huck, Sarah Kamke, Daniel Kilkenny, Dewey Mathewson, E Glen Porter, III, Jon Ruatti, Laurel Schaftary, David Stucki (until 11 a.m.), Richard Stadelman

ABSENT: Marie Drescher, Leroy Mixon, Willa Jean Moore, Michael Schuman and Bill Smith

R&L STAFF: Secretary Marlene Cummings, Cletus Hansen, Jacquelynn Rothstein, Steven Gloe and several other staff members in the Division of Enforcement.

CALL TO ORDER

The meeting was called to order at 9:40 a.m. by Clete Hansen.

APPROVAL OF AGENDA

The agenda were informally approved.

APPROVAL OF MINUTES (11/13/98)

MOTION: Jon Ruatti moved, seconded by Glenn Porter to approve the minutes with a correction on page 2, paragraph 3, whereby "renewed" is changed to "reviewed." Motion carried unanimously.

ADMINISTRATIVE REPORT

Clete Hansen referred to the revised membership roster and asked for any corrections or amendments.

**CONTINUATION OF IDENTIFICATION OF PROBLEMS WITH THE CURRENT
REGULATION**

Dewey Mathewson, who was unable to attend the last meeting, addressed the Task Force on the following issues:

- The need to move these discussions along and to obtain results in the Legislature.
- The need to define “cemetery” and to change “lot” to “grave spaces.”
- Issues relating to municipal cemeteries.
- The fact that funeral directors may not serve on cemetery boards.
- Issues relating to religious cemeteries accepting money for the cost of digging graves.

Pete Gunderson identified a problem relating to cemeteries imposing an extra charge, in addition , to the lot fee and care fund percentage.

DISCUSSION OF POTENTIAL STATUTORY CHANGES

Clete Hansen called attention to his memo of December 9, 1998, addressed to Secretary Marlene Cummings and entitled “Amendments to Cemetery Laws.” The memo lists 15 items which the Cemetery Advisory Committee and the Cemetery Task Force have identified as needing attention.

Clete Hansen also referred to **other** pages in the meeting packet which discuss many of the issues in his memo.

a. Definition of Cemetery

The Task Force discussed the process of dedicating land for cemetery use and tax exemptions which follow dedication. The Task Force also discussed columbarium niches in churches and other buildings, and whether a definition will include such columbariums.

MOTION: Jon Ruatti moved, seconded by Leslie Eisenberg, to define cemetery by using a definition, such as that prepared by the Cemetery Advisory Committee or the American Cemetery Regulators Association (ACRA), except that the definition should not use the phrase “an area dedicated,” as contained in the **ACRA** definition. Motion carried unanimously.

MOTION: Jon Ruatti moved, seconded by William Downey, to remove “lot” from the definitions section, to use “burial space.” Motion carried unanimously. (Dave **Stucki** was not present.)

b. Approval of Sale or Conveyance of a Cemetery

The committee discussed whether the Department should continue to interpret s. 157.08 (2), Stats., as requiring the Department’s approval for the sale or encumbrance of a cemetery, as well as the **sale** of the controlling interest in a cemetery’s corporate stock.

MOTION: Ed **Huck** moved, seconded by Sarah **Kamke**, to interpret s. 157.08 (2),

Stats., to require the Department to approve all kinds of sales, including the sale of the controlling stocks, and that the Department approve a transfer of assets without liabilities. Motion carried unanimously.

MOTION: Ed Huck moved, seconded by Jon Ruatti, that all cemeteries should be included in the requirement to receive departmental approval for the sale or encumbrance of a cemetery.

c. Rights of Lot Owners

The Task Force discussed cemetery practices relating to contracts of sale and deeds. The Task Force also discussed the rights of heirs to a cemetery lot.

MOTION: Dave Stucki moved, seconded by Dan Kilkenny, that the Department should craft some language for a written contract requirement and submit it to the Task Force at the next meeting. The draft should include required provisions relating to cost, resale rights and other related items. Motion carried with a 15 to 4 vote.

MOTION: Ed Huck moved, seconded by Dan Kilkenny, that the Department also prepare a draft relating to deeds and submit it to the Task Force at the next meeting. Motion carried unanimously.

d. Maintenance and Care of Cemeteries

Not addressed.

e. Care Funds, Bonds

Dorinda Floyd explained the recommendations of the City of Milwaukee, relating to abandoned cemeteries, trusteeships, and a state care fund. She suggested that the language could be permissive as to a municipality having to take over a cemetery.

The Task Force discussed the impact of this proposal on small cemeteries, whether a flood of small cemeteries would be “dumped,” disincentives for proper management of cemeteries, the need for proper criteria for distributions **from** the funds, whether municipalities or the state would be responsible for the fund, and whether the assessments should be on death certificates or other certificates.

The Task Force also discussed the classification of cemeteries and created the following chart:

- 1. Religious
- 2. For-Profit
- 3. Not-For-Profit
- 4. Municipal
- 5. Association

The Task Force also discussed criteria which could be used to determine which cemeteries should register with the department. They are: size of the cemetery, number of lot sales or the number of burials.

Clete Hansen informed the Task Force that he will call for motions relating to the City of Milwaukee proposal at the next meeting. The motions should relate to whether the Task Force supports the substance of the Milwaukee proposal and what source of funding should be pursued.

NEXT MEETING

The next meeting will be February 19, 1999, from **9:30** a.m. until **12:30** p.m. Another date, March 26, was reserved for a subsequent meeting.

ADJOURNMENT

The meeting adjourned at **12:45** p.m.



Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

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CEMETERY TASK FORCE
February 1999

Secretary Marlene Cummings, Department of Regulation and Licensing, 1400 E. Washington Avenue,
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Cletus J. Hansen, Administrator, Department of Regulation and Licensing, Division of Business
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Kelly Coleman, Nicolet Memorial Gardens, 2770 Bay Settlement Road, Green Bay WI 543 11
(W) 414-468-0382 FAX: 920-468-6586

William Downs, III, President, WI Funeral Directors Association, 1209 E. 5th Street, Superior WI
54880

Marie Drescher, Oak Grove Cemetery Association., 723 Packard Street, Tomah WI 54660

Leslie E. Eisenberg, Program Director, Burial Sites Preservation Program, State Historical Society of
WI, 816 State Street, Madison WI 53706-1488

Dorinda Floyd, Representing the League of WI Municipalities, 200 E. Wells Street # 606, Milwaukee
WI 53202

Peter Gunderson, Funeral Service Alliance of WI, 5203 Monona Drive, Madison WI 537 16
(W) 608-221-5420

Thomas Hanlon, Director of Diocesan Cemeteries, 2705 Regent Street, Madison WI 53705

Ed Huck, Executive Director, Alliance of Cities Inc., 14 W Mifflin Street, PO Box 336, Madison WI
53701-0336 (W) 608-257-5881 FAX: 608-257-5882

Sarah L. Kamke, 1148 Grand Avenue, Schofield WI 54476

Daniel Kilkenny, President, Walworth County Cemetery Association, PO Box 447, Delavan WI 53 115

Dewey Mathewson, 504 N. Water Street, New London WI 54961 (H) 414-982-3995

Leroy Mixon, Reverend, 3 8 10 N. 44th Street, Milwaukee WI 532 16 (H) 4 14-442-72 16

Willa Jean Moore, 4063 N. 16th Street, Milwaukee WI 53209

E. Glen Porter III, Highland Memorial Park, 14875 W. Greenfield Avenue, New Berlin WI 53 15 1- 15 15
(W) 414-786-6450 FAX: 414-786-7010

Jon Ruatti, Superintendent, Marinette Board of Cemetery Trustees, 2420 Mary Street, Marinette WI
54143

Laurel Schaftary, WI Association of Monument Builders of North America, 384 W. Main Street,
Waukesha WI 53 186 (W) 414-542-6886

Michael D. Schuman, Schuman & Pieper, 7161 N. Port Washington Road, Milwaukee WI 532 17

Bill Smith, State Director, National Federation of Independent Business, 1 N. Pinckney Street # 201,
Madison WI 53703 (W) 608-0255-6083

Richard J. Stadelman, Executive Director, WI Towns Association, W7686 County Road MMM,
Shawano WI 54166-6042

David Stucki, AARP, PO Box 95, Waunakee WI 53597

Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, Professional Geologists, Hydrologists and Soil Scientists; Auctioneer, Barbering and Cosmetology; Chiropractic, Controlled Substances,
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and Professional Counselors, and Veterinary.





State of Wisconsin
DEPARTMENT OF REGULATION AND LICENSING
CORRESPONDENCE / MEMORANDUM



4

DATE: December 9, 1998
TO: Secretary Marlene Cummings
FROM: Clete Hansen *CH*
SUBJECT: Amendments to Cemetery Laws

Based on the discussions and recommendations of the Cemetery Advisory Committee and the preliminary discussions of the new Cemetery Task Force, it appears that the following issues may need to be addressed with statutory amendments:

1. Define "cemetery."
2. **Clarify** the Department's authority to approve the sale or conveyance of a cemetery and decide whether that authority should extend to religious cemeteries, municipal cemeteries or small non-profit cemeteries (s. 157.08 (2), Stats.).
3. Clarify what type of document a purchaser of a cemetery lot should obtain from a cemetery authority and the rights of the purchaser (s. 157.08 (I), Stats.).
4. Give authority to the Department to promulgate rules relating to the maintenance and care of cemeteries (s. 157.11, Stats.).
5. Modify the requirements relating to cemeteries placing a minimum percentage or dollar amount into a care fund and the nature of such accounts, or create an alternative source of funds for maintaining cemeteries. Determine the need for the current statutes regarding a municipality taking over an abandoned cemetery (ss. 157.11 and 157.115, Stats.).
6. Clarify a person's right to bury a body in locations other than a cemetery.
7. Clarify the law regarding where **cremains** may be scattered.
8. Determine whether amendments are needed to current laws which mostly exempt municipal, religious and small non-profit cemeteries from regulation by the Department.
9. Open **for** public inspection the **annual** report which registered cemeteries are required to file with the Department (s. 157.62, Stats.)
10. Strengthen s. 157.64, Stats., which provides penalties for violating cemetery laws or rules.
11. **Simplify** a variety of provisions in Chapter 157, relating to the percentage of money which must be placed in a care fund or preneed trust fund under various circumstances.
12. Change s. 440.91, Stats., so that any person who operates a cemetery, except an exempt cemetery, must register every cemetery operated by that person.
13. Amend s. 440.92 (7), Stats., so that the requirements relating to in-state warehouses for preneed merchandise do not conflict with those in the Wisconsin Department of Agriculture, Trade and Consumer Protection.
14. Determine whether care fund requirements are needed for the sale of lawn crypts, possibly similar to those which apply to already-constructed mausoleums.
15. Determine whether any changes are needed in regard to platting a cemetery and filing a copy of the plat with the Department (s. 157.07, Stats.).





State of Wisconsin
DEPARTMENT OF REGULATION AND LICENSING
CORRESPONDENCE / MEMORANDUM



DATE: October 17, 1998 **FILE REF:** #1
T O : Secretary Marlene **Cummings**, Pat **McCormack**, Myra Shelton, Bill Dusso, Jacquelynn Rothstein, Steve Gloe and Henry Sanders
FROM: Clete Hansen *[Signature]*
SUBJECT: Recommendations of the Cemetery Advisory Committee For changes to the Cemetery Laws

Attached is a list of statutory changes recommended by the Cemetery Advisory Committee, after lengthy discussions during many meetings. Some of the issues are very technical, others are more substantive.

One issue was on the agenda a number of time, but not resolved. It pertains to trusting requirements relating to the sale of lawn crypts. I think that the solution we were moving toward is rather simple. If the lawn crypts have been installed and are in place, no trusting is required. If the sale is a preneed sale of a not-yet-installed lawn crypt; require trusting at the same amount that is currently required for the preneed sale of a not-yet-constructed mausoleum niche.

ISSUES FOR POSSIBLE CEMETERY LEGISLATIVE CHANGES

March 20, 1997

PRIORITY 1 ISSUES

1. Should s. 157.11(9) be amended or repealed? **It requires** a cemetery which receives a **gift** to increase its surety bonds to cover the amount of the gift. However, **the** statutes do not require any cemetery to have a surety bond, except when it sells mausoleum spaces.

Decision: By consensus, s. **157.11(9)** should be repealed.

Decision: By consensus, add a provision requiring cemeteries that receive gifts in excess of a specific dollar amount **be** required to keep track of the amount and purpose of **gift**, i.e., **gift** ledger.

2. When a cemetery invests its care **funds** in an alternative investment, sells the investment interest and receives capital gains, should the Department maintain its current position that the cemetery be able to use the capital gains, as it can use interest on care funds, to improve the cemetery?

Motion: Tim Tysver moved, seconded by Glen Porter, not to address this issue any further than what is already in the statutes. Motion carried unanimously.

3. Should s. 157.63 be amended to eliminate the requirement **that** religious cemeteries file annual certifications, or, at least, should the smaller religious cemeteries be exempted **from** the requirement?

Motion: Tim Tysver moved, seconded by Laurel Schaftary, that all cemeteries in the State be required to notify the Department of their existence and pay a nominal fee so that the Department may create a directory of all Wisconsin cemeteries. Motion carried unanimously.

Motion: Tim Tysver moved, seconded by Beverly Steinhoff, that the law be changed so that all cemeteries doing at least 20 burials a year be required to be licensed; and, that a provision be included for averaging burials over several years. Motion carried unanimously.

Note: Dewey Mathewson, in his October 21, 1996, memo, requested that his vote on the above motion at the July 18, 1996, Committee meeting be changed to "NO". At the October 23, 1996, meeting, the Committee decided that some kind of motion should be introduced at a future meeting. At the March 20, 1997, meeting the Committee members unanimously agreed that the July 18, 1996, motion should remain as stated; however, it should be understood that the word "license" in the motion means registration by the Department, as is now done, based on 10 lot sales. Moreover, another motion recommends a simple notification requirement which would be imposed on all cemeteries in the state. The Committee also agreed that, whether the criterion for registration is 20 burials a year or 10 lot sales a year, there is a need for a rule or statute which provides for some kind of averaging over several years, since some fairly small cemeteries may exceed the number one year and have fewer the following year.

6

- 4. The need to calculate the wholesale cost ratio on preneed sales makes the law unduly complex.

Decision: By consensus, include a reference to s. **445.125(1)**, Stats., in the cemetery statutes.

Motion: John Nelson moved, seconded by Tim Tysver, to require trusting of 40% of each payment of principal that is received from the sale of cemetery merchandise under a preneed sales contract (excluding undeveloped spaces) and eliminate **the** *‘wholesale cost ratio’; Motion carried. Dewey Mathewson voted no.

Motion: John Nelson moved, seconded by Tim Tysver, to require trusting of 40% of each payment of principal into the preneed trust fund for undeveloped space and to eliminate the *‘wholesale cost ratio’. This motion does not do away with the alternative of having a surety bond and not trusting the money. Motion carried. Dewey Mathewson voted no.

- 5. Calculating 25% of the construction cost of a mausoleum can be difficult, because it is sometimes difficult to determine the actual construction costs. (Note: This issue was discussed in conjunction with Question #14.)

Motion: Tim Tysver moved, seconded by John Nelson, that cemeteries be given the flexibility for mausoleum care trusting as long as the cemetery is even with or surpasses the statutory and administrative code requirements. Motion carried unanimously.

Motion: Tim Tysver moved, seconded by Glen Porter, that the requirement be 10% of the sale price for every mausoleum space with an appropriate grandfathering clause. Motion carried unanimously.

- 6. The cemetery law does not specify **what** should be done when a cemetery accidentally disturbs an unknown grave site when digging a grave. (NOTE: The Burial Preservation Law may cover this issue. Should it be referenced in the cemetery law?)

Decision: By consensus, this issue will remain a Priority 1 issue.

Motion: John Nelson moved, seconded by Beverly Steinhoff, that Cleve Hansen invite representatives from the State Historical Society to meet with the Committee to discuss the Burial Preservation Act. Motion carried unanimously.

Motion: Tim Tysver **moved**, seconded by John Nelson, to table discussion on this issue indefinitely. Motion carried unanimously.

7. The statutes do not provide a **definition** of “cemetery.” A definition would be helpful **when determining where columbariums** may be located, (Note: This issue was discussed in conjunction with Question #8.)

MOTION: Glen Porter moved, seconded by Tim Tysver, to include a definition of “cemetery” as meaning a place used or intended to be used for the interment of human remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; a columbarium or other structure or place used or intended to be used for the interment of cremated human remains; or any combination of one or more of such structures or places. Motion carried unanimously.

8. The law is not clear about whether a columbarium must be in a cemetery. Some have already been established in public buildings. (Note: This issue was discussed in conjunction with Question #7.)

Motion: Glen Porter moved, seconded by Tim Tysver, to include a definition of “cemetery” as meaning a place used or intended to be used for the interment of human remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; a columbarium or other structure or place used or intended to be used for the interment of cremated human remains; or any combination of one or more of such structures or places. Motion carried unanimously.

- 9: The law does not contain explicit language about where **cremains** may or may not be scattered. The Department receives many inquiries about this issue.

Motion: Tim Tysver moved, seconded by Glen Porter, to table discussion on this issue indefinitely. Motion carried unanimously.

10. The law **does** not contain explicit language about whether one may bury human remains on one’s own property. The Department receives many inquiries about this issue.

Motion: Tim Tysver moved, seconded by Glen Porter, not to address this issue. Motion carried unanimously.

11. The law does not address trusting requirements relating to lawn crypts.

12. Is it necessary to register cemetery salespersons? Would registering cemeteries be **sufficient** to protect consumers **from** improper sales of cemetery lots?

13. Whether the language in s. **440.92(7)**, Stats., **pertaining** to warehouses for preneed merchandise, should be changed, so that in-state warehouse keepers would not have to be licensed under Chapter 99, Stats., by the Department of Ag, Trade and Consumer Protection (DATCP). A DATCP representative told Clete Hansen that Chapter 99 does not require licensure of these kinds of warehouses.

14. Whether it is necessary to put a percentage of each payment into the care fund and trust fund.

Request: The Committee requested that Jacquelyun Rothstein prepare a draft motion on this issue which reflects the discussion, keeping in mind that the ultimate goal on an installment payment is that the cemetery not set aside a portion of every payment, particularly for care.

15. Who are the members of a cemetery association? See s. 157.062. Lot owners or their heirs have the right to vote at an annual meeting. Who owns a cemetery operated by a cemetery association? Are these provisions archaic? Are they being followed? Are changes needed? Pursuant to s. 157.064, may a cemetery association convey a cemetery to a corporation? Why doesn't this section say "corporation"? (Previous Priority 3, #1)

16. Should s. 157.19 be revised to make it clearer that care funds placed with a financial institution can be placed there under a trust agreement or can be placed in a trust account such as that maintained by a real estate broker, attorney, etc.?

PRIORITY 2 ISSUES

1. Should a cemetery authority be permitted to purchase land which is not contiguous to an existing cemetery and building a mausoleum on it without waiting for 10 years?

2. Section 157.1 l(10) requires religious cemeteries to deposit 15% or at least \$25 in a care fund; however, other sections which describe where and how the money must be deposited do not apply. At the very least, should not small religious cemeteries be exempted from all the care fund requirements, just as other small non-profit cemeteries are?

3. Where we have exemptions for small cemeteries which are not required to register with the Department, should we clearly state that the same exemptions pertain to municipal cemeteries and religious cemeteries which have less than 10 cemetery lot sales per year? (NOTE: The Department has taken the position that all municipal cemeteries are exempt.)

4. Should s. 157.62 be amended to simplify reporting requirements and to make annual reports open records.

PRIORITY 3 ISSUES

1. **MOVED TO PRIORITY 1 ISSUE #15.**

Decision: By consensus, this issue will be moved to a Priority 1 issue and discussed at a future meeting.

2. Deleted.

3. Should we remove the requirement in s. 157.128 that a cemetery must consist of at least 20 contiguous acres? This provision **already** exempts non-profit cemeteries **which** are not required to register with the Department.
4. **MOVED TO PRIORITY 1 ISSUE #16.**
Motion: Glen Porter moved, seconded by John Nelson, that this issue be a Priority 1 issue., Motion carried unanimously.
5. The law says nothing about establishing and operating a pet cemetery?
6. The language in Chapter 440, Stats., relating to **preneed** sales contracts is very complex and not easily understood.

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PROPOSED STATEMENT OF POLICY
REGARDING CREMATION
AND CREMATED REMAINS

INTRODUCTION.

The guidelines presented in this statement of policy have been prepared in the best interest of encouraging uniformity, among the various states in the United States and the various provinces in Canada, in laws and regulations related to merchandise and services in the death care industry. Regulators are encouraged to utilize these policies as guidance whenever possible in drafting laws or administrative regulations regarding cremation, funerals and cemeteries.

DEFINITIONS

Authorized Person means a PERSON legally authorized to control the FINAL DISPOSITION of a deceased human being.

Burial means the placement of HUMAN REMAINS in a GRAVE SPACE.

Casket means a rigid container, ornamental and lined with fabric, which is designed for the encasement of HUMAN REMAINS and which is usually constructed of wood, metal or like material.

Cemetery means an area dedicated to and used or intended to be used for the final disposition of HUMAN REMAINS or CREMATED REMAINS and their MEMORIALIZATION.

Columbarium means a structure or room or space in a building or structure used or intended to be used for the INURNMENT of CREMATED REMAINS.

Cremated remains means all HUMAN REMAINS recovered after the completion of the CREMATION process, including PULVERIZATION.

Cremated Remains Disposer means a PERSON in the business of scattering CREMATED REMAINS.

Cremation means the process of reducing HUMAN REMAINS to bone fragments through intense heat and evaporation, which may include any other mechanical or thermal process whereby the bone fragments are pulverized or otherwise reduced in size and quantity. Cremation is a process and is not a method of FINAL DISPOSITION.

Cremation container means the container in which the HUMAN REMAINS are placed in the cremation chamber for CREMATION.

Crematory means a structure containing a furnace or retort used or intended to be used for the CREMATION of HUMAN REMAINS.

Crematory authority means a legal entity or the authorized representative of the legal entity that is licensed to operate as a CREMATORY and perform CREMATIONS.

Encasement means the placement of HUMAN REMAINS in a rigid container, including but not limited to, a CASKET or URN.

Entombment means the act of placing HUMAN REMAINS in a MAUSOLEUM CRYPT.

Final disposition means the lawful disposal of HUMAN REMAINS or CREMATED REMAINS, including, but not limited to, INTERMENT, burial at sea, scattering of CREMATED REMAINS, delivery of CREMATED REMAINS to an AUTHORIZED PERSON or, unless the family desires the remains returned from the medical institution, delivery of HUMAN REMAINS to a medical institution.

Grave space means a space of ground in a CEMETERY that is used or intended for use for in ground BURIAL.

Human remains means the body of a deceased person, or part of a body or limb that has been removed from a living person, including the body, part of body or limb in any stage of decomposition.

Interment means the FINAL DISPOSITION of HUMAN REMAINS by BURIAL, ENTOMBMENT or INURNMENT.

Inurnment means the act of placing CREMATED REMAINS in a receptacle, including, but not limited to, an URN and depositing it in a NICHE.

Mausoleum means a chamber or structure used or intended to be used for ENTOMBMENT

Memorialization means any permanent system designed to mark or record the names and other data pertaining to a decedent.

Niche means a space usually within a COLUMBARIUM used or intended to be used for INURNMENT of CREMATED REMAINS.

Person means any individual, firm, corporation, partnership, joint venture, limited liability company, association, trustee, government or governmental subdivision, agency, or other entity, or combinations thereof.

Pulverization means a process following CREMATION that reduces identifiable bone fragments into granulated particles.

Urn means a receptacle for the ENCASMENT of CREMATED REMAINS.

III. LICENSING

Any individual, corporation or other form of organization engaged in the business of scattering CREMATED REMAINS in locations other than cemeteries shall, be licensed as a CREMATED REMAINS DISPOSER, with the agency that regulates prepaid funerals. A CREMATED REMAINS DISPOSER shall be licensed in each jurisdiction in which they engage in sales activities and each jurisdiction in which they engage in scattering activities. CREMATED REMAINS DISPOSERS shall be subject to regulatory audits, with or without cause.

Editor's Note: Prepaid funeral regulators were chosen for this purpose because they tend to cover crematories, funeral establishments and cemeteries. However, even they only have partial industry coverage, since they do not tend to regulate at-need sales. A jurisdiction may choose to utilize an agency regulating crematories, an agency regulating funerals or an agency regulating cemeteries. In addition, a jurisdiction may prefer to use a permit, registration or certificate of authority system. However, unlike a filing or notice system, the method should have the ability to deny or revoke for cause. To avoid administrative costs and burdens for CREMATED REMAINS DISPOSERS who are already licensed, jurisdictions may wish to create an exception from this requirement for existing licensees (crematories, funeral establishments and cemeteries).

IV. AUTHORIZATION

An AUTHORIZED PERSON shall be, in order of preference, a spouse, an adult child, a parent, or a close relative of the deceased, and in the absence of any of the above, a friend of the deceased. In the case of indigents or any other individuals whose FINAL DISPOSITION is the responsibility of the state or province, a public official charged with arranging the final disposition of the deceased, if legally authorized, may serve as the AUTHORIZED PERSON. In the case of individuals who have donated their bodies to science, or whose death occurred in a nursing home or other private institution, and in which the institution is charged with making arrangements for the final disposition of the deceased, a representative of the institution, if legally authorized, may serve as the AUTHORIZED PERSON. If the deceased has authorized their own CREMATION by a pre-need arrangement then any PERSON acting on those instructions will be considered legally authorized.

