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Not-For-Profit Corporation

ARTICLE 15

PUBLIC CEMETERY CORPORATIONS

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§ 1501. Declaration of policy.

The people of this state have a vital interest in the establishment, maintenance and preservation of public burial grounds and the proper operation of the corporations which own and manage the same. This article is determined an exercise of the police powers of this state to protect the well-being of our citizens, to promote the public welfare and to prevent cemeteries from falling into disrepair and dilapidation and becoming a burden upon the community, and in furtherance of the public policy of this state that cemeteries shall be conducted on a non-profit basis for the mutual benefit of plot owners therein.

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§ 1502. Definitions. As used in this article:

(a) The term "cemetery corporation" means any corporation formed under a general or special law for the disposal or burial of deceased human beings, by cremation or in a grave, mausoleum, vault, columbarium or other receptacle but does not include a family cemetery corporation or a private cemetery corporation.

(b) The term "lot owner" or "owner of a lot" means any person having a lawful title to the use of a niche, crypt, lot, plot or part thereof, in a cemetery, mausoleum or columbarium.

(c) The term "cemetery board" means the cemetery board in the division of cemeteries in the department of state.

(d) A public mausoleum, crematory or columbarium shall be included within the term "cemetery".

(e) The sale of a lot, plot or part thereof, grave, niche or crypt shall mean the sale of the right of use thereof for burial purposes.

(f) The term "monuments" means a memorial erected in a cemetery on a lot, plot or part thereof, except private mausoleums.

(g) The term "interment" means the permanent disposition of human remains by inurnment, entombment or ground burial.

(h) The term "cremation" means the technical process, using heat and flame, that reduces human remains to ashes and other residue. "Cremation" shall include the processing, and may include the pulverization, of such ashes and other residue.

(i) The term "cremains" means ashes and other residue recovered after the completion of cremation, which may include residue of foreign matter that may have been cremated with the human remains.

(j) The term "alternative container" or "external wrappings" means a nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of cardboard, pressed wood, composite materials (with or without an outside covering), or pouches of canvas or other material.

(k) The term "casket" means a rigid container that is designed for the encasement of human remains and customarily ornamented and lined with fabric.

(l) The term "crematory" means a facility or portion of a building in which the remains of deceased human beings are processed by cremation.

(m) The term "holding facility" or "temporary storage facility" means an area that (i) is designated for the retention of human remains prior to cremation; (ii) complies with all applicable public health laws, (iii) preserves the health and safety of the crematory personnel; and (iv) is secure from access by anyone other than authorized persons. The interior of such facility shall not be visible from any area accessible to the general public.

(n) The term "cremation permit" means the burial and removal permit required pursuant to section forty-one hundred forty-five of the public health law that is annotated for disposition of the remains of a deceased human being by cremation.

(o) The term "cremation authorization" means the crematory form authorizing a cremation which is signed by the next of kin or authorizing agent. This crematory form must be a separate document and cannot be a part of another form or document.

(p) The term "authorizing agent" shall mean the person with the right to control the disposition of the decedent pursuant to section forty-two hundred one of the public health law.

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§ 1503. Application.

(a) Except as otherwise provided in paragraph (b) of this section, paragraph (c) of section fifteen hundred seven, and paragraph (m) of section fifteen hundred ten, this article does not apply to (1) a religious corporation, (2) a municipal corporation, (3) a cemetery corporation owning a cemetery operated, supervised or controlled by or in connection with a religious corporation or (4) a cemetery belonging to a religious or a municipal corporation, or operated, supervised or controlled by or in connection with a religious corporation unless any officer, member or employee of any such corporation shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, other than reasonable compensation for services in effecting one or more of the purposes of such corporation or as proper beneficiaries of its strictly charitable purposes or unless the organization of any such corporation for any of its avowed purposes be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation, or for any of its officers, members or employees, and unless any such corporation is not, in good faith, organized or conducted exclusively for one or more of its stated purposes.

(b) All crematories shall be subject to inspection by the division of cemeteries. Upon inspection, the crematory may be asked to produce any and all records for the operation and maintenance of the crematory. These records may include but not be limited to cremation authorizations, rules and regulations of the crematory, procedures as set forth in section fifteen hundred seventeen of this article, and the written procedure of the identification of remains.

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§ 1504. Cemetery board and general administration.

(a) A cemetery board is hereby created within the division of cemeteries in the department of state, subject to the following requirements: (1) The members of such board shall be the secretary of state, the attorney general and the commissioner of health, who shall serve without additional compensation. (2) The secretary of state, attorney general and commissioner of health may each, by official order filed in the office of his respective department and in the office of the board, designate a deputy or other representative in his department to perform any or all of the duties under this section of the department head making such designation, as may be provided in such order. Such designation shall be deemed temporary only and shall not affect the civil service or retirement rights of any person so designated. Such designees shall serve without additional compensation. (3) The secretary of state shall be chairman of such board, provided that in his absence at any meeting of the board the attorney general or the commissioner of health, in such order, if either or both be present, shall act as chairman. When designees of such officers, in the absence of all such officers, are present at any meeting of the board, the designee of the secretary of state, if present, and in his absence one of the other designees present, in the same order of preference as provided for the officer appointing him, shall act as chairman. (4) Technical, legal or other services shall be performed in so far as practicable by personnel of the departments of state, law and health without additional compensation but the board may employ and compensate within appropriations available therefor such assistants and employees as may be necessary to carry out the provisions of this section and may prescribe their powers and duties. (5) Two members of the board shall constitute a quorum to transact the business of the board at both regular and special meetings. (6) The board shall meet at least once a month, shall keep a record of all its proceedings and shall determine the rules of its own proceedings. (7) Special meetings may be called by the chairman upon his initiative, and must be called by him upon receipt of a written request therefor signed by another member of the board. Written notice of the time and place of such special meeting shall be delivered to the office of each member of the board. (8) The board shall have the duty of administering the provisions of this chapter which deal with cemetery corporations other than the cemeteries and cemetery corporations enumerated in section fifteen hundred three and shall have all the powers herein provided and such other powers and duties as may be otherwise prescribed by law.

(b) Director of the division of cemeteries. The cemetery board shall appoint a director of the division of cemeteries who shall hold his office for a term of six years. He shall receive an annual salary to be fixed by the board within the appropriations available to the board. Subject to the supervision, direction and control of the board, the director of the division of cemeteries shall be responsible for the administration of this article and he shall exercise and perform such duties and functions of the board as it may assign or delegate to him from time to time.

(c) Powers and duties of the cemetery board. With respect to any

cemetery or cemetery corporation, the cemetery board shall have the following duties and powers: (1) To adopt such reasonable rules and regulations as the cemetery board shall deem necessary for the proper administration of this article. (2) To order any cemetery corporation to do such acts as may be necessary to comply with the provisions of this article or any rule or regulation adopted by the cemetery board or to refrain from doing any act in violation thereof. (2-a) To adopt reasonable rules and regulations to exempt those cemetery corporations from the provisions of paragraph (h) of section fifteen hundred ten of this chapter which because of a limited number of paid employees or appropriate resources are unable to carry out such provisions. (2-b) To adopt reasonable rules and regulations to extend the time period mandated by the provisions of paragraph (h) of section fifteen hundred ten of this chapter when necessary because compliance by a cemetery corporation within such time period is impossible. (3) To enforce its orders by mandamus or injunction in a summary proceeding or otherwise. In connection with such action or proceeding, the attorney general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules. (4) To impose a civil penalty upon a cemetery corporation not exceeding one thousand dollars, after conducting an adjudicatory hearing pursuant to the provisions of the state administrative procedure act, for a violation of or a failure to comply with any provisions contained in this article or any regulation, directive or order of the board, and without the need to maintain a civil action pursuant to subdivision five of this paragraph. (5) To maintain a civil action in the name of the people of the state to recover a judgment for a money penalty imposed under the provisions of this article.

(d) Judicial review. Any order or determination of the cemetery board made pursuant to this article shall be subject to review by the supreme court in the manner provided by article seventy-eight of the civil practice law and rules; provided, however, that an application for review of such order or determination must be made within one hundred twenty days from the date of the filing of such order or determination, and provided further that no stay shall be granted pending the determination of the matter except on notice to the cemetery board and for a period not exceeding thirty days. Proceedings to review such order shall be entitled to a preference.

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§ 1505. Special requirements of incorporation.

(a) Certificate of incorporation; additional contents. In addition to the requirements of section four hundred two (Certificate of incorporation; contents), the certificate of incorporation of a cemetery corporation shall be filed in the office of the clerk of each county in which any part of the cemetery is proposed to be, or is, situated, and shall state: (1) each city, village or town, and county, in which any part of the cemetery is or is proposed to be situated; and (2) the time of the annual meeting.