V. CREMATION CONTAINERS

- A. Except as provided in subsection B, no CREMATORY AUTHORITY shall make or enforce any rules requiring that HUMAN REMAINS be placed in a CASKET before CREMATION or that HUMAN REMAINS be cremated in a CASKET, nor shall the CREMATORY AUTHORITY refuse to accept HUMAN REMAINS for CREMATION for the reason that they are not in a CASKET.
- B. HUMAN REMAINS delivered to a CREMATORY AUTHORITY shall not be removed from the CREMATION CONTAINER and the CREMATION CONTAINER shall be cremated with the HUMAN REMAINS, unless the CREMATORY AUTHORITY has been provided with written instructions to the contrary by the AUTHORIZED PERSON.

VI. DISPOSITION OF CREMATED REMAINS

- A. The AUTHORIZED PERSON shall provide the PERSON with whom CREMATION arrangements are made with a signed statement specifying the ultimate FINAL DISPOSITION of the CREMATED REMAINS, if known. A copy of this statement shall be retained by the CREMATORY AUTHORITY

- B.** The AUTHORIZED PERSON is responsible for the FINAL DISPOSITION of the CREMATED REMAINS. If, after a period of one year from the date of the CREMATION, the AUTHORIZED PERSON has not specified the ultimate FINAL DISPOSITION or claimed the CREMATED REMAINS, the CREMATORY AUTHORITY or the PERSON in possession of the CREMATED REMAINS may dispose of the CREMATED REMAINS in any manner permitted by law, except scattering. The AUTHORIZED PERSON shall be responsible for **reimbursing** the CREMATORY AUTHORITY for all reasonable expenses incurred in disposing of the CREMATED REMAINS pursuant to **this** section. A record of such disposition shall be made and kept by the PERSON making such disposition. Upon disposing of CREMATED REMAINS in accordance with **this** section, the CREMATORY AUTHORITY or PERSON in possession of the CREMATED REMAINS shall be discharged from any legal obligation or liability concerning such CREMATED REMAINS. This provision shall apply to all CREMATED REMAINS currently in the possession of a CREMATORY AUTHORITY or other party.
- C.** In addition to disposing of CREMATED REMAINS in a dedicated CEMETERY, or by scattering over uninhabited public land, the sea or other-public waterways pursuant to subsection F, CREMATED REMAINS may be **disposed** of in any manner on the private property of a consenting owner, upon direction of **the** AUTHORIZED PERSON. If CREMATED REMAINS are to be disposed of on private property, other than in a dedicated CEMETERY, the AUTHORIZED PERSON shall provide the CREMATORY AUTHORITY with the written consent of the property owner.
- D.** Except with the express written permission of the AUTHORIZED PERSON no person shall:
1. Dispose of or scatter CREMATED REMAINS in **such** a manner or in such a location that the CREMATED REMAINS are commingled with those of another person. The provisions of this paragraph shall not **apply** to the **scattering** of CREMATED REMAINS at **sea or** by air from **individual** closed containers or to the scattering of CREMATED REMAINS in an area **located** in a dedicated CEMETERY and used exclusively for such purposes.
 2. Place cremated remains of more than one person in the same closed container. This paragraph shall not apply to placing the CREMATED REMAINS of members **of** the same family in a common closed container designed for the CREMATED REMAINS **of** more than one person.
- E.** CREMATED REMAINS shall be delivered by the CREMATORY AUTHORITY to the individual specified by **the** AUTHORIZED PERSON(S) on the cremation **authorization** form. The representative of the CREMATORY AUTHORITY and the individual receiving the CREMATED REMAINS shall **sign** a receipt indicating the name of the deceased, and the **date**, time and place **of** the receipt. The CREMATORY AUTHORITY shall **retain** a copy of the **receipt**. After this delivery, the CREMATED REMAINS may be transported in any manner in this state, **without** a **permit**, and disposed of **in** accordance with the provisions of this Act.
- F.** CREMATED REMAINS may be scattered over **uninhabited** public land, a **public** waterway or sea, subject to health and environmental standards, or on the private property of a consenting owner pursuant to subsection C, if **they** are reduced to a particle size of one-eighth (**1/8**) inch or less. A person may utilize a boat or **airplane** to perform such scattering. CREMATED REMAINS **may** be removed from their closed container before they are scattered. Any person who scatters such HUMAN REMAINS, pursuant to this section, shall file a verified statement with the agency that regulates prepaid funerals in the jurisdiction where the scattering occurs and in the jurisdiction where the scattering takes place, containing the name of the deceased person, the **time** and place of death, the place at which the CREMATED REMAINS are to be scattered, and any other information that the agency may require. If CREMATED REMAINS are to be scattered pursuant to this section, the CREMATORY AUTHORITY shall not release the CREMATED REMAINS to the AUTHORIZED PERSON(S) or his designated representative until **the** CREMATORY AUTHORITY has been provided with a receipt indicating that the proper filing has been made with the agency.



State of Wisconsin
DEPARTMENT OF REGULATION AND LICENSING
CORRESPONDENCE / MEMORANDUM

DATE: May 28, 1997 **FILE REF:**
TO: Clete Hansen & Cemetery Advisory Committee
FROM: Jeanne Pegelow
SUBJECT: Additional items to be considered for statutory or rule changes
Additional items from audits

- 1) When discussing when trusting deposits should be made, we would also like to consider:
Are all the multiple percentages required?
(15% lots, 25% mausoleum, 40% or 100% preneed)
Are the trusting percentages adequate, should they stay the same or be raised?
Question the undeveloped mausoleum sales trusting:
25% of price to care, 40% to preneed account, leaves max of 35% for commission
If the commission percentage is higher, they are paying out > 100%
 - 2) Statute 157.12(3)(b) The bonding requirement for treasurers of cemeteries with mausoleums. The code requires a bond with sureties approved by the department. Is this still a valid requirement? If it should remain as a statute, do you have any information that we can give to licensees to obtain this bond? How large of a bond should they obtain?
 - 3) Statute 157.12(3)(b) Indicates that the income from mausoleum care funds may be removed for cemetery maintenance, but is silent as to the principal. When the code discusses the care funds for cemetery lots, in Stats. **157.11(9g)(a)2**, it clearly prohibits the cemetery **from** withdrawing the principal. Shouldn't the mausoleum care principal also be clearly prohibited **from** general withdrawals and use? It seems that you can obtain permission **from** the department in Stats. 157.19(2)(b) and remove the mausoleum principal.
 - 4) Administrative Rule 54, for alternative investments, allows cemeteries to invest moneys held for perpetual care in alternative investments. Is there a reason that preneed moneys cannot be held in the same form of investments?
 - 5) Opening and closing services sold preneed are not addressed by the code, should they be?
- MOTION:** Tim Tysver moved, seconded by Reverend **LeRoy Mixon**, to endorse the requirement that there should be trusting of 40% of prepaid opening and closing fees into the preneed trust account. Motion carried. Glen Porter voted no.

5/30/97

Cemetery Board

Auditor Questions for Legislative Changes

Page 2

6) Statute 157.62(3)(b)3 Refers to the maintaining a copy of cemetery contracts.

The only reference that a contract must be in writing is with regard to preneed contracts, there appears to be no reference to any other written contract requirement. All cemeteries do keep copies of contracts if they are prepared, but many have not had contracts for lot sales. Is this code language complete enough to indicate that all transactions must be handled with a written contract?

MOTION: Tim Tysver moved; seconded by Laurel **Schaftary**, to recommend the creation of an administrative rule which clarifies what is implied in the Wisconsin Statutes, which is that registered cemetery authorities must use a written contract for all sales of lots, mausoleum niches, or columbarium spaces; in addition, to endorse a requirement to disclose in the contract whether or not an opening and closing fee is included in the price of the mausoleum niche or columbarium space. Motion carried unanimously.

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Dedication

(2) In case of a mausoleum or columbarium, make a good substantial map or plat on which are delineated the sections, halls, rooms, corridors, elevation and other divisions, with descriptive names or numbers. In all instances this shall be done in compliance with the state building code. (Amended by 1965 c.396 §2; 1979 c.57 §1; 1985 c.582 §3)

97.320 Filing map or plat and declaration of dedication of land to cemetery purposes. In case of a cemetery lot, the cemetery authority shall file the map or plat in the office of the recording officer of the county in which all or a portion of the property is situated, and it forthwith shall file for record in that officer's office a written declaration dedicating the property delineated on the plat or map exclusively to cemetery purposes.

97.330 When dedication is complete. Upon the filing of the map or plat and of the declaration for record, the dedication is complete for all purposes, and thereafter the property shall be held, occupied and used exclusively for cemetery purposes.

97.340 Effect of dedication. After property is dedicated to cemetery purposes pursuant to ORS 97.310 to 97.330 and 97.360 (1), neither the dedication nor the title of a plot owner shall be affected by the dissolution of the cemetery authority by nonuser on its part, by alienation of the property, by any encumbrances, by sale under execution or otherwise, except as provided in ORS 97.310 to 97.350, 97.360 (2), 97.440, 97.510 to 97.650, 97.710, 97.720 and 97.810 to 97.860.

97.350 Dedication to cemetery purposes not invalid. Dedication to cemetery purposes pursuant to ORS 97.010 to 97.046, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990 is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property, and is deemed to be in respect for the dead, and is a provision for the interment of human remains and is a duty to, and for the benefit of, the general public.

97.390 Resurvey and alteration in shape or size; vacation of streets, walks, driveways and parks and replatting into lots. (1) Any part or subdivision of the property so mapped and platted may, by order of the directors and consent of the lot owners, be resurveyed and altered in shape and size and an amended map or plat filed, so long as such change does not disturb any interred remains.

(2) Whenever a majority of the lots as platted or laid out in any cemetery established before March 3, 1927, or any part thereof, has been sold without the owners or persons in control of the cemetery having

made provision for the establishment of an adequate endowment fund for the perpetual maintenance, upkeep and beautification of the cemetery and of the lots therein, the avenues, streets, alleys, walks, driveways and parks therein may be vacated or altered and replatted into lots which may be sold for burial purposes in the manner provided in this subsection and in ORS 97.370 to 97.430. Application for the vacation or alteration of any avenues, streets, alleys, walks, driveways or parks, and for the replatting of the same, or any portion thereof, for cemetery lots in any such cemetery shall be made to the county court or board of county commissioners in the county where the cemetery is situated. The application may be by the owners or persons in control of the cemetery or by a group of 20 or more persons owning lots or having relatives buried therein. The application shall be verified and shall specify the lots owned by each petitioner in which are buried bodies of relatives in which the petitioner is interested and shall state the reason for the proposed change and what provisions have theretofore been made for the perpetual upkeep, maintenance and beautification of the cemetery, and there shall be presented therewith a plat of the cemetery, together with the proposed replat, which shall have clearly indicated thereon the proposed changes.

97.370 Fixing date of hearing; notice. When any application mentioned in ORS 97.360 (2) is filed, the court or board shall fix the time for the hearing of it and notice of the time thereof shall be given by publication in a paper of general circulation published in the town in which the cemetery is situated, or in the town to which it is nearest once a week for a period of six successive weeks prior to the date of the hearing and a copy of such notice shall be posted for a like period at three public and conspicuous places in the cemetery. Such notice shall be addressed to all persons owning lots or having an interest in the cemetery, but need not name them, and shall set forth in a general way the proposed changes, the reason stated in the application for making it, the time when the hearing of the application will be had, and shall state that a plat showing the proposed changes is on file with the county clerk of the county in which the cemetery is situated.

97.380 Hearing; order allowing replatting. (1) At the hearing mentioned in ORS 97.370 the court or board shall consider and hear any evidence introduced in favor of the proposed change and all objections thereto and after a full hearing thereon, may allow the proposed change and replat in whole or in part. If the proposed change is



Chapter 98-20 WAC CEMETERY PROPERTY

WAC
98-20-020 Definitions—Sale or transfer of ownership or control of any cemetery.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

98-20-010 Removal of dedication. [Statutory Authority: RCW 68.05.100. 81-07-013 (Order 104). § 98-20-010, filed 3/9/81.] Repealed by 89-08-043 (Order PM 830). filed 3/31/89. Statutory Authority: RCW 68.05.105.

WAC 98-20-020 Dkdefinitions-Sale or transfer of ownership or control of any cemetery. For purposes of RCW 68.05.115. sale or transfer of ownership or control of any cemetery authority, the following definitions shall apply:

(1) sale: The purchase of a controlling interest (fifty percent or more) of assets or stock of an existing cemetery corporation.

(2) ownership: The individual or individuals who own the stock of the cemetery corporation. Any one individual who owns fifty percent or more of the stock is considered an owner. When percentages of stock ownership change, anyone moving into a majority (fifty percent or more) position shall be considered the new owner, and thus subject to the provisions of RCW 68.05.115.

(3) control: The person or entity who has fifty percent or more of the ownership, or has acquired the right to sell the corporation or its assets. [Statutory Authority: RCW 68.05105. 89-08-043 (Order PM 830), § 98-20-020, filed 3/31/89. Statutory Authority: RCW 68.05 .100. 86-17-063 (Order 109), § 98-20-020, filed 8/19/86.]

Washington



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(5) Historical Sketch of **Proponents**, Form DBF-F-31, effective October 23, 1991, which is hereby incorporated by reference, of each proponent.

(6) **Current Financial Statement**, Form DBF-F-32, effective October 23, 1991, which is hereby incorporated by reference, of each proponent.

(7) Completion of an Application To Transact **Cemetery Business**, Form DBF-F-33, effective October 23, 1991, which is hereby incorporated by reference. Form DBF-F-33 shall be accompanied by a license fee based on the cemeteries' last fiscal year sales pursuant to Section 497.009, Florida Statutes.

(8) If the application is denied, written notice thereof will be given to the applicant and upon written request for a hearing thereon received within 21 days after receipt of notice of denial, a hearing may be held. Such hearing will be conducted in accordance with Chapter 120, Florida Statutes, and Chapter 3F-3 of these rules.

(9) All forms herein are hereby incorporated by reference and available by mail from The Department of Banking and Finance, Division of Finance, The Capitol, Tallahassee, Florida, 32399-0350.

Specific Authority 497.103 FS. Law Implemented 497.103, 497.301, 497.237, 497.213 FS. History—New 9-29-75, Amended 1-2-78, 1-27-81. Formerly 3D-30.16, Amended 10-23-91, Formerly 3D-30.016.

3F-5.006 Procedure for Licensing Transferred Cemeteries.

(1) Application. When a person, a group of persons or a corporation proposes to purchase or acquire control of an existing cemetery company either by purchasing the outstanding capital stock of any cemetery company, or the interest of the owner or owners, and thereby to change the control of said cemetery company, such person shall file an Application For Authority To Acquire Control Of An Existing Cemetery Company, Form DBF-F-35, effective October 23, 1991, which is hereby incorporated by reference. This application shall be accompanied by a non-refundable application fee of 55,000.

(2) Supporting Data. The following items shall accompany the above application:

- (a) Copy of sales agreement;
- (b) Copy of articles of incorporation;
- (c) **Historical Sketch of Proponents**, Form DBF-F-31, effective October 23, 1991, which is hereby incorporated by reference, of each proponent;

(d) **Current Financial Statement**, Form DBF-F-32, effective October 23, 1991, which is hereby incorporated by reference, of each proponent;

(e) Completion of an Application To Transact Cemetery Business, Form DBF-F-33, effective October 23, 1991, which is hereby incorporated by reference. Form DBF-F-33 shall be accompanied by a license fee based on the cemeteries' last fiscal year sales pursuant to Section 497.009, Florida Statutes;

(f) Existing license must be returned to the Board for cancellation. No license is transferable or assignable;

(g) A map showing land platted for burials.

(3) Conditions. Any deficits must be cleared by present owner to trust funds or a written statement waiving a final examination must be signed by the purchaser; thereby making him responsible for any deficits to the trust fund.

If a new trustee is appointed, a copy of the trust agreement must be approved by the Department before the trust fund is transferred.

(4) Investigation. The Department shall investigate the following conditions:

- (a) Character, reputation, financial standing, business qualifications and motives of the new proponents;
- (b) Legal entity;
- (c) Capitalization;
- (d) Whether money is due any of the trust funds, unless waived;
- (e) Current financial statement for each proponent;
- (f) Biographical sketch for each proponent.

(5) Issuance of license. If the department finds that the proposed owner or owners of the existing cemetery company has in good faith complied with all lawful requirements, it shall issue a new cemetery license.

(6) Denial of License. If the department intends to deny an application, the provisions of Chapter 120, F.S., shall prevail. If the application is denied, written notice thereof will be given to the applicant and upon written request for a hearing thereon received within 21 days after receipt of notice of denial, a hearing may be held. Such hearing will be conducted in accordance with Chapter 120, Florida Statutes, and Chapter 28-6 of the Model Rules of Procedure.

(7) All forms herein are hereby incorporated by reference and available by mail from The Department of Banking and Finance, Division of Finance, The Capitol, Tallahassee, Florida, 32399.0350.

Specific Authority 497.103 FS. Law Implemented 497.201(1), 497.209 FS. History—New 9-29-75, Amrntd 1-2-78, 1-27-81. Formerly 3D-30.17, Amended 10-23-91, Formerly 3D30.017.

3F-5.007 Conversion Procedures. When a municipal, church owned, fraternal or community and non-profit association cemetery converts to a cemetery company as defined in Section 497.005, F. S., then said cemetery shall file the following with the department:

(1) **An Application To Organize A New Cemetery Company**, Form DBF-F-34, effective October 23, 1991, which is hereby incorporated by reference. This application shall be accompanied by a non-refundable application fee of \$5,000.

(2) A map showing the location of cemetery.

(3) A map showing land that has been platted for burials.

(4) Legal description of the property including a statement as to the number of acres contained therein.

Approval of Sale of Cemetery

Florida



Change of Ownership

ADMINISTRATIVE RULES
MORTUARY AND CEMETERY BOARD

830-40-040 Prior to a change of ownership, the prospective new owner shall apply to the Board for the issuance of a new license on forms provided by the Board in the new owner's name. (Refer to section (3) of this rule). In no event shall a funeral establishment, crematory or preneed or endowment care cemetery be operated without the appropriate license or certificate of authority to operate. The appropriate fees and disclosures shall accompany the application.

(1) Board approval: It is the intent of this rule that all licensed facilities receive Board approval prior to the sale or change of ownership of a licensed facility and provide the Board with a full disclosure of ownership of that licensed facility including percentages of ownership

(2) All licensed facilities shall be licensed by the Board and all applications for licenses shall specify the real and true names of the person(s) who own or have an interest in the business proposed to be licensed by the Board, and shall be signed by such person(s) or in the case of corporations, by a duly authorized officer or agent.

(3) Licenses issued under ORS 692.146 and 692.275 are not transferable: therefore, prior to change of ownership, sales or purchase agreements pertaining to such shall be conditioned upon the prospective new purchaser's ability to apply for and obtain the necessary license or certificate of authority to operate. All licensed or certificated facilities are subject to the inspection and approval of the Board. Before opening a new facility or continuing the operation of an existing facility under new ownership, the prospective operator or new owner shall apply to the Board on a form provided by the Board with all ownership and, if applicable, corporate information. Prior to a transfer of ownership, the prospective new purchaser and seller shall notify the Secretary of State's office, Division of Audits, giving notice of sale to that office, and give the approximate or intended date of the change of ownership.

(4) The purchase of a controlling interest (a majority) of assets or stock of an existing licensed facility will constitute a sale or change of ownership. The person or persons who own the stock of a licensed facility shall be considered the ownership of the licensed facility. Any one person who owns a majority of the stock shall be considered an owner. When percentages of stock ownership change, any person moving into a majority position shall be required to submit an application for change of ownership.

(5) Corporate Licenses:

(a) The corporate licensee shall notify the Board in writing whenever a person intends to acquire or accumulate ownership or control of ten percent or more of any class of stock in a licensed facility, except for stock in a publicly-traded corporation;

(b) Except for publicly-traded corporations, the corporate licensee shall notify the Board immediately in writing when there has been a change in an officer or director;

(c) The Board may disapprove a change or acquisition described in this rule for any of the grounds for which a license may be denied.

(6) Partnership licensees:

(a) For the purposes of this rule, a partnership is an association of two or more persons who carry on a business jointly and who demonstrate an intent to be treated as partners by signing a

partnership agreement, or by entering into a lease or contract under a name different from their real and true names;

(b) The licensee must obtain prior written approval from the Board whenever a person intends to become a general partner in a partnership or intends to acquire or control ten percent or more of the total investment commitment in a licensed limited partnership;

(c) The licensee shall notify the Board in writing whenever an existing approved partner increases or decreases his/her investment interest;

(d) The Board may disapprove a change or acquisition described in this rule for any of the grounds for which a license may be denied.

(7) Co-licensees: For purposes of this rule, whenever two or more persons intend to carry on the business jointly other than as a corporation, partnership, or other approved legal entity, they shall be treated as co-licensees. Spouses usually fall within this category. Corporations, partnerships, individuals, or other legal entities may become co-licensees. If corporations, or partnerships become co-licensees, they must comply with the requirements pertaining to corporate and partnership licensees.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320
Hist.: FDB 1-1978 f. & ef. 6-30-78; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & cf. 10-21-86; Renumbered from 830-10-215; MCB 1-1993, 4-14-93, cert. ef. 4-16-93

Advertising

830-40-050 (1) Each licensed facility advertising through any media (including but not limited to telephone books, newspapers, direct mail, bill boards, etc.) shall include either the licensed facility's registered name, or its assumed business name and physical address as it appears on the Board's records. All printed materials and letterhead shall include the physical location of the facility.

(2) No person, firm or corporation shall advertise, promote, or market at need or preneed funeral arrangements without first having received a license from the Board.

(3) No cemetery or cremation facility, or person, firm or corporation shall advertise, promote, or market at need or preneed cemetery or cremation plans without first having received either a certificate of authority to operate that cemetery or crematorium.

(4) No person, firm or corporation shall advertise, promote, or market at need or preneed immediate disposition arrangements without having first registered with the Board.

(5) Any advertisement which intentionally conceals or misstates a material fact shall be considered misrepresentation.

Stat. Auth.: ORS 183.341, 183.545, 692.160 & 692.320
Hist.: FDB 1-1978, f. & ef. 6-30-78; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-10-220; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93

Listing of Employees -Name

830-40-060 (1) Any listing of names of employees of a licensed facility in connection with that facility shall use either the facility's registered

Ownership





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Resurrection
2705 Regent St.
Madison, WI 53705
608-238-5561

January 11, 1999

Mt. Olivet
1827 N. Washington St
Janesville, WI 53545
608-754-3472

Marlene A. Cummings
Secretary
Dept. of Regulation & Licensing
P. O. Box 8935
Madison, WI 53708-8935

Mt. Thabor-Beloit
1827 N. Washington St.
Janesville, WI 53545
608-754-3472

Dear Ms. Cummings:

Mt. Calvary-Beloit
1827 N. Washington St.
Janesville, WI 53545
608-754-3472

As suggested at the recent task force meeting, enclosed are copies of the deeds we send to families.

Thank you,

Mechelle R. Mitchell
Mechelle R. Mitchell
Secretary

Enclosures



VOID

DIOCESE OF MADISON
CATHOLIC CEMETERIES AND MAUSOLEUMS
RESURRECTION CEMETERY

Cemetery Easement

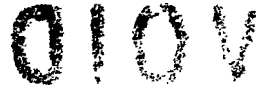
This is to Certify that «Deed Name» <<Has/Have>> paid the sum of «Amount Pd.» Dollars which payment includes income care and which entities «Sin./Comp.» and «Sin/Doub» heirs to the exclusive right and privilege of Interment in &rave Location>) of Resurrection Catholic Cemetery *under certificate* number «Owner Id» in the County of Dane and State of Wisconsin, according and subject to all of the Canons, Laws and Discipline of the Roman Catholic Church and of the Diocese of Madison and to all *rules* and regulations which are now in force, or which may *hereafter from* time to time be enacted by the said Diocese of Madison for the government and control of said Cemetery.

This certificate is not assignable and is void if held by any other than the person(s) herein named, or «Sin/Doub» heirs at law.

Madison, Wisconsin «Today's Date»

Diocese of Madison

BY _____
Diocesan Director of Cemeteries



PLEASE OBSERVE THE FOLLOWING RULES:

Cemetery Ground Rules

Winter Decorations are permitted from November 1st to April 15th. These decorations include Artificial Flowers in appropriate vases and Wreaths.

The cemetery is not responsible for vases not turned down during Winter Months.

The cemetery reserves the right to remove decorations of any kind when they become withered or otherwise unsightly.

No pets permitted on grounds.

No glass containers, tin cans or earthenware pots permitted on graves.

The cemetery is not responsible for theft or damage to anything placed on graves or lots.

No benches, chairs or like items shall be permitted to be brought onto the grounds unless authorized in writing by the cemetery and placed by its duly authorized personnel.

The cemetery has the authority to remove any objectionable item that may have been placed there contrary to the regulations of said cemetery.

Please observe the 15 mile per hour speed limit.

After graveside funeral services, the cemetery reserves the right to remove all funeral decorations after (5) days of the burial service.

Mausoleum Rules

No decorations are allowed in or around the mausoleums, attached or otherwise.

This one is for
mausoleum
Crypts

VOID

**DIOCESE OF MADISON
CATHOLIC CEMETERIES AND MAUSOLEUMS
RESURRECTION CEMETERY**

Cemetery Easement

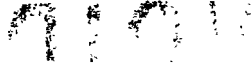
*This is to Certify that «Deed Name» «Has/Have» paid the sum of «Amount Pd.» Dollars which payment includes income care and which entitles «Sin./Comp.» and «Sin/Doub» heirs to the exclusive right and privilege of Entombment in &rave Location>> of «Mausoleum» Mausoleum in Resurrection Catholic Cemetery under **certificate** number <(Owner Id) in the County of Dane and State of Wisconsin, according and subject to all of the **Canons, Laws** and Discipline of the Roman Catholic Church and of the Diocese of Madison and to all rules and regulation which are now in force, or which may **hereafter from** time to time be enacted by the said Diocese of Madison for the government and control of said Cemetery.*

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Madison, Wisconsin ((Today's Date))

Diocese of Madison

BY _____
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RECEIVED
MICHIGAN LICENSING

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CERTIFICATE

Grantee _____ Date of Sale _____ Sales Agreement No. _____

Interment Rights Sale Amount \$ _____ Endowment Care Amount \$ _____ Transfer Fee \$ _____

Certificate of Interment Rights Delivered on _____ (Date) as indicated below:

AtGmetetyQ@ce By Sales Counselor By Mail

Received By: _____

PLEASE RETURN RECEIPT TO CEMETERY OFFICE IMMEDIATELY

NICOLET MEMORIAL GARDENS
2770 Bay Settlement Road • Green Bay, WI 54311 • (414) 468-0322

CERTIFICATE OF INTERMENT RIGHTS

No 402593

COUNTY OF: _____

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, the Grantor, a corporation, fully qualified and authorized to transact business in the above mentioned state, in consideration of payment of the full purchase price, receipt of which is hereby acknowledged, does hereby grant and convey unto

_____ as Grantee, for interment purposes only, subject to the conditions, reservations, restrictions and Rules and Regulations set forth herein, the following interment rights situated in the above-named cemetery described as _____

_____ according to a map of the said cemetery located in the office of the above-named cemetery.

That this conveyance, and all right, title and interest hereby conveyed in the interment rights above described is subject to all governing laws and ordinances, and to the following conditions, reservations and restrictions. By acceptance hereof, the Grantee covenants and agrees that:

- (a) No transfer, conveyance or assignment of any interest or rights acquired by Grantee shall be valid without the written consent of Grantor and being thereafter recorded on its books.
- (b) No inscription, alteration or ornamentation, monument or other memorial, tree, plants, objects or embellishments of any kind shall be placed upon, altered or removed from any property associated with the above-described interment rights by the Grantee without the written consent of Grantor. All grafting, landscape work and improvements of any kind, and all care on my property associated with the above-described interment rights, shall be done, all trees and plants of any kind shall be planted, trimmed or removed, and all interments, disinterments and removals shall be made only by Grantor. All interments shall be made subject to the use of the type of outer burial containers shall be designated by Grantor in its Rules and Regulations.
- (c) Grantor, at the expense of Grantee, and as a charge against the above-described interment rights, may repair or remove my monument or other memorial which is improper or offensive or which has become dangerous or dilapidated; and may remove any tree, flower or plant, or other object or embellishment that becomes unsightly or dangerous.
- (d) Grantor shall not be liable for loss or damage caused by an act of God, common enemy, thieves, vandals, strikers, malicious mischief makers, unavoidable accidents, riot or order or military or civil authority, or other acts or events beyond Grantor's control.
- (e) The enumeration herein of certain conditions, reservations and restrictions shall not be considered as the only limitations, but the Grantee's interest and rights shall be limited by and subject to the Rules and Regulations and By-Laws of Grantor now existing or which may be by it hereafter adopted either by amendment, alteration or the adoption of new Rules and Regulations and By-Laws. These Rules and Regulations and By-Laws are on file for inspection in Grantor's office and are specifically referred to and herein incorporated as if set forth in full.
- (f) The Grantor agrees to provide endowment care as required by applicable law and as defined in its Rules and Regulations, without further charge.
- (g) In the event this certificate is issued prior to the time the property associated with the within-described interment rights has been developed, the Grantor may, with the consent of Grantee, and at no increase in price, permanently transfer Grantee's interment rights to reasonably comparable developed interment property, or temporarily transfer such rights to reasonably comparable interment property, until such time as construction is completed.

All the above conditions, reservations and restrictions are binding upon Grantee, and Grantee's heirs, devisees, executors, administrators and signers and are enforceable only by Grantor or its successors in interest. Nothing herein contained shall be deemed to restrict the use of any portion of the cemetery other than that herein conveyed to Grantee.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed in its name by its duly authorized representatives this

_____ day of _____, 19 _____.

CEMETERY SERVICES, INC.
dba NICOLET MEMORIAL GARDENS

BY: _____
PRESIDENT

SECRETARY

GENERAL MANAGER



Chapter 68.32 RCW TITLE AND RIGHTS TO CEMETERY PLOTS

Sections

68.32.010	Presumption as to title.
68.32.020	Vested right of spouse.
68.32.030	Vested right-Termination.
68.32.040	Descent of title to plot.
68.32.050	Affidavit as authorization.
68.32.060	Family plot-Alienability.
68.32.070	Joint tenants--Vested rights.
68.32.080	Joint tenants--Survivorship.
68.32.090	Joint tenants--Identification.
68.32.100	Co-owners may designate representative.
68.32.110	Order of interment--General.
68.32.120	Order of interment, when no parent or child survives.
68.32.130	Waiver of right of interment.
68.32.140	Termination of vested right by waiver.
68.32.150	Limitations on vested rights.
68.32.160	Conveyance of plot to cemetery authority, effect.
68.32.170	Exemption from inheritance tax.

RCW 68.32.010 Presumption as to title. All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance. [1943 c 247 § 88; Rem. Supp. 1943 § 3778-88.]

RCW 68.32.020 Vested right of spouse. The spouse of an owner of any plot containing more than one interment space has a vested right of interment of his remains in the plot and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains in the plot if more than one interment space is unoccupied at the time the person becomes the spouse of the owner. [1943 c 247 § 89; Rem. Supp. 1943 § 3778-89.]

RCW 68.32.030 Vested right--Termination. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of a vested right of interment, except that a final decree of divorce between them terminates the vested right of interment unless otherwise provided in the decree. [1943 c 247 § 90; Rem. Supp. 1943 § 3778-90.]

RCW 68.32.040 Descent of title to plot. If no interment is made in an interment plot which has been transferred by deed or certificate of ownership to an individual owner, or if all remains previously interred are lawfully removed, upon the death of the owner, unless the owner has disposed of the plot either by specific devise or by a written declaration filed and recorded in the office of the cemetery authority, the plot descends to the surviving spouse or, if there is no surviving spouse, to the heirs at law of the owner subject to the rights of interment of the decedent. [1979 c 21 § 15; 1943 c 247 § 91; Rem. Supp. 1943 § 3778-91.]

RCW 68.32.050 Affidavit as authorization. An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot pursuant to RCW 68.32.010 through 68.32.040, is complete authorization to the cemetery authority to permit the use of the unoccupied portions of the plot by the person entitled to the use of it. [1943 c 247 § 93; Rem. Supp. 1943 § 3778-93.]

RCW 68.32.060 Family plot-Alienability. Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner and both the owner and the surviving spouse, if any, die with children then living without making disposition of the plot either by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, the plot shall thereafter be held as a family plot and shall be subject to alienation only upon agreement of the children of the owner living at the time of said alienation. [1979 c 21 § 16; 1943 c 247 § 98; Rem. Supp. 1943 § 3778-98.]

RCW 68.32.070 Joint tenants--Vested rights. In a conveyance to two or more persons as joint tenants each joint tenant has a vested right of interment in the plot conveyed. [1943 c 247 § 94; Rem. Supp. 1943 § 3778-94.]

RCW 68.32.080 Joint tenants--Survivorship. Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the remains of the deceased joint tenant. [1943 c 247 § 95; Rem. Supp. 1943 § 3778-95.]

Joint tenants, simultaneous death: RCW 11.05.030.

RCW 68.32.090 Joint tenants--Identification. An affidavit by any person having knowledge of the facts setting forth the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the cemetery authority operating the cemetery in which the plot is located, is complete authorization to the cemetery authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest. [1943 c 247 § 96; Rem. Supp. 1943 § 3778-96.]

RCW 68.32.100 Co-owners may designate representative. When there are several owners of a plot, or of rights of interment in it, they may designate one or more

Walter Kingston
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persons to represent **the** plot and file written notice of designation with the cemetery authority. In the absence of such notice or of written objection to its so doing, the cemetery authority is not liable to any owner for interring or permitting an interment in the plot upon the request or direction of any co-owner of the plot. [1943 c 247 § 97; Rem. Supp. 1943 § 3778-97.]

RCW 68.32.110 Order of interment—General. In a family plot one grave, niche or crypt may be used for the owner's interment; one for the owner's surviving spouse, if any, who by law has a vested right of interment in it; and in those remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot. [1943 c 247 § 99; Rem. Supp. 1943 § 3778-99.]

RCW 68.32.120 Order of interment, when no parent or child survives. If no parents or child survives, the right of interment goes in the order of death first, to the spouse of any child of the record owner, and second, in the order of death to the next heirs at law of the owner or the spouse of any heir at law. [1943 c 247 § 100; Rem. Supp. 1943 § 3778-100.]

RCW 68.32.130 Waiver of right of interment. Any surviving spouse, parent, child, or heir having a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of the deceased owner; and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot. [1943 c 247 § 101; Rem. Supp. 1943 § 3778-101.]

RCW 68.32.140 Termination of vested right by waiver. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom vested. [1943 c 247 § 102; Rem. Supp. 1943 § 3778-102.]

RCW 68.32.150 Limitations on vested rights. No vested right of interment gives to any person the right to have his remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred. nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules and regulations of the cemetery in which the interment space is located. [1943 c 247 § 103; Rem. Supp. 1943 § 3778-103.]

RCW 68.32.160 Conveyance of plot to cemetery authority, effect. A cemetery authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments shall be restricted to the persons designated in the conveyance or devise. [1943 c 247 § 104; Rem. Supp. 1943 § 3778-104.]

RCW 68.32.170 Exemption from inheritance tax. Cemetery property passing to an individual by reason of

the death of the owner is exempt from all inheritance taxes. [1943 c 247 § 92; Rem. Supp. 1943 § 3778-92.]

Reviser's note: The inheritance tax was repealed by 1981 2nd ex.s. c 7 § 83.100.160 (Initiative Measure No. 402). See RCW 83.100.900. For later enactment, see chapter 83.100 RCW.

tery. Each violation of this section constitutes a separate offense.

97.650 Plots are indivisible. All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the cemetery authority, or as provided by law.

97.660 Presumption of sole ownership in grantee of plot. All plots conveyed to individuals are presumed to be solely and separately owned by the person named in the instrument of conveyance.

97.570 Spouse has vested right of interment. (1) The spouse of an owner of any plot containing more than one interment space has a vested right of interment of the remains of the spouse in the plot, and any person thereafter becoming the spouse of the owner has a vested right of interment of the remains of the person in the plot if more than one interment space is unoccupied at the time the person becomes the spouse of the owner.

(2) The purchase by a married person of more than one interment space shall create in the spouse a right of interment therein.

97.580 Divestiture of spouse's right of interment. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of the vested right of interment, except that a final decree of divorce between them terminates the right unless otherwise provided in the decree.

97.596 Transfer of plot or right of interment. No transfer of any plot, heretofore or hereafter made, or any right of interment is complete or effective until recorded on the books of the cemetery authority.

97.600 Descent of plot. Upon the death of the owner, unless the owner has disposed of the plot either by specific direction in the will of the owner or by a written declaration filed and recorded in the office of the cemetery authority, if no interment has been made in an interment plot which has been transferred by deed or certificate of ownership to an individual owner or if all remains previously interred are lawfully removed, the plot descends to the heirs at law of the owner, subject to the rights of interment of the decedent and the surviving spouse of the decedent.

97.610 Determining occupant of burial plot having coowners. When there are two or more owners of a burial plot or of rights of interment therein, such owners may designate one or more persons to designate the burials to be made in the plot and file written notice of such designation with the cem-

etry association. In the absence of such notice or of written objection to its so doing, the cemetery association is not liable to any owner for interring or permitting an interment therein upon the request or direction of any registered coowner of the plot.

97.620 Death of coowner; authorization to use plot under directions of surviving owners. An affidavit by any person having knowledge of the fact, setting forth the fact of the death of one owner and establishing the identity of the surviving owners named in the deed to any plot, when filed with the cemetery authority operating the cemetery in which the plot is located, is authorization to the cemetery authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving owners or their successors in interest.

97.630 Family plots; order of occupation. (1) Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner, or of the remains of the record owner, is made in a plot transferred by deed or certificate of ownership to an individual owner, and the owner dies without making disposition of the plot, either by direction in the owner's will, or by a written declaration filed and recorded in the office of the cemetery authority, the plot thereby becomes inalienable and shall be held as the family plot of the owner, and occupied in the following order:

(a) One grave, niche or crypt may be used for the owner's interment; one for the owner's surviving spouse, if there is one, who by ORS 97.010 to 97.040, 97.110 to 97.450, 97.510 to 97.730, 97.810 to 97.920 and 97.990 has a vested right of interment in it; and in those remaining, if any, the children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot.

(b) If no child survives, the right of interment goes in order of death to the spouse of any child of the record owner.

(2) Any surviving spouse, child or child's spouse who has a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of either the deceased owner or of the deceased owner's spouse, and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot.

(3) Notwithstanding subsection (1) of this section, the personal representative of the deceased owner of a family plot may sell unoccupied interment spaces in the plot as property of the estate of the deceased owner when there are no existing rights of

Ownership of Plots

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Oregon

interment in those spaces or all existing rights of interment in those spaces have been waived and thereby terminated.

(4) **Whenever** a plot is transferred by deed or certificate of ownership to an individual owner and the transfer is recorded on the books of the cemetery authority, the cemetery authority shall provide to the individual owner a written statement, in a form approved by the State Mortuary and Cemetery Board, containing a clear explanation of the provisions of subsections (1) and (2) of this section and of the rights of interment established thereby. [Amended by 1985 c.652 §1]

97.640 Waiver or termination of vested right of interment. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom it is vested.

97.650 Limitations upon vested right of interment. No vested right of interment gives to any person the right to have the remains of the person interred in any interment space in which the remains of any deceased person having equal or prior vested right of interment have been interred; nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules and regulations of the cemetery in which the interment space is located.

CEMETERY MANAGEMENT

97.710 Power of cemetery to make rules and regulations. (1) The cemetery authority may make and enforce rules and regulations for:

(a) The use, care, control, management, restriction and protection of its cemetery;

(b) Restricting and limiting the use of all property within its cemetery;

(c) Regulating the uniformity, class and kind of all markers, monuments and other structures within its cemetery;

(d) Prohibiting the erection of monuments, markers or other structures in or upon any portion of its property;

(e) Regulating or preventing the erection of monuments, effigies and structures within any portion of the cemetery grounds and for the removal thereof;

(f) Regulating the care or preventing the introduction of plants or shrubs within such grounds;

(g) Preventing the interment in any part thereof of a body not entitled to interment therein;

(h) Preventing the use of burial plots for purposes violative of its restrictions;

(i) Regulating the conduct of persons and preventing improper assemblages therein; and

(j) All other purposes deemed necessary by the cemetery authority for the proper conduct of its business and the protection and safeguarding of the premises and the principles, plans and ideals on which the cemetery was organized.

(2) The cemetery authority from time to time may amend, add to, revise, change or modify such rules and regulations.

(3) Such rules and regulations shall be plainly printed or typewritten and maintained, subject to inspection, in the office of the cemetery authority.

97.720 Record of interments and cremations; inspection. (1) The person in charge of any premises on which interments or cremations are made shall keep a record of all remains interred or cremated on the premises under the person's charge, in each case stating the name of each deceased person, the date of interment or cremation, and the name and address of the funeral service practitioner. The interment records shall be open to inspection by survivors of the decedent during the customary office hours of the cemetery authority.

(2) A record shall be kept of the ownership of all plots in the cemetery which have been conveyed by the cemetery authority and all transfers of plots in the cemetery.

97.730 Gifts and bequests in trust for cemeteries. Gifts, grants and bequests of personal property in trust for the purpose of providing perpetual care and maintenance, improvement or embellishment of private burial lots in or outside of cemeteries and of the walks, fences, monuments, structures or tombs thereon, are permitted and shall be deemed to be for perpetual and benevolent uses. They are not invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instrument creating the trust; nor are they invalid as violating any existing laws against perpetuities or suspension of the power of alienation of title to property. But nothing in this section affects any existing authority or cause to pass upon the reasonableness of the amount of such gift, grant or bequest. Any cemetery association may act as trustee of and execute any such trust with respect to lots, walks, fences, monuments, structures or tombs, both within or outside its own cemetery limits, but within the county where such cemetery association has its principal office and place of business, whether such power is otherwise included in its corporate powers or not.

Oregon

Florida

PRACTICE AND PROCEDURES

CHAPTER 3F-6
PRACTICE AND PROCEDURES

- 3F-6.001 Grave Spaces; Definition Limited.
- 3F-6.002 Care and Maintenance of Existing Cemetery.
- 3F-6.003 Cemetery By-laws.
- 3F-6.004 Safekeeping of Records.
- 3F-6.005 Records.
- 3F-6.006 Inspection of Cemeteries.
- 3F-6.007 Criteria for Burial; Disinterment; Reinterment.

3F-6.001 Grave Spaces; Definition Limited. "Grave space," according to the definition in Section 497.005(6), F.S., means a space of ground in a cemetery intended to be used for the interment in the ground of the remains of a deceased person. Said definition is not altered or modified because of the dimensions of the space or whether vertical or horizontal to be the natural contour of the ground or whether the remains or cremains of more than one person occupy the same excavation.
Specific Authority 20.05(5), 120.53(2)(a), 497.103 FS. Law Implemented 497.005(6) FS. History-New 7-20-73, Renumbered from 3-8.08 to 3030.08 on 9-8-75, Amended 1-27-81. Formerly 3030.08. 3030.008.

3F-6.002 Care and Maintenance of Existing Cemetery. The cemetery shall be maintained in a reasonable condition which shall include leveling of the grounds where interments have been made, removal of all debris, mowing and edging, resulting in a well kept appearance at all times.
Specific Authority 20.05(5), 497.103 FS. Law Implemented 497.237, 497.241 FS. History-Amended 1-10-76. Formerly 3D-30.21, 3D-30.021.

3F-6.003 Cemetery By-laws. Each cemetery company may adopt by-laws defining its operational procedures. Any by-laws in existence as of July 1, 1978 shall be effective upon being filed with the Board. By-laws created or amended after July 1, 1978 shall be filed with the Board and advertised by the Board placing notice in the Florida Administrative Weekly. Comments may be submitted or a hearing requested by substantially affected parties. Upon review of the by-law(s), comments or finding of facts, if any, the Board shall approve such by-law(s) if they are reasonable.
Specific Authority 497.103 FS. Law Implemented 497.305(3) FS. History-New 11-2-78, Formerly 3P30.23.3030.023.

3F-6.004 Safekeeping of Records. All burial records referenced in Section 497.309, F.S., and those contracts under the jurisdiction of the Department and the Board of Funeral and Cemetery Services which have not been audited by the Department must be filed and kept in a secure manner. For purposes of this rule, "secure" means:

- (1) a vault or fire-proof container with a properly certified fire resistant capability of at least one hour; or
- (2) a computer readable media backed up by diskette, or optical disk, or tape which is stored at an off-site location; or
- (3) microfilm backed up by a security roll stored at an off-site location; or

(4) a duplicate copy of the records referenced in this rule are kept at an off-site location. Records that are deemed "secure" at an off-site location shall be updated quarterly.
Specific Authority 20.05(5), 497.103 FS. Law Implemented 497.103, 497.309 FS. History-NW 7-20-73, Renumbered from 3-8.09 to 3030.09 on 9-8-75, Amended 8-22-76. Formerly 3030.09. 3030.009. Amended 3-21-95.

3F-6.005 Records. The following records shall be made available to the Department for the purposes of examinations or inspections:

- (1) License and Certificate of Authority;
- (2) Registration for Preneed Agents;
- (3) Notice to Consumers;
- (4) Price Disclosure List;
- (5) Advertising file;
- (6) By-Laws and Rules and Regulations;
- (7) Financial and accounting records, including financial statements, general ledger, accounts receivable, accounts payable and cash receipts, journals, receipt books and invoices;
- (8) Preneed Contracts;
- (9) Other contracts, including at need sales and contracts for burial rights;
- (10) Burial Records;
- (11) Lot ownership records;
- (12) Procedures for handling complaints as referenced by 497.445(6), F.S.;
- (13) Mortgages on the property;
- (14) Preneed Funeral Contract Consumer Protection Trust Fund remittances and supporting documentation;
- (15) Record of cancellation requests and refunds given;
- (16) List of current preneed sales agents;
- (17) Detailed maps of the cemetery; and
- (18) Procedure manuals.

These records will be available for review at the licensed facility or an alternative site if approved by the Board pursuant to Section 497.309(2), F.S.
Specific Authority 497.103 FS. Law Implemented 497.309.497.431 FS. History-New 3-21-95.

3F-6.006 Inspection of Cemeteries. Inspection of cemeteries will be performed by the Department as often as necessary but not less than once per year. Such inspections shall involve the following:

- (1) maintenance of the grounds and mausoleums
- (2) posting of licenses and notices
- (3) safekeeping of records
- (4) progress of construction when preconstruction sales have been made
- (5) availability of price disclosure lists
- (6) confirmation of preneed merchandise and service contracts.

Specific Authority 497.103(2) FS. Law Implemented 497.103(2) FS. History-New 3-21-95.

3F-6.007 Criteria for Burial; Disinterment; Reinterment.

- (1) A cemetery shall not be required to perform a burial, interment, entombment, or inurnment, until it has received proper authorization. Such authorization shall consist of the following:

Care & maintenance }

Florida

(2) **Installment sales contracts or promissory notes** that include **pre-need** burial merchandise defaulted by the purchaser shall entitle the cemetery company to **withdraw** the amount deposited in the **Merchandise Trust Fund**.
Specific Authority 20.05(5), 497.011(1), 1 20.53(2)(a) FS. Law Impltmtntd 497.048(7), 497.022 FS. History—New 1-27-81, Formtrfy 3630.25.

3D30.026 **Charge** for Installation and **Maintenance** of Marker or Monument. Each amctery company shall **establish** a fa for the installation and maintenance of a marker or monument. Said **fee** shall be the actual cost to the cemetery company to install and maintain markers or monuments but shall not **exceed** 3.35 per square inch. **Each** cemetery shall be prepared to justify to the department that the fa charged does not **exceed** the actual cost to the cemetery including the actual labor costs, the overhead charges, any location and lay out **costs**, any material costs, any equipment depreciation on equipment used either in installation or maintenana, employee benefit **costs**, etc.
Specific Authority 20.05(5), 497.01 1(1), 1 20.53(2)(a) FS. Law Impltmtntd 497.023(3) FS. History—New 1-27-81. Formerly 3D-30.26.

3D30.027 **Cancellation** of Contracts.
Specific Authority 20.05(5), 120.53(2)(a), 497.011(1) FS. Law fmpmtntnrtd 497.01816). (7) FS. History-Ntw 1-29-81. Formerly 3D-30.27. Transferred to 3F.8.002.

3D-30.028 **Examination Fees.** The Department shall charge **\$250** per eight hour day for each examiner engaged in an examination of any **cemetery company**, **person** writing **preneed** co&acts or **guaranteeing organization** under Chapter 497, F.S. Such examination fee shall be **calculated** &an hourly basis and shallbe rounded to the nearest hour. For out-of-state travel, the **licensee** shall also pay the travel expense and per diem subsistence allowance provided for state employees in Section 112.061, FS. Time spent on the examination shall include travel time and time spent completing the examination report on or off premises.
Specific Aurhoriry 497.103(1), 497.105(5) FS. Law Implemented 497.431 FS. History—New 7-14-81. Formerly 3D-30.28, Amtntd 3-22-5.

3D-30.029 **Request** for Additional information - Applications.
Specific Authority 1 20.53(1)(b), 497.011 (1), (2) FS. Law impftmtntd 1 20.60(2), 497.006(2)(a), 497.008 FS. History-Ntw 12-22-81, Formerly 3D-30.29, Transferred to 3F-3.008.

3D-30.030 **Performance Bond - Mausoleums or Below-Ground Crypts.**
Specific Authority 120.53(1)(b), 497.011(1)(a) FS. Law fmpmtntntd 497.029(8) FS. History—New 12-22-81, Amended 3-24-82. Formtrfy JD-3030. Transferred to 3F-7.005.

3D.30.031 **Merchandise Trust Funds - Status** of Accounts.
Specific Aurhoriry 20.05(5), 497.011(1)(a) FS. Law Impltmtntd 497.048(1), (3), (6), (8) FS. History—New 11-15-83. Formerly 3D-30.31, Transferred to 3F-7.007.

3D30.032 **Merchandise Trust Funds - Withdrawal of Principal and Income Earned Thereon.**
Specific Aurhoriry 497.011(1)(a) FS. Law Implemented 497.048(6) FS. History-Ntw 8-26-85. Formerly 3D-30.32, Amtntd 1-4-88. Transferred to 3F-7.008.

3D30.033 **Cemetery Company Rules.**
(1) A cemetery company may establish **rules** related to monuments, monument dealers, and monument installers.

(2) For purposes of this rule, the word "monument" shall mean: any memorial structure, marker or other physical evidcna designed and **installed** with the intent to permanently identify a **gravesite** and its occupant.

(3) Cemetery company rules that **relate** to monuments, monument dealers and monument installers arc limited in scope and subject matter to include only:

- (a) **The size** of a monument;
- (b) The style of a monument;
- (c) The foundation of a monument;
- (d) A **requirement** that the monument dealer or monument installer present proof of **licensure** by the county in which the amctery is located; and
- (c) **Requirements** regarding public liability **insurance** and motor vehicle liability insurana.