(b) Cemetery board endorsement. Every certificate of incorporation of a cemetery corporation, except those within the exclusionary provisions of section fifteen hundred three, shall have endorsed thereon or annexed thereto the approval of the cemetery board as required in subdivision (e) of section four hundred four of this chapter.

(c) Type of corporation. A cemetery corporation is a charitable corporation under this chapter.

(d) Lot owners in unincorporated cemeteries may incorporate. (1) Not less than three owners of lots in an unincorporated cemetery may cause a notice to be posted in at least six conspicuous places in the city, town or village in which such cemetery is located, and to be published once in each week for three successive weeks in a newspaper, if any, published in such municipality, stating that at a time and place specified, a meeting of the lot owners will be held to determine whether such cemetery shall be incorporated, pursuant to this chapter. (2) The meeting shall be held at a convenient place in the city, town or village in which the cemetery is located, not less than twenty-five nor more than thirty days after the first posting and publication of the notice of the meeting. At such meeting every lot owner shall be entitled to one vote in person or by proxy for each lot owned by him. The persons entitled to vote at such meeting shall select a chairman and secretary, and determine by ballot whether or not the lot owners shall incorporate pursuant to this chapter. (3) If a majority of the ballots are in favor of incorporation, the persons entitled to vote at such meeting shall select three lot owners to incorporate and the provisions of this chapter shall be applicable, except that three persons may incorporate, and the corporation shall not be required to have more than three directors. Upon such incorporation, the lot owners shall be members of the corporation, and it shall be vested with the title to such cemetery and the personal property appertaining thereto. If the title to the cemetery has prior to such incorporation vested in the town, pursuant to section two hundred and ninety-one of the town law or section one of title seven of chapter eleven of part one of the revised statute, the supervisor of such town shall on request of the directors of such corporation, execute to it a deed of such cemetery lands releasing all interest of the town therein, and thereafter the title shall be vested in the corporation.

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§ 1505-a. Additional requirements for incorporation of crematories.

(a) Approval. A cemetery corporation seeking the approval to operate a crematory must submit for approval by the cemetery board the following: (1) a list of the directors, employees, and certificate holders of the cemetery corporation; (2) a certified survey of the site and location within the county it will be situated; (3) a business plan for the operation of the crematory to include, but not be limited to, number of expected cremations per year, number of cremation units, manufacture, capital costs, financing, anticipated number of employees, types of services provided, pricing thereof; (4) a description of the impact of the proposed crematory on other crematories within the county or whether the crematory will have an adverse impact on the surrounding community; (5) plans, designs, and costs of any structures to be erected or retrofitted for the crematory use; (6) a description of any approvals or permits required by state or local law. No crematory shall be approved until such other approvals or permits have been obtained. Any board approval of a crematory shall be so conditioned.

(b) Further information. Within thirty-five days following receipt of the information required by paragraph (a) of this section, the cemetery board or the division of cemeteries may request from the cemetery corporation any additional information or documentation and technical assistance deemed necessary to review such information. Such information shall not be deemed complete until the requested additional information has been received. If no such request is made, the submission shall be deemed complete on the thirty-fifth day after its receipt by the division.

(c) Determination. The cemetery board shall approve or deny the proposed crematory within ninety days of the completed submission.

(d) Notification. The cemetery board shall provide written notice of its determination to the cemetery corporation. If a negative determination is made, such notice shall state the reasons therefor. Notice shall be made by registered or certified mail addressed to the corporation at its principal office.

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§ 1506. Cemetery lands.

(a) Purchase of land; notice to board and court approval. No cemetery corporation, in purchasing real property hereafter, shall pay or agree to pay more than the fair and reasonable market value thereof. The terms of the purchase, including the price to be paid and the method of payment, shall be subject, upon notice to the cemetery board, to approval by the supreme court in a district where any portion of the land is located. In determining the fair and reasonable market value, the court may take into consideration the method by which the purchase price is to be paid.

(b) Consent of local authorities. (1) No cemetery shall hereafter be located in any city or village without the consent of the local legislative body of such city, or the board of trustees of such village. (2) No cemetery shall hereafter be located in any town, outside of an incorporated village in Suffolk county, without the consent of the town board of such town.