(4) Any amctery company rule related to **monuments**, monument dealers or monument installers not within the permissible subject matter and **scope** set forth above shall be considered by the Department to be a cemetery bylaw that **requires** Department approval before implcmntstion.

Specific Authority 497.011(1)(a) FS. Law fmpyltmenrtd 497.005(18), 497.012, 497.044(1), 497.033(1) j. (3) FS. History-Ntw J-16-86. Amtntd 4-26.88.

3D-30.034 **Residential Solidations.**
Specific Authority 497.011(1)(a), 497.012, 497.043(1), (2), (3) FS. Law Implemented 497.012, 497.043(3) FS. History—New 4-16-86. Transferred to JF-9.002.

3D30.035 **Wholesale Purchase Price.**
Specific Authority 497.01 1(l)(o) FS. Law fmpmtntnrtd 497.018 FS. History—New 3-1-W. Transftrtd to 3F-7.006.

3D30.036 **Criteria for Filing • Letter of Credit in Lieu of the Merchandise Trust Fund.**
Specific Authority 497.011(1)(a), 497.0484(12) FS. Law Implemented 497.0484(2), 497.049 FS. History—New 3-20-91, Transferred to 3F-7.011.

3D30.037 **Reporting Requirements** for Cemetery Companies Filing an **Initial** Application to **Utilize** a Letter of Credit or Surety Bond in **Lieu** of the **Merchandise Trust Fund.**
Specific Aurhoriry 497.01 f(f)(o), 497.0484(12) FS. Law Implemented 497.0184, 497.049 FS. History—New 3-20-91. Transferred to 3F-7.009.

3D30.038 **Reporting Requirements** for **Cemetery Companies Utilizing** a **Surety Bond** or Letter of Credit in **Lieu** of the **Merchandise Trust Fund.**
Specific Authority 497.011(1)(a), 497.0484(12) FS. Law fmpmtntnrtd 497.0484 FS. History—New 3-20-91, Transferred to 3F-7.010.

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**PROPOSED STATUTE RELATING TO OWNERSHIP AND MANAGEMENT OF
NEGLECTED, ABANDONED AND FINANCIALLY UNSOUND CEMETERIES AND MAUSOLEUMS
AND CREATING THE CEMETERY MANAGEMENT RESERVE FUND**

**A statute relating to abandoned, neglected and financially unsound cemeteries and
mausoleums and creating a demetery management reserve fund.**

Sections affected:

- 25.17(1)(at) cr
- 25.85 cr
- 69.18(1)(bm) am
- 69.22(l)(a) am
- 69.22(1)(d) ci
- 69.22(1)(e) cr
- 69.22(1r) cr
- 157.105 cr
- 157.115(1)(b)2 rp
- 157.115(1)(c) rp
- 157.115(2)(b) am
- 157.117 cr

- Analysis -

This statute repeals the existing statutory requirement for municipalities and towns to take over abandoned or neglected cemeteries within their jurisdiction. The statute instead authorizes the circuit court of the county where a cemetery or mausoleum is located to appoint the department of regulation and licensing (the department), or another willing and qualified person, as trustee for abandoned or neglected cemeteries and mausoleums upon petition by the attorney general, a city, village, town or county, or 6 or more residents of a municipality. The court shall appoint a trustee if it finds the cemetery or mausoleum to be neglected, abandoned, in disuse, improperly maintained or financially unsound. If the court divests title to a cemetery or mausoleum, title shall be held in the name of the state.

The statute applies to all cemeteries and mausoleums, including those owned by religious associations and nonprofit organizations. An exception is specified for a cemetery which has reverted to municipal or town ownership under the existing abandoned or neglected cemetery statute and a trustee cannot be appointed for such a cemetery:

The statute creates a cemetery management reserve fund. The fund is composed of the proceeds of a \$10 fee assessed on each death certificate filed with a county or city, a \$10 surcharge on each sale of a cemetery lot or mausoleum space and a 91 fee for issuance of a copy of a death certificate. The

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fund is part of the state investment fund and is managed by the state investment board.

The trustee has broad powers to manage the cemeteries and mausoleums under trusteeship and may petition the court to return the cemetery or mausoleum to its owner or operator, transfer it to a new owner or operator, remove and reinter the human remains and subsequently close the cemetery or mausoleum. The trustee may seek a new operator or owner, market the property, employ professional experts and take any other action that is useful or necessary to the management or trusteeship of a cemetery or mausoleum. The trustee is required to comply with the same audit and reporting requirements as other cemeteries and mausoleums. The department shall promulgate rules specifying standards and procedures for disbursements from the fund and the trustee may expend disbursed funds for the purposes of the statute.

Text of Proposed Statute:

Part 1. Section 25. t 7(1)(at) is created to read:

25.17 Powers and duties of board.

(1)

(at) Cemetery management reserve fund (s. 25.85):

Part 2. Section 25.85 is created to read:

25.85 Cemetery management reserve fund.

(1) There is established a separate nonlapsible trust fund designated as the cemetery management reserve fund, to consist of:

(a) The moneys received from death certificate filing fees under s. 69.22(1)(d).

(b) The moneys received from issuance of copies of death certificates under s. 69.22(1)(e).

(c) The moneys received from surcharges on the sale of cemetery lots and mausoleum spaces under s. t 57.1'05.

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(2) Except for the purpose of investment as provided in s. 25.17(3)(b)(ba) and (bd), the cemetery management reserve fund may be used only for the purposes authorized under s. 1.57.117.

(3) Funds shall be disbursed from the cemetery management reserve fund only to a trustee duly appointed under s. 57.117 in accordance with standards and procedures to be specified in rules promulgated by the department.

Part 3. Section 69.18(1)(bm) is amended to read:

69.11 Death records. (1)

(bm) A person required to file a certificate of death under par. (b) shall obtain the information required for the certificate of death from the next of kin or the best qualified person or source available. The person filing the certificate of death shall enter his or her signature on the certificate and include his or her address and the date of signing and shall present or mail the certificate, within 24 hours after being notified of the death, to the physician, coroner or medical examiner responsible for completing and signing the medical certification under sub. (2). Within 2 days after receipt of the medical certification under sub. (2), the person filing the certificate of death shall mail or present the certificate of death, along with the fee required under s. 69.22, in:

Part 4, Section 69.22(1)(a) is amended to read:

69.22 Fee. (1)

(a) Except as provided under ~~[(par.)]~~ ~~» pars. (c) » and (e) », \$7 for issuing one certified copy of a vital record and \$2 for any additional certified copy of the same vital record issued at the same time.~~

Part 6. Section 69.22(1)(d) and (e) is created to read:

(d) Ten dollars for receiving a certificate of death filed by a person required to file a certificate of death under s. 69.1811 (b), which shall be forwarded to the state treasurer as provided in sub. (1 r) and credited to the cemetery management reserve fund established under s. 25.85.

(e) Eight dollars for issuing a copy of a death certificate, \$1 of which shall be forwarded to the state treasurer as provided in sub. (1 r) and credited to the cemetery management reserve fund established under s. 25.85.

Part 6. Section 69.22(1r) is created to read:

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(1r) ~~By the 15th day of the first month following the end of a calendar quarter, the state registrar and any local official acting under this subchapter shall forward to the treasurer the amounts specified in sub. (1)(d) and (e) that are received during a calendar quarter. The treasurer shall credit all amounts received under this paragraph to the Cemetery management reserve fund established under s. 25.85.~~

Part 7. Section 157.106 is created to read:

157.706 Surcharge on sales of cemetery lots and mausoleum spaces.

(1) Whenever a cemetery authority sells a cemetery lot or a person operating a mausoleum sells a mausoleum space; the seller shall assess a surcharge of 10 dollars on each lot or space sold.

(2) The seller shall forward to the treasurer the surcharge specified in sub. (1) for each cemetery lot or mausoleum space sold during a calendar quarter by the 15th day of the first month following the end of the calendar quarter.

(3) The treasurer shall credit all amounts received under sub. 2 to the cemetery management reserve fund established under s. 25.85.

Part 8. Section 157.115(1)(b)2 and (c) is repealed.

Part 9. Section 157.115(2)(b) is amended to read:

757.116 Abandonment of cemeteries and cemetery lots.

(2) ABANDONMENT OF: CEMETERY LOYS.

(b) No cemetery authority may resell an abandoned cemetery lot unless the cemetery authority complies with the requirements in this subsection or the lot is sold pursuant to s. 157.117.

Part 10. Section 157.117 is created to read:

157.117 Abandoned, neglected and financially unsound cemeteries and mausoleums.

(1) **DEFINITIONS.** In this section, "cemetery or mausoleum" means any cemetery or mausoleum, regardless of ownership, unless excepted under sub. (6). The term includes a cemetery or mausoleum that is owned or managed by a religious association, nonprofit organization or any other entity.

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(2) APPOINTMENT OF A TRUSTEE. (a) The attorney general, a city, village, town or county, or 6 or more residents of the municipality in which a cemetery or mausoleum is located may petition the circuit court for the county in which a cemetery or mausoleum is located for the appointment of a trustee for the Cemetery or mausoleum. The petitioner shall serve a copy of the petition on the attorney general and the department.

(b) The court shall schedule a hearing on a petition filed under par. (a) within 90 days after the petition is filed with the court.

(c) Whenever the court finds that a cemetery or mausoleum is neglected, abandoned, in disuse, improperly maintained or financially unsound, the court shall appoint as trustee the department or another capable and competent person or entity willing to serve as trustee and to operate and manage the cemetery or mausoleum in accordance with this section.

(d) If the court finds that title to a cemetery or mausoleum should be divested from its owner, the court shall appoint a trustee as provided in this section and title shall be held in the name of the state.

(e) An owner of a cemetery or mausoleum may petition the court for an order surrendering title of the cemetery or mausoleum if the owner believes itself to be incapable of continuing to operate the cemetery or mausoleum. The court may grant the petition if it finds that the cemetery, or mausoleum is neglected, abandoned, in disuse, improperly maintained or financially unsound. If the court grants the petition, it shall transfer title of the cemetery or mausoleum to the state and shall appoint a trustee under par. (c).

(f) All disputes relating to the appointment of a trustee or the actions of a trustee appointed under this section shall be resolved by the court that appointed the trustee.

(3) TRUSTEE POWERS AND DUTIES.

(a) The trustee has managerial authority for each cemetery or mausoleum under trusteeship.

(b) The trustee may:

1. a. Petition the court to transfer ownership of a cemetery or mausoleum and all its real and personal property, tangible and intangible, to the state under the management of the trustee.

b. Petition the court to terminate a trusteeship and return ownership and operation of a cemetery or mausoleum to the previous owner.

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C. **Petition the court to terminate a trusteeship and return management of a cemetery or mausoleum to the owner or previous operator.**

d. **Petition the court to terminate a trusteeship and transfer ownership and management of a cemetery or mausoleum to the state or a new owner.**

2. **Petition the court for removal and reinterment of human remains in accordance with the requirements of this chapter,**

3. **Petition the court to terminate a trusteeship and close a cemetery or mausoleum after removal and reinterment of human remains therein.**

4. a. **Seek a new operator for a cemetery or mausoleum.**

b. **Actively market a cemetery or mausoleum and take any necessary or useful act to support such marketing.**

c. **Seek a purchaser for a cemetery or mausoleum and take any necessary or useful actions to effect a sale of the cemetery or mausoleum.**

5. **Assess cemetery lots for cleaning, care and improvement of the cemetery under s. 157.11(7).**

6. **Expend funds disbursed from the cemetery management reserve fund for the purposes authorized under this section.**

Employ professional, legal and technical experts and such other managers, management personnel, agents and employees, permanent and temporary, as may be required for the trust to properly perform its duties and exercise its powers under this section.

0. **Take any other action useful or necessary to the management or trusteeship of a cemetery or mausoleum.**

(c) **The trustee shall:**

1. **Be responsible for the management, maintenance and financial stability of all cemeteries and mausoleums under trusteeship.**

2. **Comply with the audit and reporting requirements of s. 157.62. The trustee shall provide the court with a copy of all records, audits and reports filed in accordance with this provision.**

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3. **Provide the court with such additional information. records and reports which the court may from time to time direct.**

(4) DEPARTMENT POWERS AND DUTIES. (a) The department shall:

1. **Fix the conditions and terms of the trustee's t&tract, duties and related matters.**

2. **If acting. as trustee for a cemetery or mausoleum, have all the powers and duties of a trustee under sub. (3).**

3. **Shall promulgate rules to specify standards and procedures for disbursements from the cemetery management reserve fund, as provided under s. 25.85(3).**

(b) The department may promulgate rule8 to carry out the purposes of this section.

(5) TERMINATION OF TRUSTEESHIP. The court that appointed a trustee shall terminate the trusteeship whenever any of the following occur:

(a) The owner or operator of a cemetery or mausoleum demonstrates to the court that the conditions that necessitated the trusteeship have been remedied and that it is competent and capable of managing the cemetery or mausoleum.

(b) The court finds that a new operator is both willing to manage and competent to and capable of managing the cemetery or mausoleum. Upon such a finding, the court shall approve the transfer of the management of the cemetery or mausoleum to the new operator;

(c) The court approves the sale or transfer of a cemetery or mausoleum to the state or to some other new public or private owner based upon finding that the new owner is capable and competent of management the cemetery and mausoleum on a financially sound basis.

(d) The court approves closing a cemetery or mausoleum after all human, remains have been removed and reinterred.

(6) EXCEPTION. This section does not apply to a cemetery whose ownership or control and management has been assumed by a municipality or town under s. 157.115(1)(b) and (c), 1995-96 Wis. Stats., or their predecessor statutes.



FINAL REPORT

OF

TASK FORCE ON ABANDONED AND NEGLECTED CEMETERIES

ROBERT PAPPAS,
CHAIRMAN

JANUARY 15, 1999

EXECUTIVE SUMMARY

The Cemetery Preservation and Consumer Protection Act, passed during the 1998 Legislative Session mandated and funded the formation of a Task Force on Abandoned and Neglected Cemeteries (Task Force) under the aegis of the **Office** of the Comptroller. The Task Force was formed on July 1, 1998; it is comprised of 12 members selected from a cross section of interested groups; who serve without compensation; whose chairman was elected by the members of the Task Force; and, **all** of whom will serve through the end of the 1999 Legislative Session. All Task Force matters are subject to Florida Sunshine Law and have been conducted accordingly.

An Interim Report was prescribed as due December 1, 1998, with a Final Report and any recommended legislation, due January 15, 1999. Committees were named and chairmen elected to examine the issues mandated in the Cemetery Preservation and Consumer Protection Act. Seven meetings and hearings have been held: to organize the Task Force, **define** the agenda, gather and analyze information, debate the issues and prepare this Interim Report and draft recommended legislation.

It is notable that support for Task Force Activities by Department of Banking and Finance staff, in particular the Bureau of Funeral and Cemetery Services, has been outstanding.

The Cemetery Preservation and Consumer Protection Act effectively requires universal identification and determination of condition of cemeteries in the State. That process is underway and progress has been made, but will necessarily extend beyond the expected life of the Task Force due to the magnitude of the assignment.

The Task Force has determined that in general, cemeteries become neglected and/or abandoned in varying degrees for reasons suggested by the enabling legislation. However, it has chosen to define abandonment as a function of burial activity in relation to time and condition rather than lack of fixed responsibility; neglect is determined in relation to time, evident condition and appearance.

Sufficient empirical information exists for the Task Force to determine that abandoned and neglected cemeteries constitute a problem in the statutory sense. That is, there is evidence of violations of both chapters 497 and 872, however, insufficient data exists to date to provide a definitive analysis of all reported cemeteries. The problem of abandonment and neglect is sufficiently widespread to warrant government intervention. Contained within this report is proposed legislation that would provide a structure, process and sources of funding that would initiate corrective action. The Task Force believes its solution is feasible and reasonable for the foreseeable future, although it is possible that a longer term solution may be warranted at a later date.

Significant efforts on the part of the Task Force, Department of Banking and Finance, with the active support of some media sources have been made to obtain both a reaction and input from the general public. Public reaction has been primarily from those with a direct, immediate interest such as, the industry, cemetery owners, and those who have genealogical or historical interests. The sense of the Task Force is that the general public has an abiding interest in cemeteries but generally chooses to rely upon organized, institutional efforts to provide both the function and oversight of the disposal of human remains.

Cemeteries can be categorized as licensed for profit (regulated), unlicensed not for profit (unregulated), private and family.

Reasons for neglect and abandonment range from saturation of the burial grounds and economic failure, to the transient nature of the general population, migration from rural areas to cities, lack of funds, lack of interest and changes in societal norms all of which contribute to deterioration of unregulated cemeteries.

There are a number of different sources of funds for the rehabilitation and maintenance of cemeteries in certain instances. Additionally, volunteer efforts on the part of citizen groups, scouts, individuals, and communities contribute to cemetery maintenance efforts. Qualitative results vary from cemetery to cemetery and from location to location.

Problems of health, vandalism, and crime do not appear to be sufficient to warrant definitive, continuous, aggressive abatement action on the part of most local governments. Section 872, F.S., addresses the treatment of human remains, yet there is some indication that there is ignorance thereof, and cases of intentional obscuring of cemeteries (such as with a parking lot) although they do not specifically violate the statute(s) in the process.

The Task Force considered a spectrum of alternatives-for dealing with abandonment and neglect, from doing nothing on the one hand, to consolidation of the human remains of all neglected and abandoned cemeteries into a central location and creation of a large-scale permanent memorial on the other hand. The Task Force forged a middle of the road approach to the issues of abandonment and neglect that is both reasonable and workable. **That** approach is shown in detail in proposed legislation that is included herewith.

The Task Force recommends adding a separate section to Chapter 497, designated as Chapter 497, Part II. Among other things, Part II would:

1. Require that all new cemeteries created subsequent to enactment of the proposed legislation be licensed under the provisions of Chapter 497 Part I;
2. Prescribe that **official** burial records specify the exact location of decedents;
3. Contain provisions for cemetery owners to convert cemeteries;
4. Vest local **governments** with overall responsibility for abandoned and/or neglected cemeteries within respective jurisdictions;

5. Fix responsibility for care and maintenance in the owner of a cemetery;
6. Insure access by certain parties;
7. Provide for designation as abandoned;
8. Prescribe a minimum level of care for cemeteries;
9. Prescribe registration of all cemeteries;
10. Form not for profit, government corporation to establish a fund for, and to enhance public participation and involvement in, the identification, protection, preservation, and care and maintenance of neglected and abandoned cemeteries; and,
11. Recommend simplification and streamlining procedures for re-siting of abandoned or neglected cemeteries and/or human remains located therein.

BACKGROUND

From earliest time people have sought new ways to bury and honor their deceased loved ones. As civilization evolved new and impressive ways were devised based on the era, religion and location of the society in which one lived. We see this in the ancient pyramids of Egypt and South America, the Mausoleums of ancient Greece and the Indian Burial Mounds of North America. More recently we seem to have strayed from our traditional care of unlicensed burial grounds. In many States there are quite a number of abandoned and neglected cemeteries, Florida is no exception. Some of these overgrown and abandoned cemeteries are not even a hundred years old.

Until October 1, 1993, Florida did not require the registration of unlicensed and private cemeteries. In response to the many calls and complaints received from citizens of this State the legislature revised Florida Statute 497 to require the registration of all cemeteries in the State which are over five acres in size.

In July 1998, the Florida Legislature passed the Cemetery Preservation and Consumer Protection Act, creating a Task Force to review and report on the status of neglected and abandoned cemeteries in the State of Florida and, if necessary, to propose legislation to counter this problem. The Task Force was charged with the following tasks.

1. Examine the extent to which some cemeteries in the state are abandoned and therefore have no existing responsible person or entity in charge, or are neglected and therefore are not receiving adequate care and maintenance.
2. Examine the extent to which some cemeteries in the state, although they are owned and operated by some identifiable person or entity, are neglected due to a lack of **sufficient** funds to perform adequate care and maintenance or for other reasons.
3. Examine the extent to which neglected cemeteries in the state create problems for citizens and local governments due to vandalism, storm damage, dilapidation, public health concerns, public safety concerns, lack of enforceable standards, and strain on local government **financial** resources.
4. Examine the extent to which neglected cemeteries in the state represent a loss of significant historic or archeological resources.
5. Examine whether or not bringing presently unlicensed operating cemeteries under state regulation as to physical facilities and care and maintenance may help ameliorate the problems caused by neglected cemeteries.
6. Examine whether or not a program of grants to assist in providing adequate care and maintenance for abandoned and neglected cemeteries may help ameliorate the problems caused by neglected cemeteries and, if so, how the grant program should be structured, administered, and funded.
7. Examine current governmental and non-governmental programs that help or could help ameliorate the problems caused by neglected cemeteries, to see if some expansion or increased emphasis or support could do more to help ameliorate the problems caused by neglected cemeteries in a more cost-effective manner than a grant program.
8. Report **findings** and make recommendations concerning solutions to problems found by the task force, including a **draft** of any legislation deemed advisable to implement recommended solutions.
9. The Task Force shall produce a preliminary report by December 1, 1998, and a **final** report by January 15, 1999, detailing its findings and recommendations. Copies of each report shall be transmitted to the Comptroller, the Resident and the Minority Leader of the Senate, and the Speaker and the Minority **leader** of the House of Representatives. Copies shall also be furnished to the Governor, the Secretary of State, the Attorney General, and the **Office** of Program Policy Analysis and Government.

A broad spectrum of interests are served by the instant legislation, beginning with the legislature in its representative capacity. Additionally, Task Force members bring to bear specific institutional and public perspectives and interests. Composition of the Task Force includes citizen members who represent diverse social and economic concerns. For example, there **is** a salient concern among the elderly, many of whom are on fixed incomes, about the adequacy of care for the burial places of their progenitors or other relatives and friends; and, who are uncomfortable about prospects of

adequate care and maintenance of their own final resting places.

Earlier it was stated that the sense of the Task Force is that the general public has an abiding interest in cemeteries as the final resting place of its progenitors. The public generally chooses to rely upon organized, institutional efforts to provide both the function and oversight of the disposal of human remains. If the sense of the Task Force is correct, it would place that burden squarely upon the shoulders of the legislature. The May 24, 1998 remarks of Mr. Richard Mueller, Task Force member and Vice President/General Manager of The Evergreen Cemetery Association speak well to the responsibility of care for the remains of the dead. "We care just like Kemal Attaturk. He led the Turkish forces in defeating the Allies at Gallipoli, in one of the bloodiest battle of World War I. Yet soon after the end of hostilities, as president of Turkey, he consoled the grieving mothers of Allied dead with these words, 'There is no difference between the Turks and Allies where they lie side by side in Turkey. Having lost their lives here they have become our sons as well.'

If this society fails to appropriately and adequately deal with this issue through some definitive action, whether legislative or otherwise, not only will genealogical and historical resources likely be irreparably harmed, but society will potentially lose a valuable resource for charting its inexorable course into annals of human history.

The **first** Task Force meeting was held on September 2, 1998. Mr. Robert Pappas was elected the Chairman of the Task Force. Several committees were developed to investigate and report on the concerns of the Task Force.

Committee Chairman

Cemetery Identification and Status - Mr. Washington Sanchez, Jr.

Abandoned Cemeteries - Mr. James Miller

Maintenance of Unregulated and Neglected Cemeteries - Mr. Joseph Cone

Reports/Proposed Legislation - Mr. Robert Maxwell

Numerous committee and Task Force meetings, as well as public workshops and hearings were held. The following report is the result of the findings of this task force.

STATE REGULATION

Florida regulates licensed cemeteries by Chapter 497, setting forth the requirements for creation of new cemeteries, as well as other detailed requirements for the operation of such cemeteries. These requirements include three trust provisions (perpetual care, preneed and pre-construction) which are overseen by the Board of Funeral and Cemetery Services and the Bureau of Funeral and Cemetery Services within the Department of Banking and Finance. This statute exempts certain categories of cemeteries, including church cemeteries, county and municipal cemeteries, community and non-profit association cemeteries, fraternal organized cemeteries and family graveyards. In addition, specific exemptions apply to certain church cemeteries, a certain columbarium and a certain mausoleum. All other cemeteries must be licensed and must abide by the regulations of Chapter 497; These licensed cemeteries number approximately 170. Under this Statute, the creation of a new licensed cemetery requires the establishment of certain financial criteria: fifteen acres of land free of obligation, a **\$5,000.00** application fee, and establishment of a minimum **\$50,000.00** care and maintenance trust fund.

Certain provisions of Chapter 497 apply to all cemeteries, licensed and unlicensed. They are: s. **497.309(1)**, requiring burial records, s. 497.321, solicitation of goods or services, s. 497.341, burial without regard to race or color, and s. 497.345, abandoned cemeteries; immunity; actions.

METHODOLOGY

Task Force staff and members solicited comments on abandoned and neglected cemeteries **from** representatives of the licensed cemetery industry, the constituents of the Task Force members, public interest groups, and the general public. Task Force members researched and reviewed legislation on the subject in other States. In addition, the Task Force staff reviewed complaints received by the Department of Banking and Finance concerning unlicensed cemeteries. Additional information was obtained from the internet concerning unlicensed cemeteries and their general location. Task Force members and others took videotape pictures of neglected and abandoned cemeteries and established a database to manage unlicensed cemetery data for use in locating and describing such cemeteries. Task force members also established a web site as a link to the Comptroller's web site (<http://www.dbf.state.fl.us/cemeteries/>) to disseminate

information to the public about the abandoned and neglected cemetery project, and to collect from the public information about unlicensed neglected and abandoned cemeteries. This database is growing steadily.

FINDINGS

1. Data collected to date on some 3,580 cemeteries in the State suggests that 40% to 50% are abandoned or neglected. As additional information becomes available in the future (and as abandoned and neglected cemeteries are restored), the total could increase beyond the current projection of 1,500.
2. The Task Force, in the short time of its existence, has been unable to quantify the extent to which private, unlicensed cemeteries are not able to care for the same due to lack of funds, but it clearly appears to be a significant factor.
3. The extent that neglected cemeteries create problems for citizens and local governments has not been quantified, but the City and County representatives on the Task Force verify that such cemeteries are a burden on local governmental resources.
4. Some older cemeteries that are neglected may represent a loss of historic or archeological values, but the extent of such loss has not been quantified. More than three hundred cemeteries with some level of historical significance are recorded in the records maintained by the Department of State.
5. Legislation is needed to establish guidelines, definitions, methods of establishing care for neglected and abandoned cemeteries, agencies responsible for providing such care, the funding mechanism for such projects, as well as a permanent structure to continue the location, identification, protection, preservation and care of such cemeteries.
6. A grants-in-aid type program using matching funds would help ameliorate the problems created by abandoned and neglected cemeteries. This matter is addressed in the proposed legislation set forth in the appendix.
7. The Task Force has examined the question of funds needed to address the problems and recommends in the proposed legislation the following funding sources: (1) a one-time appropriation by the legislature, (2) a fee on death certificates, (3) enabling legislation to permit Cities and Counties to include in their budgets funds for this purpose; and (4) the establishment of a non-profit corporation within the Department to obtain donations from individuals, businesses, industries, organizations, local, state and federal grants, foundations, etc. The fund would be established in such a way that the corpus could-continue to grow with only the income used for the purposes outlined herein. In this way the trust funds can be effective over the long term.
8. The Task Force has determined that it is imperative to stop the proliferation of neglected and abandoned cemeteries
9. The legislature has already established in Chapter 872 protection for all human burial sites and all human remains regardless of whether or not the site is abandoned.

RECOMMENDATIONS

1. The work of the Task Force should be allowed to continue in either of the following ways:
 - (a) The Task Force should continue **in** its present form for a finite time in order for the Task Force to more thoroughly examine the extent of the problems; or
 - (b) The non-profit corporation outlined in the proposed legislation should continue these functions on a permanent basis.
2. Establish that local governments are the best way to handle the problem created by abandoned and neglected cemeteries within their respective jurisdictions, combined with a statewide approach through the designated agency and non-profit corporation.
3. Establish that owners of unlicensed cemeteries must care for those cemeteries in a proper manner so as to avoid neglect.
4. Proscribe abandonment and neglect of cemeteries.
5. Establish that a copy of all burial transit permits will be filed with the Clerk of Court in the County of burial.
6. Establish that **officially** designated persons other than the next of kin shall be given an easement or right of entry to enter and inspect private cemeteries.
7. Establish that unlicensed cemeteries be required to post a sign at the cemetery providing notice of the existence of a cemetery at the posted location.
8. Establish that no new cemeteries shall be allowed to be created except under the provisions of Part I of Chapter 497, thereby insuring that a care and maintenance fund is established for each new cemetery.

Respectfully submitted,

Task Force on Abandoned and Neglected Cemeteries

By: Robert Pappas, Chairman

By: Washington Sanchez, Vice-Chairman and
Chairman Cemetery Identification and
Status Committee

By: Robert G. Maxwell, Chairman Reports/Proposed Legislation Committee

By: Joseph Cone, Chairman
Maintenance of Unregulated and Neglectedcemeteries Committee

By: James J. Miller, Chairman Abandoned Cemeteries Committee

By: Roy Braksick

By: Bernard Dew

By: Warren H. Jemigan

By: Kenneth Mitchell, Sr.

By: Richard L. Mueller

By: Judith C. Ralph

By: Michael R. Tadros

BIOGRAPHICALSKETCHES

Roy Braksick served two combat tours in Vietnam and is active in the location, identification and protection of historic burial sites, especially those of veterans. He is active in community volunteer efforts, especially concerning military and veterans affairs. He is an alternate Ex-officio member of the Task Force.

Joseph Cone serves on the Task Force as the Florida League of Cities Representative. Mr. Cone is currently the City Manager of the City of Lake City. After a four-year enlistment in the U.S. Army Security Agency, which included a tour of duty in Vietnam, he graduated **from** the University of South Florida in Tampa in 1972. He has 26 years of experience in local government in Florida, serving as a City Planner, Assistant City Manager and County Administrator.

Bernard Dew was appointed as the **first** County Administrator for Sumter County and County Budget **Officer** and has carried out those responsibilities for more than 15 years. He is a Trustee of the Bushnell Evergreen Cemetery and Chairman, Board of Trustees, St. Catherine United Methodist church. His family has lived in Sumter County since the 1850s. He represents county interests on the Task Force.

Warren H. Jernigan is a native of Pensacola, Florida, who has been associated with the U.S. Congress in Washington, D.C. for more than 15 years as an Aide to Representative Bob Sikes of Florida and as Chief Doorman for the U.S. House of Representatives. He is an advocate at the state and national levels for the disabled and has received numerous honors and awards for his leadership in advancing the cause of persons with disabilities. Mr. Jernigan has been Chairman of the **Whitmire** Cemetery Association in Escambia County for **ten** years and is dedicated to issues of perpetual care. He is a citizen representative on the Task Force.

Robert G. Maxwell has been practicing law since 1952, including Attorney for the Florida Cemetery Association for two decades beginning in 1970, and has been consulting cemeteries and cemetery-funeral establishment combinations for more than three decades. He was a municipal Judge of the City of Miami Springs and was very active in the community holding a number of board positions in civic and professional organizations. Now his civic activity is as Guardian-Ad-Litem. He represents interests of the licensed cemetery industry on the Task Force.

James. J. Miller represents archeological and historical interests on the Task Force. For fifteen years he has been State Archeologist and Chief of the Florida Bureau of Archaeological Research. In this practice, Jim worked with Native Americans and others to amend the Florida law concerning dead bodies and graves and has certain statutory responsibilities when unmarked human remains are discovered.

Kenneth Mitchell, Sr. is a first generation funeral director. He has been a lifelong Florida resident, residing in Orlando. He owns and operates Mitchell Funeral. He is active in the Florida Funeral Directors Association and the Florida Morticians Association, as well as his community. He represents consumer interests on the Task Force.

Richard L. Mueller has been involved in cemetery operations since 1963. In 1976 he accepted a position at the non-profit Evergreen Cemetery in Jacksonville, the largest cemetery in northern Florida, where he currently serves as Vice-President and General Manager. He has held many positions in professional cemetery organizations at state, national and international levels and is active in community service. He represents the interests of non-profit owned cemeteries on the Task Force.

Robert (Bob) Pappas was chosen by the Comptroller of Florida to be the first Regional Director of Banking and Finance, Northwest Florida Region in 1995. In this position he is responsible for consumer protection and industry support through a variety of government programs. He served in the U.S. Marine Corps including two combat tours in the Vietnam War. He represents the Florida Department of Banking and Finance on the Task Force, and serves as Chairman of the Task Force.

Judith C. (Johnson) Ralph is a native Floridian who was a registered nurse before helping her husband found their first funeral home in Plantation, Florida in 1965. They now own funeral homes in Plantation, Weston-Bonaventure, and Marathon. She has served in elected and appointed positions in a number of civic and professional organizations, including the Florida Funeral Directors Association, of which she was past president and director. She is now in her second term of the Florida Board of Funeral Directors and Embalmers. On the Task Force she represents the interests of pre-need certificateholders.

Washington Sanchez retired as a Colonel from the U.S. Army in 1991 following a career in Field Artillery that included two tours in Vietnam. He is a combat wounded veteran and a highly decorated combat commander. In Germany in the 1980s he commanded. He is very active in the community, volunteering as President, Gulf Coast Real Estate Investors Association and leadership positions in church, business, government and civic organizations. He represents citizen interests on the Task Force.

Michael R Tadros is Director of Cemeteries for the Archdiocese of Miami and has been in the cemetery industry for over 12 years. He previously worked as Controller and General Manager of the Cemeteries for the Archdiocese of Toronto in Ontario, Canada. He has held elected and appointed positions in Florida, U.S. and Canadian professional cemetery associations, and was recently elected to a three year term as a Director for Florida Cemetery Association. He has been a member of the National Catholic Cemetery Conference for thirteen years. He represents the interests of church-owned cemeteries on the Task Force.

ACKNOWLEDGEMENT

PROPOSED LEGISLATION BY TASK FORCE ON ABANDONED AND NEGLECTED CEMETERIES

DRAFT

PART I

FLORIDA FUNERAL AND CEMETERY SERVICES ACT

497.003 Cemeteries; exemption; investigation and mediation.

~~(1) The provisions of this chapter relating to cemeteries and all rules adopted pursuant thereto shall apply to all cemeteries except for:~~

~~(a) Church cemeteries of less than 5 acres which provide only single level ground burial.~~

~~(b) County and municipal cemeteries.~~

~~(c) Community and nonprofit association cemeteries which provide only single level ground burial and do not sell burial spaces or burial merchandise.~~

~~(d) Cemeteries owned and operated or dedicated by churches prior to June 23, 1976.~~

~~(e) Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent.~~

~~(f) A columbarium consisting of less than one half acre which is owned by and immediately contiguous to an existing church facility and is subject to local government zoning. The church establishing such a columbarium shall ensure that the columbarium is perpetually kept and maintained in a manner consistent with the intent of this chapter. If the church relocates, the church shall relocate all of the urns and remains placed in the columbarium which were placed therein during its use by the church.~~

~~(g) Family cemeteries of less than 2 acres which do not sell burial spaces or burial merchandise.~~

~~(h) A mausoleum consisting of 2 acres or less which is owned by and immediately contiguous to an existing church or synagogue facility and is subject to local government zoning. The church or synagogue establishing such a mausoleum must ensure that the mausoleum is kept and maintained in a manner consistent with the intent of this chapter and limit its availability to members of the church or synagogue. The church or synagogue establishing such a mausoleum must have been incorporated for at least 25 years and must have sufficient funds in an endowment fund to cover the costs of construction of the mausoleum.~~

~~(i) All unlicensed cemeteries not otherwise exempt from Chapter 497, Part II.~~

(1) The provisions of Part I of this chapter and all rules adopted pursuant thereto shall apply to all licensed cemeteries. The following unlicensed cemeteries are exempt from Part I, except for herein:

(a) Cemeteries owned and operated or dedicated by churches prior to June 23, 1976.

(2) Section 497.309(1) as to burial records, and ss. 497.321, 497.325, 497.341, and 497.345 apply to all licensed and unlicensed cemeteries in this state.

(3) All cemeteries exempted under Part I of this chapter ~~which are in excess of 5 acres~~ and all unlicensed cemeteries under Part II must submit to the following investigation and mediation procedure by the department in the event of a consumer complaint:

(a) The exempt cemetery shall make every effort to first resolve a consumer complaint;

(b) If the complaint is not resolved, the exempt cemetery shall advise the consumer of the right to seek investigation and mediation by the department;

(c) If the department receives a complaint, it shall attempt to resolve it telephonically with the parties involved;

(d) If the complaint still is not resolved, the department shall conduct an investigation and mediate the complaint;

(e) If the department conducts an **onsite** investigation **and** face-to-face mediation with the parties, it may charge the exempt cemetery a single investigation and **mediation** fee not to exceed \$300, which fee shall be set by rule and shall be calculated on an hourly basis; and

(f) If all attempts to resolve the consumer complaint fail, the cemetery shall be subject to proceedings for penalties and discipline under this chapter.

(4) Any church-owned cemetery that is exempt under paragraph ~~(1)(d)~~**(a)**, is located in a county with a population of at least 1.3 million person on July 1, 1996, and was selling merchandise and services to the church's members prior to October 1, 1993, may establish one additional exempt cemetery in such county after December 31, 2020, without establishing need under s. 497.201.

(5) Any ~~church-owned~~ cemetery ~~exempt under subsection (1)~~ except those cemeteries qualifying under paragraph (1)(~~d~~)(a), which becomes affiliated with a commercial enterprise must meet ~~the~~ requirements of s. 497.20 1.

History.—s. 2, ch. 59-363; s. 1, ch. 65-570; s. 3, ch. 76-168; s. 1, ch. 76-251; s. 1, ch. 77-457; ss. 3, 39, 40, ch. 80-238, ss. 2.3, ch. 81-318. s. 1, ch. 85-202. s. 1, ch. 89-8, ss. 38, 122, ch. 93-399; s. 2, ch. 96-400.

Note.—Former s. 559.31.

PART II

NEGLECTED, ABANDONED AND UNLICENSED CEMETERY ACT

497.600 Short title

This act may be cited as the "Neglected, Abandoned and Unlicensed Cemetery Act" and shall be Chapter 497, Part II.

497.601 Florida State policy concerning Neglected and Abandoned Cemeteries

(1) All human burials should be accorded respect based upon common human dignity without reference to ethnic origin, cultural background or religious affiliation. The burying grounds of human remains should not become neglected to the extent that the burying grounds become nuisances or places of reproach, desolation or crime in the community. Human dignity requires a degree of care for the burial grounds, cemeteries or final resting places of our ancestors. In addition, certain human burial grounds are of historical or archeological significance. It therefore, is incumbent upon society to provide care to those burying grounds which do become neglected and abandoned.

(2) City, County and State officials should provide leadership in the care of neglected and abandoned cemeteries.

(3) Local governments should encourage cooperation among all levels of government, private citizens, private businesses, industry, foundations, organizations and other entities to aid local governments to accomplish this task by raising the funds necessary or provide manpower and skills, in lieu of funds.

(4) Local governments should take such actions as are necessary to locate, protect, preserve and provide care for neglected and abandoned cemeteries located within their jurisdiction.

497.602 Status

A cemetery shall retain its status and cannot be used for any other purpose unless and until such time as all human remains have been removed from the land pursuant to the laws of Florida.

497.603 Exempt

(1) From the effective date of this Part all new cemeteries created in the State of Florida shall be created and licensed under chapter 497, Part I. However, any unlicensed cemetery, not qualified under (2) below, existing at the time this Statute becomes effective, shall be permitted to function provided it is not in violation of any provision of chapter 497, Parts I or II.

(2) The Provisions of Part II and rules adopted pursuant thereto, shall apply to all cemeteries, except for:

(a) Cemeteries licensed under chapter 497, Part I, Florida Statutes.

(b) Entities that qualify under s. 497.003 (I)(a) and 497.003(4), shall continue to function under chapter 497, Part I, unless declared neglected or abandoned under the provisions of Part II. All renewed agents of any of these entities must be registered under s. 497.439, Part I.

497.604 Sections of Part I effective in Part II

(1) s. 497.309(1), required burial records,

(2) s. 497.321, Solicitation of goods or services,

(3) s. 497.325, Illegal tying arrangements,

(4) s. 497.341, Burial without regard to race 'or color,

(5) s. 497.345, Abandoned cemeteries; immunity actions, and

(6)s. 497.005. Definitions

shall apply to all cemeteries, licensed or unlicensed.

497.605 Investigation and mediation

s. 497.003(3) concerning investigation and mediation procedures established by the Department for consumer complaints applies to all unlicensed cemeteries. These procedures shall provide for the handling of consumer complaints at the lowest authority level.

497.606 Conversion procedures

When an unlicensed cemetery wishes to convert to a licensed cemetery to be operated under Chapter 497, Part I, it shall follow the conversion procedures of Part I.

497.607 Licenses rewired

A cemetery that sells burial rights (ground, mausoleum or niche) or burial merchandise or services must be operated under and comply with Chapter 497, Part I. A cemetery which builds a mausoleum or columbarium must be operated under and comply with Chapter 497, Part I.

497.608 Care and maintenance

The owner of an unlicensed cemetery shall provide proper "care and maintenance" which means the perpetual process of keeping a cemetery and its lots, graves, grounds, landscaping, roads, paths, other means of access, parking lots, fences, buildings, vaults and other improvements, structures and embellishments in a well-cared-for and dignified condition, so that the cemetery does not become a nuisance or place of reproach and desolation in the community, in keeping with the full definition thereof in s. 497.005(8) and rules promulgated thereunder.

497.609 Liability

An owner of an unlicensed cemetery that knowingly fails to provide to that unlicensed cemetery the "care and maintenance" set forth herein commits a Misdemeanor punishable as provided in the Florida Statutes. However, in the event a landowner, after purchase, finds upon the land a cemetery, but-vine, around or final resting place of human remains, which he did not create or dedicate, and which was not disclosed in the title search or otherwise made known to him prior to his purchase, shall have sixty days from the date of discovery thereof to register said cemetery with the Clerk of Court and within six months of registration shall either establish a care and maintenance program for the cemetery or locate the boundaries thereof and convey the same to the local government in lieu of any criminal or civil liability.

497.610 Civil liability

An individual owner and the officers and directors of a corporate owner of an unlicensed cemetery shall be held personally liable, jointly and severally, for the failure to provide "care and maintenance" as set forth in Chapter 497 Part II, for that cemetery.

497.611 Ingress and egress

In addition to the provisions of s. 704.08 (Cemeteries: right of ingress and egress for visiting or maintenance); a representative designated by the County or by the City in which the cemetery is located, a representative designated by the Sheriff in the County in which the cemetery is located, and a representative designated by the Department shall have an easement or right of entry for ingress and egress for the purpose of inspection of the cemetery at reasonable times and in a reasonable manner to determine compliance with this statute and with Chapter 497, Part I. Property owners failine to provide such easement or right of entry shall be guilty of a Misdemeanor

497.612 Definitions

All of the definitions of s. 497.005, Part I, as amended from time to time, shall be effective in Part II.

497.613 Local government responsibilities

From and after the passage of this Act, it shall be the duty of each local government (City or County) in the State of Florida to identify, preserve and protect all neglected and abandoned unlicensed cemeteries within its jurisdiction; and for such purposes may budget annually an amount to accomplish this.

497.614 Abandonment

Even though an unlicensed cemetery shall not lose its character and status as a cemetery, it may be declared an abandoned cemetery. The procedure for declaring an unlicensed cemetery abandoned is as follows:

1. An application to declare a cemetery abandoned may be made to the Circuit Court of the County in which the cemetery is located.

This application may be made by 5 local citizens, or the owner, after requesting assistance from the local government, or it may be made by the local government (City or County) in which the cemetery is located if the owner of the cemetery land

a. cannot be found or is unknown.

b. does not maintain it in accordance with this Part or has not maintained the proper records of ownership of burial rights and locations of persons buried there.

c. was a corporation that has been dissolved, or if.

d. the cemetery has not been registered or licensed as a cemetery under Part I or Part II of Chapter 497.

2. Notice by the local government must be given to the owner of record and all interested parties.

3. Whether the local government is the applicant or not, it shall be responsible for the cost of the application, including the cost of any title search and a survey of the cemetery.

(4) The Court upon determining:

(a) that the cemetery exists, and

(b) that the cemetery is abandoned Pursuant to this Part shall, by Order, declare the cemetery that is the subject matter of the application to be abandoned and said Order shall contain a prohibition against further burials in the abandoned cemetery.

(5) Upon the recordation in the official records of the County of the Court's Order declaring the cemetery abandoned, the local government named in the Order shall immediately become the owner of the cemetery with all the rights and obligations set forth in this Chapter and all the assets, funds and trust accounts shall thereafter be the property of the local government.

(6) The Order of Abandonment may contain other matters which the Court determines are needed and which are not in violation of Chapter 497, Part I and Part II.

(7) From the date of the Order of Abandonment, the local government shall be responsible for the maintenance of the cemetery in accordance with this Part.

(8) In the event that the Court does not enter an Order of Abandonment, it shall enter an Order of Denial of the Application.

497.615 Neglected Cemetery

An unlicensed cemetery may be declared a neglected cemetery when the owner fails to provide "care and maintenance" as defined in s. 497.608 for a period of six months. From the date of notice to the owner by the local government by due public notice as prescribed in s. 166.0415 that the cemetery does not present a well-cared-for and dignified appearance, the owner shall have 30 days to correct the violation with the ability to request one 30 day extension to be granted upon good cause shown. Whenever, after said period, the Board of County Commissioners or the City Council determines, according to this Statute, after public hearing, that an unlicensed cemetery, which has failed to be maintained for six months or has received three notices of neglected status, has become a neglected cemetery, it shall provide for the order and reasonable cutting of all weeds and grass and removal of all debris and shall have unlimited access to perform the same. The local government may maintain an action against the owner of the cemetery to recover an amount equal to the value of such maintenance. Upon failure of the owner to pay the same, the local government may proceed to the Circuit Court for an Order of Abandonment in the same manner as that available in the case of abandoned cemeteries. However, the owner and the officers and directors of a corporate owner shall remain personally liable for said costs and no further burial rights may be issued therein.

497.616 Private Contracts

Any local government required, Pursuant to this act, to care for a cemetery may contract with any individual, firm, corporation or association for the care and maintenance thereof or for the opening and closing of graves, or may use its employees to perform these functions.

497.617 Register of cemeteries

The Clerk of Court of each County shall establish and maintain a register of cemeteries within the County. Such register may include unmarked human burials, including any burial mound, earthen or shell monument containing human skeletal remains or associated burial artifacts. This registry shall contain the physical location of each cemetery, the name, address and phone number of the owner thereof and the person responsible for the care and maintenance of the cemetery. This register shall be available to the public for review or copying upon request. The Clerk may charge a fee for copies of the register. Upon receipt of registration information from any source, the Clerk of Court shall send a copy of each filing with registry number thereon to the local government in which the cemetery is located and a copy to the Department. It shall be the responsibility of the local government to investigate the information disclosed in the filing to verify or determine the order legal description of the cemetery and, through title search to determine the owner. A declaration of the cemetery, its order legal description and the owner thereof shall then be recorded in the official records of the County. A copy of this recorded declaration shall be forwarded to the Department for inclusion in the State data base. Thereafter, the Department shall forward notice to the owner for registration of the cemetery with the Department. The owner shall be

required to file a **copy** of the **registration** with the Department to the Clerk for use to update the **register**.

497.618 Filings by surveyors

If in the course of a land survey of **property** located in this State, a surveyor, licensed by the State of Florida locates any cemetery which has not been previously registered, the surveyor shall file a statement with the Clerk of Court of the location of the cemetery. The statement shall be filed on a form provided by the Clerk of Court and developed to fit the database of the Department. No fee shall be charged the surveyor for such **filing**.

497.619 Filings by citizens

Any person, family, **group**, association, society or county **officer** may submit to the Clerk of Court, on forms provided by the Clerk, the names and locations of any cemetery located in the County for inclusion in the registry. No fee shall be charged for such **submission**.

497.620 Non-profit corporation

(1) In order to enhance **public** participation and involvement in the identification, protection, preservation and care and maintenance of neglected and abandoned unlicensed cemeteries in the State of Florida, there is created within the **Office** of the Comptroller the "Florida **Cemetery** Preservation Corporation".

(2) It is the intent of the legislature that a single non-profit corporation be established for the purpose of **developing** a fund for the identification, restoration and maintenance of neglected and abandoned cemeteries. The legislature appropriates the sum of Five Million Dollars (**\$5,000,000.00**) to the corporation to establish the "Florida Unlicensed Cemeteries Preservation Trust Fund". This Fund shall be invested by the corporation in investments as prescribed in s. 215.47 and only the income from such investments shall be used for the purposes outlined herein. **During** the first 10 years of this Fund's existence, one-half of subsequent donations, **grants**, etc. shall be used directly for the identification, restoration and maintenance of neglected and abandoned unlicensed cemeteries and the remaining one-half shall become **part** of the corpus, the income from which shall also be used for the purposes outlined herein. After 10 years all subsequent donations, **grants**, and other sources of income shall be invested and only the income used for the **purposes** outlined herein. The only exception to the above will be **grants** and donations which require that the funds be expended immediately or **by** a time certain or to the corpus only, in which case the funds will be expended in accordance with the grant's or donation's specifications. Proceeds from fees on death certificates shall go to the corpus only.

(3) **The corporation shall:**

(a) **Be** a Florida corporation not for **profit**, incorporated under the provisions of Chapter 617.

(b) **Provide** for the functions needed to carry out the State policy outlined herein.

(c) **Receive**, hold, invest and administer funds and make **expenditures** needed to **carry** out the State policy outlined herein.

(d) **Operate** under a fiscal **year** that **begins** on **July 1** of each year and ends on June 30 of the **following** year.

(e) **Have** a nine member Board of Directors **appointed** by the Comptroller, one each from the following categories, licensed **cemetery** industry, church owned **cemeteries**, non-profit owned cemeteries, consumer interests, historic preservation and **archaeological** interests, City interests, County interests, and two **citizen representatives**. However, no member of the Board of Funeral and Cemetery Services or the Board of Funeral Directors and Embalmers may serve **concurrently** on the Board of this corporation. The first term appointments shall be four members for two **years** and **five** members for 4 **years**. **Thereafter**, each appointment shall be for a four year term, except for appointments to fill **unexpired** terms which shall be for the balance of the unexpired term only. No member shall serve more than two consecutive terms on the Board of Directors. All actions taken by the Board of Directors shall be by **majority** vote of those present in a **duly** called, recorded meeting.

(f) **The corporation shall select its officers in accordance with its By-Laws.**

(g) **The** members of the Board of Directors may be removed by the Comptroller for cause and for failure to attend three consecutive scheduled **meetings**.

(h) **The** Articles of Incorporation and By-Laws of the corporation must be approved **by** the Comptroller.

(i) **The** annual **budget** of the corporation must be submitted and **approved** by the Comptroller.