(c) Cemeteries in Kings, Queens, Rockland, Westchester, Nassau, Suffolk, Putnam and Erie counties. A cemetery corporation shall not take by deed, devise or otherwise any land in the counties of Kings, Queens, Rockland, Westchester, Nassau, Suffolk, Putnam or Erie for cemetery purposes, or set apart any ground therefor in any of such counties, unless the consent of the board of supervisors or legislative body thereof, or of the city council of the city of New York, in respect to Kings or Queens county, be first obtained. Such consent may be granted upon such conditions and under such regulations and restrictions as the public health and welfare may require. Notice of application for such consent shall be published, once a week for six weeks, in the newspapers designated to publish the session laws and in such other newspapers published in the county as such board or body may direct, stating the time when the application will be made, a brief description of the lands proposed to be acquired, their location and the area thereof. Any person interested therein may be heard on such presentation. If such consent is granted the corporation may take and hold the lands designated therein. The consent shall not authorize any one corporation to take or hold more than two hundred and fifty acres of land. Nothing contained in this subdivision shall prevent any religious corporation in existence on April fifteenth, eighteen hundred fifty-four, in any of said counties from using as heretofore any burial ground then belonging to it within such county. Such board or body, from time to time, may make such regulation as to burials in any cemetery in the county as the public health may require.

(d) Limitation on the acquisition of land by rural cemetery corporations. It shall not be lawful for any rural cemetery corporation hereafter to acquire or take by deed, devise or otherwise, any land in any county within the state of New York, having a population of between one hundred and seventy-five thousand and two hundred thousand, according to the federal census of nineteen hundred, or set apart any ground for cemetery purposes therein, where there has already been set apart in any such county, five hundred acres of land for rural cemetery purposes, and the consent of the board of supervisors of any such county shall not be granted where there has already been granted five hundred

acres of land, or upwards, within such county, to rural cemetery corporations. But nothing herein contained shall affect any lawful consent or grant hitherto made by the board of supervisors of any such county.

(e) Limitations on the acquisition of land for cemetery purposes in certain counties. (1) It shall not be lawful for any corporation, association or person hereafter to set aside or use for cemetery purposes any lands in any county within the state erected on and after January first, eighteen hundred ninety, adjoining a city of the first class and having a population of between eighty thousand and eighty-five thousand according to the federal census of nineteen hundred ten; but nothing herein contained shall prevent cemetery corporations formed prior to January first, nineteen hundred seventeen, which own in such county a cemetery in which burials have been made prior to such date, from setting apart and using for burial purposes lands lying contiguous or adjacent to such cemetery which lands have been heretofore acquired by a recorded deed of conveyance made to such a cemetery corporation either for burial purposes, or for the purposes of the convenient transaction of its general business, which lands shall have been acquired with the consent of the board of supervisors; nor to prohibit the dedication or use of land within such county for a family cemetery as provided in subdivision (c) of section fourteen hundred one of this chapter.

(2) The provisions of this paragraph shall not operate to prevent any such cemetery corporation located in Nassau county from using for burial purposes contiguous or adjacent land acquired by it provided that such use shall be consented to by the Nassau county legislature.

(f) Conveyance by religious corporations or by trustees. A cemetery corporation may accept a conveyance of real property held by a religious corporation for burial purposes, or by trustees for such purposes if all such trustees living and residing in this state unite in the conveyance, subject to all trusts, restrictions and conditions upon the title or use. Lots previously sold and grants for burial purposes shall not be affected by any such conveyance; nor shall any grave, monument or other erection, or any remains, be disturbed or removed without the consent of the lot owner, or if there be no such owner, without the consent of the heirs of the persons whose remains are buried in such grave.

(g) Certain conveyances to cemetery corporations authorized. Upon approval of the cemetery board first having been obtained, a cemetery corporation which maintains and operates a cemetery may accept a conveyance of title to the fee of or to burial rights in lands within the confines of said cemetery and it shall be lawful for any cemetery or business corporation to make such conveyances. Lots previously sold and grants previously made for burial purposes shall not be affected by such conveyance. The cemetery corporation, in consideration of the conveyance to it of burial rights in lands within the confines of said cemetery, may, with the approval of the cemetery board, issue participating certificates of the kind and nature provided for in paragraph three of subdivision (e) of section fifteen hundred eleven of this article. In making its determination the cemetery board shall consider and may condition its approval on the purposes of this section.