(j) **The** corporation shall hire an Executive Director and may hire additional staff. The Comptroller shall designate an employee, which shall be a new position authorized by the legislature, to act as liaison for the Comptroller with the corporation to ensure the effective operation of the activities of the corporation and to serve, without **voting** rights, as Secretary and as Assistant Executive Director of the corporation. The Comptroller shall provide additional staff assistance to the corporation, as necessary, and space to conduct its operation. However, this help and use of facilities need not be made at times or **places** that would unreasonably interfere with opportunities for the general public to use such facilities for **established purposes**. The Comptroller may prescribe, by rule, any condition with which the corporation shall **comply** in order to use the Comptroller's property, facilities or staff. The Comptroller shall not permit the use of **any** property or facilities of the State if the corporation does not provide equal opportunities to **all** persons, regardless of race, color, religion, sex, **age**, or national origin.

(k)Members of the Board of Directors shall serve without pay, but shall be entitled to reimbursement for their expenses in carrying out their official duties as provided in s. 112.061.

(l)It shall be the responsibility of the corporation to:

1. Administer the Florida Unlicensed Cemetery Preservation Trust Fund;

2. Develop and administer matching fund projects for specific projects as submitted to and approved by the Board of Directors based upon the merits of the applications;

3. Raise funds: request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest and administer, in its own name, securities, funds, or other property, real or personal, and make expenditures to or for the direct or indirect benefit of neglected and abandoned unlicensed cemeteries in the State of Florida;

4. Provide an active outreach program to encourage public understanding of and involvement in the identification, protection, restoration and maintenance of neglected and abandoned unlicensed cemeteries;

5. Identify and express public goals for preservation of neglected and abandoned unlicensed cemeteries;

6. Conduct and carry out a program of grants-in-aid, including matching fund grants, to any County or City program having as its purpose the identification, protection, restoration and maintenance of neglected and abandoned unlicensed cemeteries in the State of Florida;

7. Cause an annual post audit of its financial accounts to be conducted by an independent certified public accountant. The annual audit report shall be submitted to the Comptroller, The Auditor General and the Comptroller are each authorized to require and obtain from the corporation, or from its independent auditor, such data as may be needed relative to the operation of the organization. The identity of donors who desire to remain anonymous shall be confidential and exempt from the provisions of s. 119.97(1), and that anonymity shall be maintained in the auditor's report. Other than this all actions of the corporation and its Board of Directors shall be subject to the Sunshine and Public Records law.

(m)For the first death certificate issued in each death there shall be forwarded a fee to the corporation for inclusion in the corpus of the Florida Unlicensed Cemetery Preservation Trust Fund. This fee shall be collected and forwarded by the Department of Health at the time the death certificate is filed.

497.621 Sign at entrance

Each unlicensed cemetery in the State of Florida shall cause to be placed and maintained in legible condition at its entrance a sign with the name of the cemetery and stating that it has been registered with the Clerk of Court of the County.

497.622 Burial Transit Permits

The licensed or registered establishment handling the burial or disposition, or the sexton of the cemetery in which the burial is made, shall file a copy of each burial transit permit with the Clerk of Court indicating thereon specifically the cemetery, garden, lot and space where the deceased is buried or the disposition of the body by cremation (i.e., scattered in the cemetery [name], scattered at sea delivered to survivor [name] or heir [name] or other), burial at sea, anatomical donation [name] or other means. Accompanying the Burial Transit Permit and prepared by the funeral establishment handling the body shall be a statement containing the following information: Full name of the deceased, sex, date of birth, birthplace, military service [if any], place of death, facility, city, county and State, decedent's usual occupation, marital status, name of surviving spouse, residence [street and number, city, county and State, zip code], father's name [first, middle and last], mother's name [first, middle and maiden name], the informant's name and mailing address, and the funeral establishment's name, address and license number. This statement shall be to the best of the funeral establishment's knowledge as gleaned from the informant, but the information is not warranted by the funeral establishment. There shall be no fee for the filing of either the burial transit permit or the accompanying statement.

497.623 Transfer of small cemeteries

If an abandoned cemetery, established in accordance with this Part, contains less than 20 burials, has no historical or archeological significance as determined by the Division of Historical Resources and the local government, and is located in the path of imminent development, the concerned developer, at its expense, shall be permitted to transfer the remains of the buried persons to an abandoned cemetery being maintained by the local government, provided that the provisions of s. 497.515(7) and s. 470.0295 have been complied with prior to any disinterment of human remains. If, after diligent search by property owner or developer, the next of kin or duly authorized "legally authorized person" cannot be found, the Board of County Commissioners or the City Council, after public notice and after public hearing, by resolution, may direct the disinterment of the human remains and their re-burial in a cemetery under the control and maintenance of the local government, provided the removal and re-burial includes the removal of all stones, markers and other items of identification and their establishment in the same continuation in their new location.

497.624 Rules

The Department shall adopt rules necessary to establish procedures and administer the provisions of this Part.

This Act shall take effect on December 31 of the year in which it was enacted.

NOTE: UNDERLINE DESIGNATES NEW LANGUAGE AND STRIKETHROUGH DESIGNATES LANGUAGE TO BE DELETED.

[Back to Cemetery Task Force Page](#)



- 440.93 Disciplinary actions and proceedings.

(1) The department may reprimand a registrant or deny, limit, suspend or revoke a certificate of a cemetery authority, cemetery salesperson or preneed seller if it finds that the applicant or registrant, or, if the applicant or registrant, is an association, partnership, limited liability company or corporation, any officer, director, trustee, member or shareholder who beneficially owns, holds or has the power to vote 5% or more of any class of security issued by the applicant or registrant, has done any of the following:

(aa) Engaged in unprofessional conduct.

(a)-Made a material misstatement in an application for a certificate or for renewal of a certificate.

(b) Made a substantial misrepresentation or false promise to an individual to influence the individual to purchase a cemetery lot, cemetery merchandise or mausoleum space.

(c) Engaged in any practice relating to the operation or management of a cemetery. or relating to sale of a cemetery lot, cemetery merchandise or mausoleum space which clearly demonstrates a lack of knowledge or ability to apply professional principles or skills.

(d) ~~Subject to ss. 111.321, 111.322 and 111.335, been convicted of an offense the~~ Violated any law. the circumstances of which substantially relate to the operation or management of a cemetery. or relating to the sale of a cemetery lot, cemetery merchandise or mausoleum space. A certified copy of a judgment of conviction is prima facie evidence of a violation.

(e) Advertised in a manner that is false, deceptive or misleading.

(f) Subject to ss. 111.321, 111.322 and 111.34, engaged in any practice relating to the operation or management of a cemetery. or relating to the sale of a cemetery lot, cemetery merchandise or mausoleum space while the **person's** ability to practice was impaired by mental disease or defect or by alcohol or other drugs.

(g) Violated this subchapter or any rule promulgated under this **subchapter** *or any order of the Dept.*

(1m) The department may, in addition to or in lieu of a reprimand or revocation, limitation, suspension or denial of a certificate of registration, assess against a person who has done any of the things under sub. (2) (a) to (i) a forfeiture of not more than \$5,000 for each separate offense. Each day of continued violation constitutes a separate offense.

- Plug potential ambiguity in sec. 157.08 re: sale of stock vs. land

(b) Before a cemetery authority sells or encumbers any cemetery land, except for a sale described in par. (a), the cemetery authority shall notify the department in writing of the **proposed** sale or encumbrance. If within 60 days **after** the **department** is notified of the proposed sale or encumbrance the department **notifies** the cemetery **authority** in writing that the department objects to the sale or encumbrance the cemetery **authority** may not sell or encumber the cemetery land unless the department subsequently notifies the cemetery authority in writing that the objection is withdrawn. The department may object to a sale or encumbrance only if it determines that the cemetery authority will not be financially **solvent** or that the rights and interests of owners of cemetery lots and mausoleum spaces will not be adequately protected if the sale or encumbrance occurs. The department may, before the expiration of the 60-day period, notify the cemetery authority in writing that the department approves of the sale or encumbrance. Upon receipt of the department's written approval, the cemetery authority may sell or encumber the cemetery land and is released of any liability under this paragraph. The department shall make every effort to make determinations under this paragraph in an expeditious manner.

- Increase penalties for violation of 157

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Chapter RL 52

WAREHOUSES STORING CEMETERY MERCHANDISE SOLD
UNDER PRENEED SALES CONTRACT

RL 52.01 Authority
RL 52.02 Applications
RL 52.03 Approval of warehouses located in this state

RL 52.04 Approval of warehouses located outside this state
RL 52.05 Term of approval
RL 52.06 Cancellation of approval

RL 52.01 **Authority.** This chapter is adopted pursuant to ss. 227.11 and 440.92 (7), Stats.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92.

RL 52.02 **Applications.** (1) FORMS. Applications for approval of a warehouse to store cemetery merchandise sold under a preneed sales contract shall be made on forms provided by the department and shall be delivered through the mails or otherwise to the department's office.

Note: Application forms may be obtained upon request from the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(2) **COMPLETE ANSWERS; CERTIFICATION.** No application shall be processed until all questions appearing on the application are fully completed, certified as accurate, and returned to a notary public, and all required documents are received by the department.

(3) **DETERMINATION OF APPROVAL.** The department shall provide the applicant with its determination upon the application within 60 days after receipt of the completed application and required documents.

History: Cr. Register, November, 1992, No. 442, eff. 12-1-92.

RL 52.03 **Approval of warehouses located in this state.** The department shall approve a warehouse located in this state only if the person who operates the warehouse is licensed as a public warehouse keeper by the department of agriculture, trade and consumer protection under ch. 99, Stats. Proof of licensure as a public warehouse keeper shall be made through the submission of a copy of the current license with the application.

History: Cr. Register, November, 1992, No. 442, eff. 12-1-92.

RL 52.04 **Approval of warehouses located outside this state.** The department shall approve a warehouse located outside this state upon the following conditions:

(1) **Submission of proof that the warehouse is authorized to store cemetery merchandise within its state of location.** Proof of such authorization may be made through the submission of a copy of the current license, permit, certificate, registration or other document issued by the agency regulating warehouses in that state, or through the submission of such other information or statements acceptable to the department

(2) (a) The filing with the department of a bond furnished by a surety company authorized to do business in this state in an amount that is sufficient to guarantee the delivery of cemetery merchandise to purchasers under preneed sales contracts.

(b) The bond shall be payable to the state for the benefit of purchasers of stored property or their assignees.

(c) The amount of the bond shall be in an amount approved by the department, and in no case less than 100% of the wholesale value of the cemetery merchandise that is stored and to be transported to this state as of the date of the application.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92.

RL 52.05 **Term of approval.** An approval of a warehouse by the department entitles the warehouse to store cemetery merchandise sold under a preneed sales contract for a period of one year following the issuance of the approval.

History: Cr. Register, November, 1992, No. 443, eff. 12-1-92.

RL 52.06 **Cancellation of approval.** (1) Any approval previously granted by the department may be cancelled upon the occurrence of any of the following:

(a) The failure to maintain the license in this or any other state necessary to operate a warehouse.

(b) The failure of a warehouse located outside this state to maintain the bond required under this chapter. When the department determines that a bond is insufficient, or if the bond lapses or is canceled, the warehouse shall correct the defect within 30 days after written notice from the department and, if the defect is not corrected within that period, the approval of the warehouse automatically rescinds at the expiration of the 30 day period.

(2) The owner or operator of a warehouse shall notify the department within 30 days after the occurrence of any of the events described in sub. (1).

Note: A current list of the names and addresses of all approved warehouses may be obtained from the department's Bureau of Direct Licensing and Real Estate, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

History: Cr. Register, November, 1992, No. 442, eff. 12-1-92.





State of Wisconsin
DEPARTMENT OF REGULATION AND LICENSING
CORRESPONDENCE/MEMORANDUM

DATE: May 28, 1997

FILE REF:

TO: Clete Hansen
Cemetery **Advisory** Board

FROM: Jeanne Pegelow *JMP*

SUBJECT: LawnCrypts

BOARDMEETINGDISCUSSIONS

Lawn crypts are in essence a package sale of an outer burial container and a burial space. This seems to be the case whether it is one "lawn crypt vault" placed at a time or 50 poured together with a drainage system. A definition of a lawn crypt could note that it is a package sale that includes, at a minimum, a form of outer burial container and a grave space.

It seems appropriate to make outer burial containers a part of the cemetery merchandise definition rather than be listed under the funeral director code. This change would make any preneed sales subject to the 40% trusting requirements, rather than 100% trusting regulation.

In order to ensure that trusting is done adequately on all lawn crypt sales, a note to the definition may be considered. This note would indicate that all lawn crypt sales are subject to the 15% lot perpetual care trusting requirements and they would also be subject to the 40% preneed trusting requirements if they were being sold as preneed items.

PERPETUAL CARE

Many cemeteries currently do perpetual care trusting for lawn crypt sales, however, the amount trusted varies **from** cemetery to cemetery. The audit staff has "strongly recommended" to cemeteries to trust for perpetual **care** on all lawn crypt sales. The July 2, 1992 memorandum from Jacquelynn Rothstein, however, states that: "...money received from the sale of a lawn crypt is not required to be put in trust, nor is there any requirement that any money be put in trust for an undeveloped lawn crypt space...". (last sentence, paragraph 2)

PRENEED SALES

There are **very few** cemeteries that sell preneed lawn crypts, it has been found that these cemeteries were not trusting for the preneed sales of lawn crypt spaces, again as based on the July 2, 1992 memo quoted above. The audit **staff**, however, has since determined that **the lawn** crypt containers are indeed a form of outer burial container. The cemeteries selling these preneed

5/28/97

Hansen Memo

Lawn Crypt Information

Page 2

lawn crypts have been advised that the lawn crypt is a form of outer burial container and that 100% trusting is required until the vault is placed in the ground, as per WI stats. 445.125.

TRUSTING BASED ON **CONTRACT**

Establishing the amount to trust should be based on the dollar amounts written in the contract. If there is no separation of the lawn crypt sale into lot and vault amounts, the trusting should be based on the total sales amount listed. This would eliminate discrepancies between the cemeteries* and the audit **staff's** interpretation of how much should be trusted and would also be consistent with Jacquelynn Rothstein's previous opinions:

April 7, 1992, paragraph 2, sentence 2 & 5: "...if the contract fails to itemize the **individual amounts for** the cemetery merchandise and the mausoleum space, **I think** it is reasonable for you to base the care fund calculations on the entire **amount...this** will encourage cemeterians to itemize their product costs and/or services."

June 24, 1992, paragraph 2, sentence 3: "Since this contract does not **itemize...base** your care fund calculations on **the entire amount...**". **Paragraph 3, sentence 4-6:** "...to itemize...makes the consumer aware of all the costs involved...the cemetery, the consumer, and the department all know what each and every price is for and are then able to determine if any care fund deposits are necessary."

Since these opinions, I have had only one discussion with Jacquelynn Rothstein allowing a cemetery to trust based on actual cost rather than contract cost. This was because each file had adequate information and documentation to determine the amounts and breakdowns. This is the only cemetery that has been able to and allowed to do that to my knowledge. All other cemeteries have been advised under the 1992 opinions. Requiring trusting based on the **full** amount of the sales price stated in the contract, if it is not itemized, has been the simplest way to handle the trusting calculations.

jmp
C:\WINWORD\LWNCRYPT.DOC

LIPSCOMB LAW OFFICES

522 NORTH WATER STREET
MILWAUKEE, WISCONSIN 53202

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CHRISTOPHER R. LIPSCOMB
MARK G. LIPSCOMB, JR.

FAX (414) 276-5351
TELEPHONE (414) 276-5763

March 17, 1997

Cemetery Advisory Committee
Attn: Clete Hansen
Room 133
1400 E. Washington Ave.
Madison, WI 53708-8935

Gentlemen:

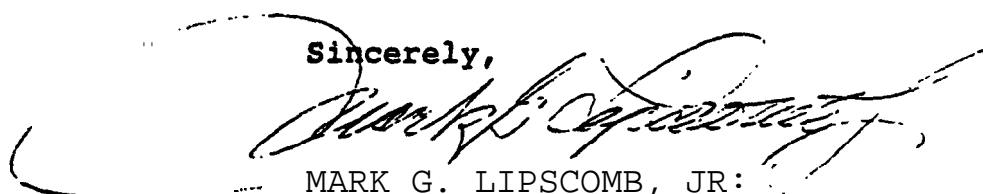
Because I will not be available for your Thursday, March 20, 1997, meeting, I wish to address the subject matter of Item 11 of your priority one issues. Item 11 indicates "the law does not address trusting requirements relating to lawn crypts".

Page 17 of the enclosures **for** your agenda for March 20, 1997, **is** a proposal of the Badger State Cemetery Association regarding regulation of lawn crypts.

I would like the Advisory Committee to know that the Wisconsin Burial Vault Association is flatly opposed to the proposal as stated on Page 17. The Wisconsin legislature, when it adopted a definition **of** cemetery merchandise in Chapter **157.061(3)**, clearly indicated that our burial containers (or burial vaults) were not cemetery merchandise.

The Committee is urged to look to a definition of lawn crypts that does not require a change in the definition of cemetery merchandise. Your priority **one** issue should be addressed to the "trusting requirements relating to lawn crypts". **I** am certain you **can** develop "address trusting requirements" without including outer burial containers in your regulatory concerns.

Sincerely,



MARK G. LIPSCOMB, JR.

MGL:cg





State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

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Marlene A. Cummings
Secretary

1400 E WASHINGTON AVENUE
PO BOX 9935
MADISON, WISCONSIN 53708-9935
(608) 266-2112

Jimmy G. Thompson
Governor

December 9, 1998

TO: Cemetery Authority

RE: Questionnaire

Enclosed please find a questionnaire regarding the status of platting for your cemetery. Sec. 157.07, Wis Stats. requires that all portions of cemetery authority lands required for burial to be surveyed and platted.

Please return the completed questionnaire to the Department of Regulation and Licensing by no later than November 6, 1998. Completed questionnaires must be sent to the Department of Regulation and Licensing, Attn: HBX, PO Box 8935, Madison, WI 53708-8935.

Thank you for your cooperation. Please feel free to contact me if you have any questions.

Sincerely,

Cynthia Thomas
Project Investigator
Division of Enforcement
Tele. (608) 261-9736

Enclosure

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Regulatory Boards

Accounting; Architects; Landscape Architects; Professional Geologists; Professional Engineers, Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers; Marriage and Family Therapists and Professional Counselors; and Veterinary.

CEMETERY AUTHORITY PLATTING QUESTIONNAIRE
Return to Department of Regulation and Licensing Attn HBX PO Box 8935 Madison WI 53708

1. Name of cemetery _____

2. Location _____
[Street, City, county, State, Zip Code]

3. Are all of the lands held by the cemetery authority platted? Yes No.

4. If your response to question #3 is NO, please describe:

a. The areas of unplatted land held by the cemetery authority.

b. The use that is currently being made of any unplatted lands.

Attach additional page(s) if necessary.

5. Does the cemetery currently contain grave sites in **unplatted** lands? Yes No

6. If your response to question #5 is YES, please explain (Attach additional page(s) if necessary)

7. For all plats of the cemetery grounds, please provide:

a. The name of the registered land **surveyor** who prepared the plat.

b. The date of the plat. _____

c. The date that the plat was recorded with the county registrar of deeds.

d. The file locator information for the plat _____
[Volume/ page number(s) County]

e. Attach a copy of the county resolution approving the cemetery plat that is affixed to the cemetery plat filed with the registrar of deeds.

8. Person completing this questionnaire:

[Name/Position Address Telephone]

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Florida

contracts

(6) Provide to the customer, upon the purchase of any burial right, merchandise, or service, a written contract.

(a) The written contract shall be completed as to all essential provisions prior to the signing of the contract by the customer.

(b) The written contract shall provide an itemization of the amounts charged for all services, merchandise, and fees, which itemization shall be clearly and conspicuously segregated from everything else on the written contract.

(7) Provide the licensee's policy on cancellation and refunds to each customer.

(6) In a manner established by rule of the board, provide on the signature page, clearly and conspicuously in boldfaced type larger than the largest type on the rest of the page, the following:

(a) The purchase price.

(b) The amount to be trusted.

(c) The amount to be refunded upon contract cancellation.

(d) The amounts allocated to merchandise, services, and cash advances.

(e) A description of the merchandise covered by the contract to include, when applicable, model, manufacturer, and other relevant specifications.

(f) The toll-free number of the department which is available for questions or complaints.

(g) A statement that the purchaser shall have 30 days from the date of execution of contract to cancel the contract and receive a total refund of all moneys paid.

History.—s. 37, ch. 80-238; b 2, c1. 81-318; 1, ch. 89-8; ss 75, 122, ch. 93-399.

Note.—Former b 559.407; b 497.046.

497.337 Prohibition on sale of personal property or services.-

(1) This section applies to all cemetery companies licensed pursuant to this chapter that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of human remains or the commemoration of the memory of a deceased human being and also to any person in direct written contractual relationship with licensed cemetery companies.

(2)(a) Except as otherwise provided in this chapter, no cemetery company shall directly or indirectly enter into a contract for the sale of personal property or services, excluding burial or interment rights, which may be used in a cemetery in connection with disposing of human remains, or commemorating the memory of a deceased human being, if delivery of the personal property or performance of the service is to be made more than 120 days after receipt of final payment under the contract of sale, except as provided in s. 497.417. This shall include, but not be limited to, the sale for future delivery of burial vaults, grave liners, urns, memorials, vases, foundations, memorial bases, and similar merchandise and related services commonly sold or used in cemeteries and interment fees but excluding burial or interment rights.

(b) For the purposes of this section, the term 'delivery' means actual delivery and installation at the time of need or at the request of the owner or the owner's agent.

Merchandise is not considered delivered under paragraph (a) if it is stored on the grounds of the cemetery or at a storage facility except for monuments, markers, and permanent outer burial receptacles that are stored in a protected environment and are comprised of materials designed to withstand prolonged, protected storage without adversely affecting the structural integrity or aesthetic characteristics of such permanent outer burial receptacles.

(c) In lieu of delivery as required by paragraph (b), for sales to cemetery companies and funeral establishments, and only for such sales, the manufacturer of a permanent outer burial receptacle which meets standards adopted by the board may elect, at its discretion, to comply with the delivery requirements of this section by annually submitting, in writing, evidence of the manufacturer's financial responsibility with the board for its review and approval. The standards and procedures to establish evidence of financial responsibility shall be those in s. 497.423 or s. 497.426, with the manufacturer of permanent outer burial receptacles which meet national industry standards assuming the same rights and responsibilities as those of a certificateholder under s. 497.423 or s. 497.425.

(3) No nonprofit cemetery corporation which has been incorporated and engaged in the cemetery business prior to and continuously since 1915 and which has current trust assets exceeding \$2 million shall be required to designate a corporate trustee.

History.—s. 6, ch. 72-78; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 11, ch. 78-407; ss. 23, 39, 40, ch. 80-238; s. 411, ch. 81-259; ss. 2, 3, ch. 81-318; ss. 2, 3, ch. 82-7; s. 13, ch. 85-202; s. 7, ch. 89-227; 4, 1, ch. 89-8; ss. 76, 122, ch. 93-399.

Note.—Former s. 559.441; s. 497.048.

497.341 Burial without regard to race or color.-

(1) No cemetery company or other legal entity conducting or maintaining any public or private cemetery may deny burial space to any person because of race or color. A cemetery company or other entity operating any cemetery may designate parts of cemeteries or burial grounds for the specific use of persons whose religious code requires isolation: Church cemeteries may limit burials to church members and their families.

(2) Any cemetery company or other legal entity which violates the provisions of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.083, and each violation of this section constitutes a separate offense.

History.—s. 9, ch. 72-78; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 31, 39, 40, ch. 80-238; ss. 2, 3, ch. 81-318; s. 1, ch. 89-8; ss. 83, 122, ch. 93-399.

Note.—Former s. 559.52; s. 497.061.

497.345 Abandoned cemeteries; immunity: actions.-

(1) Notwithstanding any provision of law to the contrary, a county or municipality which has within its jurisdiction an abandoned cemetery or a cemetery that has not been reasonably maintained for a period in excess of 6 months may, upon notice to the department, take such action as is necessary and appropriate to provide for maintenance and security of the cemetery. The solicitation of private funds and the expenditure of public funds for the purposes enumerated in this subsection are hereby authorized, provided that no action taken by a county or municipality under this subsection shall

Florida

Appellant, president of Florida cemetery company convicted of failure to make required contributions to care and maintenance trust fund of cemetery, may introduce evidence to negate intent, but proof of appellant's assignment of note and mortgage to trust fund prior to sales for which appellant failed to remit required contributions is not relevant to this issue. Coffin v. State, 374 So. 2d 304 (1979).

In appeal of president of Florida cemetery company convicted of failure to make required contributions to care and maintenance trust fund of cemetery, on alleged standardless discretion vested in Department of Banking and Finance because of control over size of trust fund and contributions thereto is irrelevant to appellant's conviction. Coffin v. State, 374 So. 2d 304 (1979).

3D-30.002 Trust Fund; Multiple Items; Lump Sum Contracts.

Specific Authority 20.05(5), 497.011 FS. Law Implemented 497.021, 497.023 FS. History—New 3-22-63. Repealed 2-17-73. Renumbered from 3-8.02 to 3D-30.02 on 9-8-75. Formerly 3D-30.02.

3D-30.003 Deficiencies in Trust Funds.

Specific Authority 20.05(5), 497.011 FS. Law Implemented 497.021, 497.023 FS. History—New 3-22-63. Renumbered from 3-8.03 to 3D-30.03 on 9-8-75. Amended 9-29-75. Formerly 3D-30.03. Repealed 10-25-87.

3D-30.004 Scn Cemetery Company: Establishment; Approval Required by County Commissioners.

Specific Authority 20.05(5), 497.011 FS. Chapter 72-76. Laws of Florida. Law Implemented 497.006, 609.60 FS. History—New J-2243. Repealed 2-17-73. Renumbered from 3-8.04 to 3D-30.04 on 9-8-75. Formerly 3D-30.04.