(h) Acquisition of property by condemnation. If the certificate of incorporation or by-laws of a cemetery corporation do not exclude any person, on equal terms with other persons, from the privilege of purchasing a lot or of burial in its cemetery, such corporation may, from time to time, acquire by condemnation, exclusively for the purposes of a cemetery, not more than two hundred acres of land in the aggregate,

forming one continuous tract, wholly or partly within the county in which its certificate of incorporation is filed or recorded, except as in this section otherwise provided as to the counties of Erie, Nassau, Suffolk, Putnam, Kings, Queens, Rockland and Westchester. A cemetery corporation may acquire by condemnation, exclusively for the purposes of a cemetery, any real property or any interest therein necessary to supply water for the uses of such cemetery, and the right to lay, relay, repair and maintain conduits and water pipes with connections and fixtures, in, through or over the lands of others and the right to intercept and divert the flow of waters from the lands of riparian owners, and from persons owning or interested in any waters. But no such cemetery corporation shall have power to take or use water from any of the canals of this state, or any canal reservoirs as feeders, or any streams which have been taken by the state for the purpose of supplying the canals with water. A cemetery corporation may acquire, otherwise than by condemnation, real property as aforesaid and additional real property, not exceeding in value two hundred thousand dollars, for the purposes of the convenient transactions of its business, no portion of which shall be used for the purposes of a cemetery.

(i) Sale or disposition of cemetery lands. (1) No cemetery corporation may sell or dispose of the fee of all or any part of its lands dedicated to cemetery use, unless it shall prove to the satisfaction of the supreme court in the district where any portion of the cemetery lands is located, either: (A) that all bodies have been removed from each and every part of the cemetery, that all the lots in the entire cemetery have been reconveyed to the corporation and are not used for burial purposes, and that it has no debts and liabilities, or (B) that the land to be sold or disposed of is not used or is not physically adaptable for burial purposes and that the sale or disposition will benefit the cemetery corporation and the owners of plots and graves in the cemetery, and (C) that the sale or disposition is not to a funeral entity as defined in paragraph (c) of section fifteen hundred six-a of this article. (2) If the sale or disposition is made pursuant to subparagraph (A) of subdivision one of this paragraph, the cemetery shall satisfy the court that it is in the public interest to dispose of such cemetery land in the manner proposed; that the subject land is not suitable for cemetery purposes or is no longer needed by the community for such cemetery uses or purposes; and that the subject land is being sold for its current market value. (3) If the sale or disposition of the land is made pursuant to subparagraph (B) of subdivision one of this paragraph, the court shall order that the consideration received by the cemetery corporation, less the necessary expenses incurred, shall be deposited into the permanent maintenance fund established by the cemetery corporation pursuant to paragraph (a) of section fifteen hundred seven of this article. (4) Notice of any application hereunder shall be given to the cemetery board, to the holders of certificates of indebtedness and land shares of the cemetery corporation, and to any person interested in the proceeding pursuant to section five hundred eleven of this chapter (Petition for leave of court).

(j) Conveyance by cemetery corporation to city or village. A cemetery corporation may convey and transfer its real property held for burial purposes, together with its other assets, to a city having a population of less than one million inhabitants in which such real property is located, or to a village, provided such real property is located within such village or wholly within three miles of the boundaries thereof, or to a town, in which such real property is located, if all the directors and trustees of such cemetery corporation

living and residing in the state of New York unite in the conveyance and transfer. Such conveyance and transfer shall be subject to all agreements as to lots sold and all trusts, restrictions and conditions upon the title or use of such real property and assets. Lots previously sold and grants previously made for burial purposes shall not be affected by such conveyance, nor shall any grave, monument or other erection be disturbed or removed except in accordance with law. No such conveyance shall be effective unless and until the legislative body of such city, town or village shall by ordinance or resolution accept the same subject to the conditions and restrictions hereinabove imposed, which ordinance or resolution said legislative body is hereby authorized and empowered to adopt by a majority vote of such body. Upon such conveyance and transfer such property shall be and become a municipal cemetery of such city, town or village and such property and assets so conveyed and transferred shall be administered as any other municipal cemetery of such city, town or village and the said cemetery corporation shall be dissolved by the recording of such conveyance and transfer.

(k) Streets or highways not to be laid out through certain cemetery lands. So long as the lands of a rural cemetery corporation organized under the act entitled "An act authorizing the incorporation of rural cemetery associations," constituting chapter one hundred thirty-three of the laws of eighteen hundred forty-seven, and the acts amendatory thereof, shall remain dedicated to the purpose of a cemetery, no street, road, avenue or public thoroughfare shall be laid out through such cemetery, or any part of the lands held by such association for the purposes aforesaid, without the consent of the trustees of such association and the cemetery board.