3D-30.005 New Cemetery; Suitability of Site.

No application for authority to organize cemetery may be considered until proponents file with the Department of Banking and Finance a statement that in the opinion of the local health authorities the proposed site is suitable for the intended use. Proponents may be required to furnish a statement from 2 qualified persons that land or site is suitable or can be made suitable. In case land or site is not presently suitable, plans and specifications, as well as estimated costs to correct the unsatisfactory condition of the land or site shall be furnished.

Specific Authority 20.05(5), 497.011 FS. Law Implemented 497.006 FS. History—New 3-22-63. Renumbered from 3-8.05 to 3D-30.05 on 9-8-75. Formerly 3D-30.05.

3D-30.006 Accounting Procedures.

Specific Authority 20.05(5), 497.011(1) FS. Law Implemented 497.023, 497.048, 559.482 FS. History—New 6-16-72. Renumbered from 3-8.06 to 3D-30.06 on 9-8-75. Formerly 3D-30.06. Transferred to 3F-7.014.

3D-30.007 Percentage Deposits Required on Turf Tops, Lawn Crypts, Etc.

Specific Authority 20.05(5), 497.011 FS. Law Implemented 497.038, 497.073 FS. History—New 7-20-73. Renumbered from J-8.07 to 3D-30.07 on 9-8-75. Formerly 3D-30.07. Transferred to 3F-7.002.

3D-30.008 Grave Spaces; Definition Limited.

Specific Authority 20.05(5), 170.531(2)(a), 497.011 FS. Law Implemented 497.005(16) FS. History—New 7-20-73. Renumbered from 3-8.08 to 3D-30.08 on 9-8-75.

Amended 1-27-81. Formerly 3D-30.08. Transferred to 3F-6.001.

3D-30.009 Safekeeping of Records.

Specific Authority 20.05(5), 497.011 FS. Law Implemented 497.035(3) FS. History—New 7-20-73. Renumbered from 3-8.09.10 to 3D-30.09 on 9-8-75. Amended 8-22-75. Formerly 3D-30.09. Transferred to 3F-6.004.

3D-30.010 Written Contracts Required.

Written contracts on all sales must be made between the cemetery company and the purchaser which contracts shall state the sales prices, terms and other pertinent information relative to the transaction. Such contracts shall be serially numbered and filed by the cemetery company in numerical sequence. All sales shall be entered into a sales journal numerically. Any additional purchases or deletions made by a customer more than 30 days subsequent to the original sale must be shown on a separate contract and shall be assigned a separate serial number which number shall be the current unused number in consecutive order. The sales contract form, in order to meet the approval of the Department, must contain a full disclosure and itemization of each item or service purchased and a statement that a charge for opening and closing of a burial space is not included and will require an extra charge unless otherwise indicated. The contract must conform to the statutory requirements of Chapter 520, Part II, if the sale is for the purchase of burial merchandise or services and financed as a retail installment transaction. A copy of the sales contract form must be approved by the Department prior to use by the cemetery.

Specific Authority 20.05(5), 170.531(2)(a), 497.011(1) FS. Law Implemented 497.018(1)(q), 497.033, 497.022, 497.023(7), 497.048(11), (12), (13), 497.029(13), Chapter 520, Part II FS. History—New 7-20-73. Renumbered from 3-8.10 to 3D-30.10 on 9-8-75. Amended J-876, 1-27-81. Formerly 3D-30.10.

3D-30.011 Accounts Receivable Records.

Account receivable records pertaining to each individual purchaser shall be assigned the same serial number as shown on the purchaser's contract and shall be maintained in numerical sequence. They shall contain the name and address, deferred payment price, date of payment, retail price of each item, wholesale price plus 10% of merchandise by item, schedule of payments and percentage required to be deposited in the care and maintenance and merchandise trust funds from each payment.

Specific Authority 20.05(5), 170.531(2)(a), 497.011(1) FS. Law Implemented 497.035, 497.022, 497.023(16), 497.029(3), 497.048(12) FS. History—New 7-20-73. Renumbered from 3-8.11 to 3D-30.11 on 9-8-75. Amended 1-27-81. Formerly 3D-30.11.

3D-30.012 Receipt and Delivery of Pre-need Merchandise; Documentation Required.

Specific Authority 20.05(5), 497.011 FS. Law Implemented 497.035, 497.046 FS. History—New 7-20-73. Renumbered from 3-8.12 to 3D-30.12 on 9-8-75. Amended 9-29-75. Formerly 3D-30.12. Transferred to 3F-7.003.

590-3-3-.03 Business, Corporate, and Financial Records. Amended.

(1) Sales Contracts.

(a) Sale of a cemetery lot, space, niche, or crypt by or on behalf of a perpetual care cemetery required to register with the Secretary of State shall be made and evidenced by a written sales contract. The sales contracts for each cemetery shall be consecutively numbered in one continuous numerical sequence for the entire cemetery.

Georgia

(b) Each sales contract shall include the following items:

1. Identification of the lots or spaces covered by the contract;
2. The name of the salesperson who sold the items pursuant to the contract;
3. The total sales price;
4. Separately itemized charges for the lots and any merchandise or services purchased; and
5. A statement in bold-faced type at least eight points larger than the type size used in the body of the contract, stating "This contract provides for perpetual care or endowment care."

(c) If a certain amount is set aside on the sales contract as a perpetual care charge, that amount must be included in the total sales price in determining the required deposit to the perpetual care trust fund.

(d) Any additional sales to or material contractual modifications or amendments with previous purchasers shall be made pursuant to a new contract number.

(e) Each perpetual care cemetery shall maintain a legible copy (photostatic or otherwise) of every executed sales contract. Said copies shall be available for inspection upon request by representatives of the Secretary of State.

(2) ~~Corporate and Financial Records.~~ Each perpetual care cemetery required to register with the Secretary of State shall keep and maintain its business and financial records for the cemetery and its perpetual care trust fund as segregated records separate and apart from the records of any other cemetery, trust, or business, including any other cemetery or business of the cemetery owner, cemetery salespersons, or perpetual care trustee.

(3) ~~Plat of Real Property.~~ Each perpetual care cemetery required to register with the Secretary of State shall cause to be made a plat in accordance with Official Code of Georgia Annotated §44-2-26, as now or hereafter amended. A copy of said plat shall be kept and made available for public inspection at the cemetery's principal place of business in Georgia that is open to the public.

(4) ~~Sales Journal.~~ Each perpetual care cemetery required to register with Secretary of State shall keep and maintain a sales journal at the cemetery's principal place of business. Said sales journal shall contain, at a minimum, the following items:

Georgia

NICOLET MEMORIAL GARDENS

2770 Bay Settlement Road • Bay, WI 54311 • (414) 468-0382

No 005967

CEMETERY INTERMENT RIGHTS, MERCHANDISE AND SERVICES PURCHASE/SECURITY AGREEMENT THIS AGREEMENT PROVIDES FOR ENDOWMENT CARE

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This Agreement is made this _____ day of _____, 19____, by and between the undersigned "Seller" and _____ hereinafter called the "Purchaser"

Address _____

Residence Telephone No. (_____) _____ Street _____ City _____ State _____ Zip _____ Day Telephone No. (_____) _____

WITNESSETH THAT: The Seller agrees to sell and Purchaser agrees to buy the following described Interment Rights, Merchandise and Services.

Developed Predeveloped Lot Lawn Crypt Mausoleum Niche Other _____

Description of Interment Rights: _____

No.	INTERMENT RIGHTS, MERCHANDISE AND SERVICES	ITEMIZATION OF AMOUNT FINANCED
	Interment Rights (inc. \$ _____ E.C.) \$ _____	Less:
M	emorialization - Type _____	Down Payment Cash (\$ _____)
s	i _____ Design _____	Credit Fee (_____)
	Memorial Base-Type _____	(b) Total Down Payment (\$ _____)
	Size _____ Color _____	(c) Amount Financed (a - b) _____
	Memorial Endowment Care _____	(i) Less Interment and Recording Fees not subject to Finance Charge _____
	Memorial Installation/Inspection Fee _____	(d) Amount Subject to Finance Charge (c - i) _____
	casket - Description _____	(e) Finance Charge _____
	Material: Wood/Metal _____ Gauge _____	(f) Credit Life Insurance _____
	Outer Burial Container _____	(g) Total of Payments _____
	Interment and Recording Fee _____	(h) Deferred Payment Price (a + e + f) \$ _____
	Processing Fee 35.00	
	Other _____	
	Travel Protection Plan (see below) _____	Remarks: _____
	Sales Tax _____	
	(a) Total Cash Price (Including Sales Tax) \$ _____	

Travel Protection Plan being purchased hereunder is a product provided by World Access Corporation, not by the cemetery identified above. World Access Corporation is not owned by or affiliated with such cemetery, and the cemetery shall have no responsibility for the performance of the services associated with the Travel Protection Plan. The Purchaser will be required to enter into a separate contract with World Access Corporation pertaining to Travel Protection Plan. That plan has been referenced in this Agreement and included in the purchase price above solely for the convenience of the Purchaser in making payments.

ITEMIZATION OF AMOUNT FINANCED: \$ _____ shall be credited to your account with the Seller for the Interment Rights, Merchandise and Services the Seller is providing to you (this amount is equal to the Total Cash Price less your down payment, if any).

ANNUAL PERCENTAGE RATE ¹ The cost of your credit as a yearly rate. _____ %	FINANCE CHARGE ² The dollar amount the credit will cost you. (e) \$ _____	Amount Financed The amount of credit provided to you or on your behalf. (c) \$ _____	Total of Payments & The amount you will have paid after you have made all payments as scheduled. (g) \$ _____	Total Sale Price The total cost of your purchase on credit, including your down payment of \$ _____ (b) (a+e+f) \$ _____
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Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
One	\$ _____	Beginning

INSURANCE: Credit life insurance is not required to obtain credit and will not be provided unless you sign or initial the appropriate box and agree to pay the additional cost.

Credit Life Premium Cost
 Individual Joint
I want credit life insurance. YES NO (Purchaser to initial applicable box)
I want credit life insurance. YES NO (Purchaser to initial applicable box)

Prepayment: If you pay off early, YOU will be entitled to a rebate of all or part of the Finance Charge.

Security: You are giving a security interest in the goods and property being purchased.

Late Charges: If full payment is not made within 15 days after it is due, you will be charged \$1.00 or 5% of such payment, but not exceeding \$15.00.
Other Provisions: See this Agreement for any additional information about nonpayment, default, any required repayment in full (exclusive of unearned finance charges) before the scheduled date, and prepayment rebates and penalties.

1 The Annual Percentage Rate is imposed only on the portion of the Amount Financed that is subject to Finance Charge.

2 Finance Charges are computed on all items excluding the Interment and Recording Fee.

If accepted by Seller, the parties hereto agree to the following terms and conditions:

1. Agreement to Pay. Having first been quoted both a Total Cash Price and a Total Sale Price for the items described above, and for value received, the undersigned Purchaser jointly and severally, if more than one, promises to pay to the order of Seller, at its address shown above, the amount Identified above as the Total of Payments in accordance with the payment schedule dates set out above.

2. Title. Seller will retain title to said Interment Rights and Merchandise until the Total Sale Price has been paid by Purchaser to Seller.

3. Cemetery Rules and Regulations. Purchaser agrees that all rights conveyed under this Agreement are subject to, and Purchaser agrees to at all times comply with, the present rules, regulations and bylaws of Seller on file and subject to examination in its office as may be hereinafter adopted, amended or altered.

4. Prepayment. Upon prepayment in full, whether voluntarily or upon acceleration by reason of Purchaser's default and payment in full, or judgment being entered against Purchaser for the unpaid balance, Purchaser shall receive a rebate of any unearned Finance Charge computed in accordance with the actuarial method. If the Total Sale Price is paid within 12 months of the date of this Agreement, or on or before its maturity, if it matures in less than 12 months, Purchaser will be entitled to a full rebate of any Finance Charge.

5. Interment and Recording Fee. Unless otherwise specifically provided herein, a charge for opening and closing the interment space and applicable cemetery document recording (herein referred to as "Interment and Recording Fee"), is not included in the Total Cash Price set forth herein, and there will be an added charge for this service at the time of need. If the Interment and Recording Fee is purchased hereunder, the payment of such Interment and Recording Fee entitles the Purchaser to protection against overtime charges which would otherwise apply if interment were to be necessary on a weekend, holiday or after normal working hours. If the prevailing price for Interment and Recording at the time of interment is less than the fees paid for such services under this Agreement, you will be refunded the difference.

6. Issuance of Certificate of Interment Rights. Upon payment of the Total Sale Price by the Purchaser, the Seller agrees to convey the above-described Interment Rights by issuance of a Certificate of Interment Rights to the person(s) designated below:

NAME _____ ADDRESS _____ CITY _____ NEXT OF KIN _____ NAME _____ ADDRESS _____ CITY _____ ()

Name Address City, State, Zip Phone

NOTICE TO PURCHASER: (1) DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED. (2) DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES. (3) YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN. (4) YOU HAVE THE RIGHT AT ANY TIME TO PAY IN ADVANCE THE UNPAID BALANCE DUE UNDER THIS AGREEMENT AND YOU MAY BE ENTITLED TO A PARTIAL REFUND OF THE FINANCE CHARGE. (5) UNDER WISCONSIN LAW, YOU, THE PURCHASER MAY VOID THIS TRANSACTION AT ANY TIME WITHIN 10 DAYS OF THE DATE OF THIS AGREEMENT, PROVIDED NO INTERMENT OR SUBSTANTIAL SERVICE OR MERCHANDISE HAS BEEN PROVIDED HEREUNDER, IN WHICH EVENT SELLER SHALL REFUND WITHIN 30 DAYS AFTER THIS TRANSACTION IS VOIDED ALL MONIES PAID FOR MERCHANDISE OR SERVICES WHICH HAVE NOT BEEN SUPPLIED OR DELIVERED.

NOTICE: BY SIGNING THIS AGREEMENT, YOU ARE AGREEING TO HAVE ANY AND ALL DISPUTES BETWEEN YOU AND THE SELLER RESOLVED BY ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A COURT OR JURY TRIAL AS WELL AS YOUR RIGHT OF APPEAL.

Time _____ AM _____ PM Source _____ Seller (Creditor):

Signed this _____ day of _____, 19____. The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

CEMETERY SERVICES, INC. dba NICOLET MEMORIAL GARDENS 2770 Ray Settlement Road Green Roy, WI 54311

Purchaser _____ Date of Birth _____ *S.S.N. _____ Male Female Accepted By: _____ Authorized Representative _____ Co-Purchaser _____ Date of Birth _____ Counselor _____ No. _____

*Under penalties of perjury, the Purchaser represents and warrants that the Social Security number shown on this Agreement is his or her correct identification number and that he or she is not subject to federal backup withholding or any order from the Internal Revenue Service that would require special reporting to the IRS by Seller.

Federal Notice of Right To Cancel: If This Sale Was Solicited And Your Agreement To Purchase Was Made At A Place Other Than The Seller's Place of Business: YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT. NOTICE SEE OTHER SIDE FOR ADDITIONAL TERMS THAT ARE PART OF THIS AGREEMENT.

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ADDITIONAL TERMS AND CONDITIONS

7. **Credit Life Insurance.** The Purchaser is not required to obtain credit life insurance and such is not a determining factor in the approval of this Agreement. If purchaser elects credit life insurance as indicated on the previous page, then Purchaser understands that such coverage is in accordance with the terms and conditions of the policy and/or certificate of insurance delivered to the Purchaser.
8. **Application of Payments.** In the event of the death of either Purchaser or Co-Purchaser prior to payment in full, all payments made by Purchasers shall be applied to the Interment Right being used in the following order: First, to the Finance Charge, if any; next, to the Interment Right; then to the Endowment Care Fund; and finally, to Merchandise and Services. All payments made by Purchaser shall be applied in the same order as stated above even where such a death has not occurred. All prepayments will be applied to the next installment then due.
9. **Death Prior to Payment in Full.** Should the need for interment occur before final payment of the Total Sale Price set forth herein, the Purchaser shall have the right to inter the deceased in the interment space selected, provided the proportionate part of said Total Sale Price applicable to the Interment Right, Merchandise or Service to be used shall have first been paid.
10. **Default or Cancellation.** Failure to make a payment within 15 days of the time required shall be a default. Upon the minimum applicable legal period to cure the default or failure by the Purchaser to comply with the provisions hereunder or upon receipt of Purchaser's written request to cancel this Agreement, or in the event of a proceeding in receivership or insolvency instituted by or against Purchaser, Seller shall have the right to cancel all or any part of this agreement, as related to any unused Interment Rights, and to retain all monies paid as liquidated damages and not as a penalty. No refunds will be made of any monies paid for Interment Rights on this Agreement by Purchaser to Seller. Upon cancellation, at Seller's discretion, Seller may issue a Certificate of Interment Rights for Interment Rights of the Seller's selection, provided the Purchaser's Net Equity (total amount paid less earned Finance Charge) is equal to or greater than the selling price of said Interment Rights. If Seller elects to cancel this Agreement, it shall be relieved of all further obligations hereunder.
To the extent permitted by applicable law, Purchaser shall be entitled to cancel the portion of this Agreement allocable to Caskets or Burial Vaults purchased hereunder at any time prior to delivery by providing Seller with written notice of such cancellation and receive a refund of 100 percent of the principal paid hereunder allocable to such items. Once an Outer Burial Container has been delivered in accordance with applicable state law by installing it in the interment space, it cannot be cancelled by Purchaser.
With regard to caskets and outer burial containers purchased hereunder, all funds allocable to such merchandise shall be deposited and maintained in trust in accordance with state law, except that the Seller may, upon payment in full, install the outer burial container in the cemetery space to which the Purchaser's interment rights relates. Upon death, the casket shall be delivered to the Purchaser or Beneficiary, provided that full payment has been made by or on behalf of Purchaser.
11. **Liquidated Damages.** The parties agree that it is impractical and extremely difficult to fix the actual damages, if any, which may result from the breach or cancellation of this Agreement by Purchaser. If this Agreement is cancelled, Seller may retain as liquidated damages all monies paid hereunder to Seller allocable to Interment Rights, which shall be Seller's exclusive remedy against Purchaser. Upon such cancellation, all rights, title and interests of Purchaser under or by virtue of this Agreement shall terminate.
12. **Collection Costs.** If the liquidated damages provision herein is held to be unenforceable, then Purchaser agrees to pay all reasonable costs of collection to the extent permitted by law, including court costs, disbursements, and other lawful charges incurred in the collection of Purchaser's indebtedness; provided, however, that each party shall pay its own attorneys' fees incurred in connection with any collection effort or any other dispute of any nature relating to this Agreement and the transaction contemplated hereby. It is further agreed that the waiver by the Seller of any breach of any of the covenants contained herein, shall not be construed as a waiver of the covenant itself or any subsequent breach thereof.
13. **Assignment.** Purchaser's rights under this Agreement may not be assigned without the prior written consent of the Seller. This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the Purchaser. Purchaser further agrees that Seller may assign its rights under this Agreement and that this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Seller.
14. **Conveyance of Title and Delivery.** Upon payment in full of the Total Sale Price to Seller or Seller's assignee, Seller will convey to Purchaser all rights, title or interests in the within described Interment Rights and will deliver the within described Merchandise. With regard to merchandise purchased hereunder (other than caskets), upon payment in full of the Total Sale Price to Seller or Seller's assignee, Seller may: (1) complete delivery of the within described goods to a warehouse which complies with the requirements of applicable Wisconsin law or store the merchandise on Seller's property in a manner consistent with applicable law (in either case, the Seller agrees to affix the merchandise to the applicable grave space or mausoleum crypt at no additional charge within 30 days after being requested to do so in writing by the Purchaser or Beneficiary) or (2) affix the merchandise to the cemetery lot or mausoleum to which the interment right relates.
15. **Sale for Personal/Family Use Only.** Purchaser agrees that the Interment Rights purchased hereunder are being purchased for personal or family interment purposes only and not for speculation, and neither Seller, its agents nor sales persons, in any way represent or guarantee a resale thereof.
16. **Substitution of Merchandise.** Purchaser and Seller acknowledge and agree that this Agreement does not call for the sale of any specific brand or make of casket or outer burial container and that Seller is only obligated to furnish a casket or outer burial container which conforms to the general description listed in this Agreement and is of equivalent quality. If a particular casket or outer burial container are unavailable at the time of delivery, Seller will furnish comparable merchandise similar in style and quality of material equal in value or better.
17. **Acceptance by Seller.** This Agreement will be of no force or effect until counter-signed by a duly authorized representative of Seller.
18. **Preconstruction Sales.** In the event this Agreement includes Interment Rights in a section of a mausoleum or belowground crypts which has not been constructed as of the date of this Agreement, Seller agrees to complete construction of such section within six years after the date of the first sale of Interment Rights therein. If construction is not completed within six years of the date of such first sale, all monies paid by the Purchaser hereunder for such Interment Rights shall be refunded upon Purchaser's request and neither party shall have any further obligation to the other hereunder; provided, however, that if failure to complete such construction within said six-year period is the result of any strike, lockout, invasion, insurrection, riot, war, order of any civil or military authority or of any court, or any other unforeseen contingency beyond the control of Seller, then the aforementioned six-year period shall be extended by the duration of the event causing such delay (unless such extension would violate applicable law).
9. **Void of Agreement.** In the event this Agreement includes Interment Rights in a section of a preconstructed mausoleum or belowground crypts, Purchaser may void this Agreement if any of the following conditions applies: (1) The plans for constructing the mausoleum or belowground crypts are not approved under s.157.12(2)(a); (2) The construction of the mausoleum or belowground crypts does not begin within three (3) years after the date of the first sale of interment rights therein; (3) If the mausoleum is a public mausoleum, the construction of the mausoleum is not certified under s.157.12(2)(b) within six (6) years after the date of the first sale of interment rights therein. In the event Purchaser voids this Agreement pursuant to this Paragraph 17, Seller shall refund to Purchaser, within 30 days of such void, all money paid by the Purchaser for such Interment Rights, together with interest calculated at the legal rate of interest as provided under S. 138.04
10. **Approval for Preconstruction Sale.** In the event this Agreement includes Interment Rights in a section of a mausoleum or belowground crypts which has not been constructed as of the date hereof, **THE PLANS FOR CONSTRUCTING THE MAUSOLEUM SPACE HAVE BEEN SUBMITTED TO THE DEPARTMENT OF DEVELOPMENT FOR APPROVAL. THE SELLER IS RESPONSIBLE FOR ALL COSTS REQUIRED TO OBTAIN APPROVAL OF THE PLANS BY THE DEPARTMENT OF DEVELOPMENT, COMPLETE THE CONSTRUCTION, AND OBTAIN CERTIFICATION OF THE CONSTRUCTION BY THE DEPARTMENT OF DEVELOPMENT.**
11. **Need for Interment Prior to Development.** In the event the need for interment occurs prior to the development or completion of the interment property described herein, Seller may, with the consent of Purchaser, and at no increase in price, permanently transfer Purchaser's Interment Rights to other reasonably comparable developed interment property, or temporarily transfer Purchaser's rights to other reasonably comparable interment property.

of interment and disinterment and there shall be no additional charge to the Purchaser for this service. The need for interment means that a death has occurred in the family after the date of purchase of pre-developed cemetery property.

22. **Limitation of Damages.** It is impractical and extremely difficult to fix the actual damage, if any, which may proximately result from a breach of this Agreement by Seller or any error or mistake in connection with the Interment Rights provided hereunder or any other breach of the Agreement and in the event of a resulting loss, Seller's liability hereunder shall be limited to amounts theretofore paid to Seller by Purchaser plus a maximum of \$100.00 as liquidated damages and not as a penalty and this remedy shall be exclusive.

23. **Endowment Care Fund (hereinafter referred to as "Care and Maintenance Trust Fund").** Seller hereby binds itself to maintain the interment spaces or other interment facilities described herein, and to deposit from payments received hereunder the amounts required by law to a Care and Maintenance Trust Fund created for the continual maintenance of all developed cemetery property without further assessment to Purchaser. Such deposit to the Care and Maintenance Trust Fund shall be in trust with an established State or National bank or savings and loan association licensed in this State as Trustee and in accordance with the applicable law governing such Care and Maintenance Trust Fund, and the net income from the Care and Maintenance Trust Fund shall be used solely for the continuing care and maintenance of the developed cemetery and to pay such costs as may be reasonably necessary for the administration of the Care and Maintenance Trust Fund.

24. **Merchandise and Services Trust Fund.** Seller shall, in accordance with applicable state law, make deposits into a Merchandise and Services Trust Fund, and/or, as allowed by law, post a sufficient bond with the Department of Development.

SECTION 440.92(2) OF THE WISCONSIN STATUTES SPECIFIES THE RIGHTS OF THE PURCHASER UNDER THIS CONTRACT. DEPENDING ON THE CIRCUMSTANCES, THESE MAY INCLUDE THE RIGHT TO VOID THE CONTRACT AND RECEIVE A REFUND OR THE RIGHT TO ASSIGN AN INTEREST IN THE CONTRACT TO ANOTHER PERSON.

25. **Notice.** Notices to the Purchaser shall be sufficient if mailed to the Purchaser's last known address, as reflected in Seller's records.

INCOME TAX NOTICE: PURCHASER MAY BE SUBJECT TO INCOME TAX ON INCOME EARNED ON ANY FUNDS REQUIRED TO BE TRUSTED RELATING TO MERCHANDISE AND/OR SERVICES PURCHASED HEREUNDER.