(l) Exclusive right of cemetery corporation to provide annual care services. Notwithstanding any provision of this article to the contrary, it shall be the right of each cemetery corporation, at its option, to exclusively provide all annual care services to be performed for consideration on all or any part of its lands at rates to be reviewed by the cemetery board. In the event that the cemetery board determines that an excessive, unauthorized or improper charge has been made for such services or that the services have not been properly performed, he or she may direct the cemetery corporation to pay to the person from whom such charge was collected a sum equivalent to three times the excess as determined by the cemetery board, or in the case of work not properly performed, it may direct the cemetery corporation to perform the work properly. Every cemetery corporation that chooses to provide, on an exclusive basis, such annual care services shall include in any contract for the sale of any part of its lands the following notice, in at least ten point bold type:

Notice

The (name of cemetery corporation), pursuant to state law, provides annual care services on an exclusive basis. Therefore, the purchaser of the plot or lot being transferred by this agreement may not contract with any outside party for such annual care services. For purposes of this paragraph, the term "annual care" shall mean the maintenance of a lot, plot or part thereof, and may include care of lawns, trees, shrubs, monuments and markers within the plot. The provisions of this paragraph shall not be construed to prohibit a lot owner from placing, or arranging to place, floral or similar arrangements on such cemetery lots or plots.

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§ 1506-a. Cemetery corporations; restrictions.

(a) No cemetery corporation shall, directly or indirectly:

(1) sell, or have, enter into or perform a lease of any of its real property to a funeral entity, or use any of its property for location of a funeral entity;

(2) commingle its funds with a funeral entity;

(3) direct or carry on its business or affairs with a funeral entity;

(4) authorize control of its business or affairs by a funeral entity;

(5) engage in any sale or cross-marketing of goods or services with a funeral entity;

(6) have or enter into or perform a management or service contract for cemetery operations with a funeral entity; or

(7) have, enter into or perform a management contract with any entity other than a not-for-profit cemetery corporation.

(b) Only the provisions of subdivisions one and two of paragraph (a) of this section shall apply to cemetery corporations with thirty acres or less of real property dedicated to cemetery purposes, and only to the extent the sale or lease is of real property dedicated to cemetery purposes, and such cemeteries shall not engage in the sale of funeral home goods or services, except if such goods and services are otherwise permitted to be sold by cemeteries, nor shall a majority of the members of the board of directors or trustees of such cemeteries be made up of the representatives of a funeral entity.

(c) For the purposes of this section, "funeral entity" means a person, partnership, corporation, limited liability company or other form of business organization providing funeral home services, or owning, controlling, conducting or affiliated with a funeral home, any subsidiary thereof or an officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

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§ 1506-b. Transfer of lands of Valley View Rural Cemetery.

Notwithstanding any other provision of law to the contrary, the board of trustees of the Valley View Rural Cemetery Association in the town of Dover Plains, New York, may by resolution of such board, sell, lease or transfer any portion of the lands of Valley View Rural Cemetery to the parish of St. Charles Borromeo in the town of Dover Plains, New York, for cemetery purposes for the adjoining and contiguous cemetery of the parish of St. Charles Borromeo.

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§ 1506-c. Abandoned cemetery maintenance by cemetery corporations.

(a) Upon application and approval by the cemetery board, a cemetery corporation may assume management and maintenance of an abandoned cemetery. For the purposes of this section, abandoned cemetery means a cemetery which was previously owned by a cemetery corporation organized pursuant to this chapter or existing by virtue of the membership corporation law, for which there no longer exists any corporate board or body to maintain it, and for which there is no sufficient trust fund or endowment to provide ordinary and necessary care and maintenance. Provided, however, that in no event shall the cemetery board approve the assumption of the management and maintenance of an abandoned cemetery under this section if the abandoned cemetery was affiliated with any religious denomination or tradition or if the majority of the persons whose bodies were interred in such cemetery were affiliated with any religious denomination or tradition unless the cemetery assuming the management and maintenance of such abandoned cemetery follows the customs and practices of the same religious denomination or tradition.

(b) A cemetery corporation assuming management and maintenance of an abandoned cemetery shall make application for funds pursuant to paragraph (h) of section fifteen hundred seven of this article and section ninety-seven-r of the state finance law for maintenance of abandoned cemeteries. Within sixty days of submission of a completed application, the cemetery board shall approve or deny such application.