ARBITRATION: ANY CONTROVERSY OR CLAIM ARISING BETWEEN THE PARTIES (INCLUDING THE INTERPRETATION OF THIS ARBITRATION CLAUSE) SHALL BE SUBMITTED TO AND FINALLY RESOLVED BY MANDATORY AND BINDING ARBITRATION IN ACCORDANCE WITH THE STATUTES, RULES OR REGULATIONS GOVERNING ARBITRATIONS IN THE STATE WHERE THIS AGREEMENT HAS BEEN EXECUTED. IN THE ABSENCE OF SUCH STATUTES, RULES OR REGULATIONS, THE ARBITRATION PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE APPLICABLE RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"); PROVIDED, HOWEVER, THAT THE FOREGOING REFERENCE TO THE AAA RULES SHALL NOT BE DEEMED TO REQUIRE ANY FILING WITH THAT ORGANIZATION, NOR ANY DIRECT INVOLVEMENT OF THAT ORGANIZATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE APPLICABLE STATUTES, RULES OR REGULATIONS, THE ARBITRATOR SHALL BE SELECTED BY MUTUAL AGREEMENT OF THE PARTIES OR BY A COURT OF COMPETENT JURISDICTION IN THE CITY OR COUNTY IN WHICH SELLER IS LOCATED, UPON THE APPLICATION OF ONE OR BOTH PARTIES. THIS ARBITRATION PROVISION SHALL BE BINDING ON THE SELLER, YOU AS THE PURCHASER, AND ANY OTHER PERSON WHO CLAIMS TO BE A THIRD PARTY BENEFICIARY OF THIS AGREEMENT.

DISCLAIMER OF SELLER'S WARRANTIES: THE ONLY WARRANTY ON ANY GOODS SOLD IN CONNECTION WITH THIS AGREEMENT IS THE EXPRESS WRITTEN WARRANTY, IF ANY, GRANTED BY THE MANUFACTURER. SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, WITH RESPECT TO THE GOODS SO DESCRIBED. WITH RESPECT TO MAUSOLEUM CRYPTS, LAWN CRYPTS, OR NICHES SOLD HEREUNDER, THE ONLY WARRANTIES RELATING TO SUCH ITEMS SHALL BE THOSE IMPLIED WARRANTIES PROVIDED BY LAW AND SELLER MAKES NO EXPRESS WARRANTIES WITH RESPECT TO SAID ITEMS.

ENTIRE AGREEMENT: THIS AGREEMENT CONTAINS ALL TERMS WHICH HAVE BEEN AGREED UPON BY THE PURCHASER AND THE SELLER RELATING TO THE GOODS AND SERVICES LISTED ON THE OTHER SIDE. THIS CONTRACT REPLACES ALL OTHER DISCUSSIONS AND AGREEMENTS, WHETHER ORAL OR WRITTEN, RELATING TO THOSE GOODS AND SERVICES. NO SUBSEQUENT DISCUSSION OR AGREEMENT CAN CHANGE THE TERMS OF THIS CONTRACT UNLESS IT IS WRITTEN AND IS SIGNED BY BOTH THE PURCHASER AND THE SELLER (OR THE SELLER'S ASSIGNEE).

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

SEE OTHER SIDE FOR ADDITIONAL TERMS AND CONDITIONS

FAMILY HERITAGE PLAN

Local Persons to Contact in Case of Emergency

1. Name _____
 Address _____
 Phone # _____
 Relationship _____

2. Name _____
 Address _____
 Phone # _____
 Relationship _____



CIRCLE OF PROTECTION

accounts are maintained for each ~~perpetual~~ care endowment reflecting the principal amount, the income ~~apportioned~~ for the year, the cost of care charged for the year, ~~and the~~ excess of income credited to such account to be used in ~~future~~ years.

(4) A statement ~~concerning~~ the accountability for the permanent ~~maintenance fund, indicating whether~~ the cemetery's records identify separately cumulative ~~principal reflecting~~ allocations from the proceeds of the sales of lots and from supplemental sources, cumulative capital ~~gains or losses~~ from investments, and the retained income ~~available~~ for the maintenance and preservation of the cemetery.

(5) A statement concerning the accountability for the perpetual ~~care fund, indicating whether~~ the cemetery's records identify separately cumulative ~~principal for~~ endowments, cumulative capital ~~gains or losses, and the cumulative~~ income retained for use in ~~future years.~~

(b) ~~This~~ section shall be effective for reports covering the calendar year ~~1975 or fiscal~~ years ending after September 30, 1975. (Historical Note: Sec. amd. filed Oct. 15, 1971; renum. 200.5, new filed July 16, 1985; amds. filed: Dec. 24, 1975; Sept. 16, 1981 eff. September 16, 1981. Section 200.4 was last amended on Feb. 14, 1990.)

Section 200.5 **Fidelity bonding.**

(a) Every cemetery corporation with combined funds (cash and investments) of \$40,000 or more shall carry fidelity bond coverage for officers and employees who handle money and securities.

(b) The annual financial report filed with the Division of Cemeteries shall indicate the amount of fidelity bond coverage, the classes of employees included, name of carrier and policy number, and the expiration date **of** coverage.

(c) Cemeteries with combined funds and assets **of** less than \$40,000 may apply to the Division of Cemeteries **for** an exemption from meeting the requirements of subdivisions (a) and (b) of this section. The division shall grant the exemption upon receiving satisfactory documentation demonstrating that all financial transactions, including withdrawal from trust funds or general funds, require the signatures of two or more designated cemetery officials.

(d) If any cemetery which is currently exempt should, at any time in the future, obtain combined funds and assets in excess of \$40,000, that cemetery shall, within 60 days of notification from the Division of Cemeteries, obtain the bond required by subdivision (a) and (b). (Historical Note: Section 200.5 was last amended on Feb. 14, 1990.1)

Section 200.6 **Location of offices.**

The principal office ~~of the State Cemetery~~ Board is located in the State Office Building, 270 Broadway, New York, N.Y. 10007. There are branch offices at 162 Washington Avenue, Albany, N.Y. 12231; Hughes State Office Building, Syracuse, N.Y. 13202, and 65 Court Street, Buffalo, N.Y. 14202. (Historical Note: Sec. renum. 200.8, new added by renum. 200.6, filed July 16, 1975; renum. 200.8 new added by renum. 200.6, filed July 24, 1975.)





November 9, 1998

20/20

Producer Michael N. Pressman
c/o Monique Medina
American Broadcasting Corporation
147 Columbus Avenue
New York, NY 10023

RE: 1 1/8/98 Broadcast, "Cemeteries"

Dear Mr. Pressman:

Last night's broadcast of the "20/20" program contained a segment on cemeteries. The segment focused on three cemeteries where the embezzlement of funds, fraudulent selling of grave spaces, and mismanagement of interments, understandably caused financial harm and emotional distress to the family members of the decedents. Unfortunately, the segment failed to place any of these events in an overall factual context and, instead, characterized aggrieved consumers as numbering in "the thousands" without establishing any perspective or support for those numbers, leaving viewers to infer that such occurrences must be routine.

Had our Association been contacted by your office, we would have provided your staff with some **frame** of reference. For example, the Census Bureau reports approximately two million deaths annually in the United States. This results in roughly two million interments or entombments of casketed and cremated remains in our nation's cemeteries each year. If the events depicted in your broadcast last night were anything other than rare and exceptional, there would be a scandal of epidemic proportions that would make your reporting superfluous. We would have referred you to the North American Cemetery Regulators Association, an independent organization of government regulators, for their perceptions of consumer problems. We would have referred you to staff at the Federal Trade Commission, who maintain a data base of consumer complaints involving cemeteries and funeral homes, for their analysis.

Instead, your report gave a platform to a self-styled consumer advocate, who is accountable to nobody, claiming that such incidents are "universal." This knee-jerk type of electronic journalism unfortunately makes your reporting closer in spirit to the National Inquirer than the New York Times. If "20/20" genuinely seeks to claim "Edward R. Murrow Standards of Excellence," then it is sorely in need of balanced reporting.

Michael N. Pressman
November 9, 1998
Page Two

The illegal and unethical events depicted in the November 8th "20/20" program are reprehensible. The offenders should be punished to the full extent of the law. However, these events do not depict the typical policies and practices of the interment and memorialization industry. It would have taken less than five seconds to make this point had you wished to do so.

The ICFA recently published model guidelines for laws and regulations that call for more stringent cemetery reporting and auditing standards than currently exist in some states. The ICFA is circulating these guidelines to state law enforcement officials, consumer groups, and to industry members to obtain their support for uniform standards. In the long run, these guidelines will help provide an effective solution to ensure that no families will be victimized by unscrupulous individuals. I would welcome your call if you wish to discuss these matters.

Sincerely,

Linda E. Christenson, Esq.
Executive Vice President

Enclosure

ICFA Publishes Model Guidelines For laws and Regulations

by Robert M. Fells, Esq., General Counsel

COn October 14th, the ICFA Board of Directors approved a series of new model guidelines at its Fall Meeting in Aventura, Florida. The new guidelines, combined with several approved by the board last year, have been published in a 150-plus-page binder together with an Overview of Preneed, an ICFA-commissioned survey of preneed consumers, an ICFA-commissioned economic study of minimum preneed trust deposit requirements and various supporting documents. Distribution of the Model Guidelines for Laws and Regulations to national and state trade associations and other interested parties is occurring in several stages.

The guidelines were developed by the Government and Legal Task Force, a subcommittee of the ICFA Government and Legal Affairs Committee, chaired by Irwin W. Shipper, CCE. In his introduction to the guidelines, Shipper noted, "We believe that the fourteen guidelines plus the Glossary of Terms and related materials contained herein will help raise the level of debate concerning proposed state legislation from a largely anecdotal basis to one in which statistical and actuarial data will add substance to the discussion. However, in any project of this nature, it is important to understand the intentions of the sponsoring organization; therefore, some explanation is in order.

"These guidelines, together with additional guidelines that the ICFA may publish in the future, are intended for use at the state and local levels. Although drafted by industry members, the goal throughout this project has been to combine a sensitivity to consumer protection

issues with the need for all industry members, whether for-profit or not-for-profit, cemeteries, funeral homes, retail monument dealers, or crematories, to conduct their operations according to sound business principles. For example, a review of negative media coverage in recent years has revealed a consistent theme regardless of the specific misconduct involved, that

The guidelines are focused on a variety of issues including prepaid contracts, endowment care trust funds, alternatives to trusting, insurance-funded prearrangements, cemetery and funeral establishment combinations, and authorization to control final disposition, among other topics. Commenting on the work of the Task Force, Shipper stated, "Chair Diane

"The goal throughout this project has been to combine a sensitivity to consumer protection issues with the need for all industry members to conduct their operations according to sound business principles."

theme being that the industry member did not practice sound business principles.

"These guidelines are advisory in nature and set out general concepts rather than precise statutory language. The ICFA is not recommending that the guidelines be codified into law as a whole. Instead, the guidelines are intended for consideration as a series of options to be selectively chosen by interested parties to address particular concerns. The recommendations contained in the guidelines represent compromise positions that some parties believe may go too far while others feel may not go far enough. However, the goal of the guidelines is to foster an informed debate of various issues of interest to industry members, to government regulators, and to the general public."

Kauffman was a real task master of the Task Force. The members of this group somehow managed to complete in two years a work product which normally would have taken anywhere from four to five years to produce. Larry Sloane spent an enormous amount of time coordinating the trust study with two New York college economics professors and the consumer survey with a professional polling organization. The commitment of time and energy shown by all the members of the Task Force is remarkable."

State and national associations will be offered copies of the guidelines without charge. Additional copies may be ordered from the ICFA at cost. Inquiries should be made to ICFA headquarters at 1-800-645-7700.

Grave marker found in crypt had been replaced Grave marker found in crypt had been replaced By
Jesse **Garza**
of the **Journal Sentinel staff**

December **11, 1998** A stone grave marker found in an unused crypt at the troubled <<**Evergreen Cemetery**>> had been replaced with another on a double grave site because it had an incorrect inscription, authorities said Wednesday.

An empty coffin was also found in the crypt Tuesday night during an excavation prompted by Carolyn Jacobi, president of Eternal Justice, a Maryland cemetery watchdog group.

Evergreen, 4530 N. Green Bay Ave., has had more than 150 complaints of poor maintenance and misplaced graves lodged against it since early last year.

Jacobi told police Tuesday she suspected human remains were inside the crypt, located behind a maintenance shed, a statement from Glendale police said. After the crypt was found to be empty, she said in a television interview she believed the body had been removed.

The daughter of the couple whose names were on the grave marker told **police** it was replaced on their graves with another stone.

Jacobi could not be reached for comment Wednesday, but the attorney representing cemetery operator Richard Lewis and owners, Cemeteries Inc., said they will seek charges against her for criminal damage to property and trespassing.

“What she did was abusive and outrageous,” said Paul Piaskoski. “She has caused further damage and **worry** to the people she professes to be concerned about.”

Piaskoski said city officials had paid to bring Jacobi to Milwaukee in the city’s effort to change a state law that requires municipalities to take control of abandoned or mismanaged cemeteries. To back up his chum, Piaskoski produced records showing the city has paid for more than \$1,600 in hotel and travel expenses for Jacobi between July and September.

Dorinda R Floyd, legislative fiscal manager for the city Department of Administration, acknowledged the payments as well as the city’s effort to change the law regarding abandoned and mismanaged cemeteries. But she said the city was merely seeking advice from Jacobi on laws in other states that pertain to cemetery properties.

“We wanted to access her knowledge of the (cemetery) industry,“, Floyd said. “We got her to stop in Milwaukee in late July to give us an assessment. We had no expertise.”

Floyd noted that the city did not want a repeat of the **financial** burden caused by its takeover of the troubled Fait-view Mausoleum in 1994.



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING



45

Tommy G. Thompson
Governor

Marlene A. Cummings
Secretary

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P O BOX 8935
MADISON WISCONSIN 537064935
E-Mail dorl@mail.state.wi.us
(606) 266-2112
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January 25, 1999

Letters to the Editor
Milwaukee Journal Sentinel
P.O. Box 371
Milwaukee, WI 53201-0371

Dear Sirs:

A recent article in the Milwaukee Journal Sentinel regarding Evergreen Cemetery may have left the impression that a lack of state licensure could interfere with burials at the cemetery. This is definitely not the case.

Anyone who currently owns a burial plot at Evergreen Cemetery can have someone buried in that plot regardless of whether the cemetery holds a current state license or not. State licensure of cemeteries is required for purposes of selling burial plots. However, state licensure is not required for purposes of burying someone in a plot that has already been sold.

Although the state license previously held by Evergreen Cemetery expired on December 31, anyone who currently owns a lot in the cemetery can contact either the cemetery or a funeral director for assistance in making burial arrangements at the cemetery.

Sincerely,

Marlene Cummings
Secretary



Alternative Suggestions

1. Create a State cemetery insurance fund. This can be funded by requiring ALL cemeteries to submit a report of how many interments, entombment and inumments occurred in the **preceeding** quarter and assessing a fee of **\$10** to **\$20** each. In lieu of utilizing interments, a similar amount of each grave, crypt or niche sale could be assessed.
2. The State cemetery insurance fund would be invested in a fashion similar to perpetual care funds. Once a cemetery has failed and is in need of immediate repair, these funds could be allocated to fund those improvements deemed necessary by an independent board appointed for that purpose by the State.
3. Once a failed cemetery is brought up to minimum standards, it should be offered for sale to other nearby cemeteries. Incentives like State, County or Municipally funded low interest loans could be included to attract quality purchasers.
4. If no buyer is found, then the cemetery would become the responsibility of either the municipality or the county in which it is located.
5. Require ALL cemeteries to establish and maintain perpetual care funds at the State minimum with no exemptions to religious or municipal cemeteries.
6. Require all funeral directors to place a "toe tag" on all human remains, an identification tag on the exterior of all caskets and on the exterior of all-burial vaults. Require all cemeteries to ensure a casket tag and a burial vault tag exists prior to any interment or entombment. Require similar identification for all **cremains**, one inside the container, one outside the container and one on the burial vault.
7. Impose strict penalties for gross violation of State statutes.
8. Create a standardized reporting and auditing of cemeteries with copies of the reports and any analysis of these sent to the municipality in which the cemetery is located.
9. Provide for early intervention by the State when a cemetery appears to begin a downward financial trend.
10. Require all cemeteries to accept some minimum percentage of county funded burials.
11. Increase the amount counties are required to pay to both cemeteries and funeral directors.

municipal
clerk
of
city,
village
or town
in which
cemetery located

Other Alternatives

Alternative to simply turning failed cemeteries over to the State, create regional cemetery authorities. Since Wisconsin is very diverse, it is difficult to imagine how anyone in Northwestern Wisconsin would have any interest in a cemetery in Southeastern Wisconsin. An alternative would be to create several regional authorities responsible for monitoring the activities of all cemeteries within their geographic areas and their adherence to State statutes. Failing cemeteries would come under the auspices of these regional authorities for operations and/or disposition. Again, funding these authorities in the same way as outlined above. These authorities should have the power to intervene as early as possible, before a bankruptcy is imminent.

Foremost in mind should be to minimize any tax burden from any of the activities decided upon. Most or all funding, if possible, should be generated from within the industry. Any tax burden required to supplement operations should come from the local area where the failed cemetery is located, either on a municipal, town or countywide basis.

11 · 19 · 10 · 1 · 29 · 30

$\frac{6445}{19}$

10

1 · 10 · 11 · 19 · ~~29~~ ²⁰ ~~30~~

* Recall of plots
those who have
moved bodies out
still own land

Concerns about Express

1. maintenance - 13
2. stacking - 8
3. record keeping - 4
4. trust fund - 1
5. markers - 8
6. pre need - 2
7. cemetery laws - 4
8. office hours - 4
9. deeds - 2
10. limited plots sold - 2
11. moving bodies - 2
- 12.

* Consumer Protection
* Prioritize Express

Eptner Loper
475-8491 w.
527-4784 h.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
MADISON, WI 53701-2037

STEPHEN R MILLER
CHIEF

LEGAL SECTION (608) 266-3561
LEGAL FAX, (608) 264-8522

REFERENCE SECTION (608) 266-0341
REFERENCE FAX (608) 266-5646

June 1, 1999

Representative Johnnie Morris-Tatum
Room 118 North
State Capitol

Dear Representative Morris-Tatum:

This letter is in response to your recent request for information about laws relating to cemeteries and funeral homes raised by William Downs in his letter of May 3.

The Code of Federal Regulations at 16 CFR 453 confirms that the funeral industry must provide prospective customers with a general price list.

Section 445.125, Wisconsin Statutes, requires funeral directors to deposit all trust funds with a bank or trust fund within the state. Under Section 440.92 (3), any cemetery registered with the Department of Regulation and Licensing must deposit at least 40% of each payment on preneed sales of cemetery merchandise in a preneed trust account.

According to LRB Attorney Joseph Kreye, a structure such as a funeral home on a tax-exempt parcel would be taxable as an improvement. Other improvements on an exempt parcel such as driveways and landscaping would remain tax exempt.

Funeral directors are regulated by rules adopted by the Funeral Directors Examining Board under the Department of Regulation and Licensing. Section FD 1.04, Wisconsin Administrative Code, requires funeral directors to have two years of academic instruction. Section 445.045 (1) (f) requires applicants for a funeral directors license to have completed a one year apprenticeship. Section 445.06 requires applicants for renewal of licensure to have completed at least 15 hours of continuing education. The Department of Regulation and Licensing requires cemeteries that expect to sell 10 or more lots per year or who have a person selling lots on a salary or commission basis to register with the department. The department does not have a record of what percentage of Wisconsin cemeteries are operated for profit.

Enclosed you will find copies of 16 CFR Section 453; Sections 445.125, 440.92, 445.045, 445.06 and 445.095, Wisconsin Statutes; and Chapters FD 1 through FD 6 and RL 50 through RL 54, Wisconsin Administrative Code.

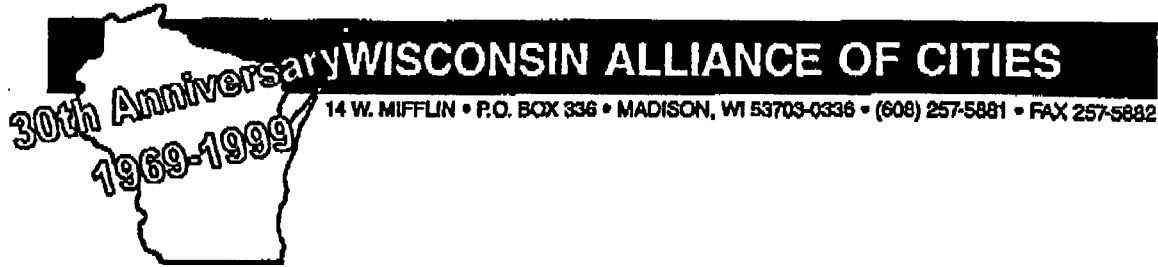
We hope this information is useful.

Sincerely,

Michael J. Keane
Legislative Analyst
(608) 266-0346

MJK:els

Enclosure



FAX COVER SHEET

Date: 6/11
 To: Rep. Morris-Tatum
 From: Gov
 Re: _____

URGENT

No. of Pages: 3 total (including this sheet)

Additional message:



30th Anniversary
1969-1999

WISCONSIN ALLIANCE OF CITIES

14 W. MIFFLIN • P.O. BOX 336 • MADISON, WI 53701-0336
(608) 257-5881 FAX 257-5882 • EMAIL: wiscall@inxpress.net

Appleton
Ashland
Baraboo
Beaver Dam
Beloit
Cudahy
De Pere
Eau Claire
Fond du Lac

June 9, 1999

To: Assembly Majority Leader Mickey Foti

From: Gail Sumi, Intergovernmental Coordinator

Re: Mandates

Green Bay
Greenfield
Janesville
Kaukauna
Kenosha
La Crosse
Madison
Manitowoc
Marinette
Marshfield
Menasha
Merrill
Milwaukee
Monroe
Neenah
Oshkosh
Platteville
Racine
Sheboygan
Stevens Point
Superior
Two Rivers
Watertown
Waukesha
Wausau
Wauwatosa
West Allis
West Bend
Whitewater
Wisconsin Rapids

Thank you for your interest in the list of mandates **identified** by Wisconsin **Alliance** of Cities members in a 1995 survey. I have further defined some of the mandates listed on page 2, **as requested** by Michael Heifitz, and **also included** others I thought may be of interest. **This list** is meant as **an initial** attempt to offer information and is not exhaustive. Please **call if you** have questions.

Municipal Responsibility for Abandoned Cemeteries

When a **cemetery** authority abandons or fails to manage or care for a cemetery or mausoleum, the municipality in which the facility is located is responsible for its operation and maintenance.

Background - Cemeteries or **mausoleums** become neglected or abandoned for a variety of reasons. In some cases, maintenance costs exhausted the trust **fund** or the facility and its care **funds** were mismanaged. In addition to the maintenance **of the facility**, there are administrative **costs to maintain records** and answer **inquiries** regarding location of plots and family members. In several highly publicized cases where facilities have been abandoned or neglected, the cost to local property taxpayers **has** been enormous. Sometimes the property taxpayer **has become** financially responsible for the ongoing management and operation of abandoned facilities, costing hundreds of **thousand of dollars annually**.

Remedy - Amend **157.115(1)(b)2, Wis. Stats.** to read "...**the** municipality in which **the** cemetery is located **shall may** take **control** of the cemetery and collect and manage **all trust funds connected with the cemetery** other than trust funds **received by a will.**" In addition, amend **157.115(1)(c)Wis. Stats.** to read "... the town board, at the expense of the town, **shall may** take charge of the cemetery and manage and care for it."

State Funding Source - Impose a **\$5** surcharge on the initial copy of a death certificate (of \$7) **and** impose a **\$1** surcharge on each **additional** copy (**of \$2**) to generate approximately \$450,000 annually. The **funds** would be deposited in a State Cemetery Care Fund **managed** by the State Investment Board. The Department of Regulation and Licensing could **promulgate rules** establishing the **conditions** under

Sustainable Cities for the 21st Century

Wisconsin Alliance of Cities, June 9, 1999

List of Mandates

Page 2

Cemeteries, cont.

which the care **funds** would be withdrawn and utilized. (There is precedence to this approach - \$5 is imposed on birth certificates to generate revenues to fund the Child Abuse Prevention Fund.

Total cost of a birth certificate is \$12.)

Fiscal Impact - Unknown

Discussion of Cemetery Legislation
Mayor Lombardi/City of Waukesha
April 30, 1999

1. Current Law

- ◆ Municipal takeover provision
- ◆ Licensure of cemetery authorities and salespersons
- ◆ Regulation provisions

2. Problems with current law

- ◆ Unfunded mandate
 - No protection for local taxpayers
- ◆ Permissive state enforcement
- ◆ No incentive for state oversight

3. Proposed Legislation

- ◆ Property Taxpayer Protection
 - ◆ Establish a Cemetery Management Reserve Fund
 - ◆ Source of funding includes a surcharge on death certificates
 - ◆ Create process for receivership
 - ◆ Repeal municipal takeover provision
- ◆ Consumer Protection
 - ◆ Establish a Consumer Protection Fund
 - Register all cemeteries
 - ◆ License cemeteries based on criteria and not type of cemetery
 - ◆ License salespersons and preneed sellers
 - ◆ Establish care and maintenance standards
 - ◆ Enhance notification provisions
 - ◆ Require independent auditing provisions
 - ◆ Establish care fund protection provisions
 - ◆ Create requirements for sales contracts
 - ◆ Require disclosure of prices
 - ◆ Require identification of deceased
 - ◆ Require investigation when complaints are filed
 - ◆ Enhanced penalties and disciplinary actions

timetable - franchise?

4. Legislative Strategy

- ◆ Timetable
- ◆ Bipartisan support
- ◆ Statewide support
- ◆ Special interest support

** Criminal Background checks
on owners + mgs.*