(c) Monies disbursed under such assumption shall be used exclusively for the purpose of the management and maintenance of an abandoned cemetery such as the ordinary and necessary care of a cemetery, including the removal of grass and weeds, the refilling of graves, and the preservation, care, and fencing of a cemetery, and also including the care of crypts, niches, grave sites, monuments, and memorials paid for by means of the general fund or special fund or the income applied from the permanent maintenance fund, perpetual care fund, monument maintenance fund, general fund, or a special fund of the abandoned cemetery.

(d) Any residual funds disbursed to a cemetery corporation after the maintenance of an abandoned cemetery has been performed must be returned to the cemetery board for redeposit into the state cemetery vandalism restoration, monument repair or removal and administration fund established by section ninety-seven-r of the state finance law.

(e) Within ninety days of its receipt of disbursements, the cemetery corporation shall make a report to the cemetery board setting forth details of the maintenance and clean-up undertaken and the amount of funds, if any, to be redeposited into the fund. If the maintenance and clean-up have not been completed, or necessary equipment has not been purchased, the reasons therefor shall be set forth, and the anticipated date for a subsequent, final report shall be disclosed.

Not-For-Profit Corporation

§ 1507. Trust funds.

(a) Maintenance and preservation; permanent maintenance fund; current maintenance fund. Subject to rules and regulations of the cemetery board: (1) Every cemetery corporation shall maintain and preserve the cemetery, including all lots, plots and parts thereof. For the sole purpose of such maintenance and preservation, every cemetery corporation shall establish and maintain (A) a permanent maintenance fund, and (B) a current maintenance fund. At the time of making the sale of a lot, plot or part thereof, the cemetery corporation shall deposit not less than ten per centum of the gross proceeds of the sale into the permanent maintenance fund. An additional fifteen per centum of the gross proceeds of the sale shall be deposited in the current maintenance fund. In addition to the foregoing, at the time the cemetery corporation receives payment for the performance of an interment or inurnment, the cemetery corporation shall collect and deposit into the permanent maintenance fund the sum of thirty-five dollars. (2) The permanent maintenance fund is hereby declared to be and shall be held by the corporation as a trust fund, for the purpose of maintaining and preserving the cemetery, including all lots, crypts, niches, plots, and parts thereof. The principal of such fund shall be invested in such securities as are permitted for the investment of trust funds by section 11-2.3 of the estates, powers and trusts law. The income in the form of interest and ordinary dividends therefrom shall be used solely for the maintenance and preservation of the cemetery grounds. In addition, the governing board of the corporation may appropriate for expenditure solely for the maintenance and preservation of the cemetery grounds a portion of the net appreciation, in the fair market value of the principal of the trust, as is prudent under the standard established by article five-A of this chapter, the prudent management of institutional funds act. In the event that a cemetery corporation seeks to appropriate any percentage of its net appreciation in its permanent maintenance fund in accordance with this subparagraph, the cemetery corporation shall provide notice of such proposed appropriation by certified mail to the cemetery board not less than sixty days in advance of such proposed appropriation and shall disclose such appropriation as part of and in addition to their annual reporting requirements as defined in section fifteen hundred eight of this article, setting forth the amount of funds to be appropriated for such expenditure and its effect on the permanent maintenance fund. Such proposed appropriation shall become effective sixty days after receipt of such notice, unless the cemetery board within such sixty-day period notifies the cemetery corporation that the board objects to the proposed appropriation. Notwithstanding the foregoing provisions of this subparagraph, all principal of the permanent maintenance fund shall remain inviolate, except that, upon application to the supreme court in a district where a portion of the cemetery grounds is located, the court may make an order permitting the principal or a part thereof to be used for the purpose of current maintenance and preservation of the cemetery or otherwise. Such application may be made by the cemetery board on notice to the corporation or by the corporation on notice to the cemetery board. Unless the cemetery can clearly demonstrate that it

lacks sufficient future revenue to make repayment, any such allowance from the permanent maintenance fund shall be in the form of a loan, and the court shall determine the method for repayment of such a loan by the cemetery to the fund. (3) The current maintenance fund shall be used and applied for the sole purpose of ordinary and necessary expenses of the care and maintenance of the cemetery. When all burial rights in the cemetery have been conveyed, the fund remaining on deposit or to the credit of the current maintenance fund shall be transferred into the permanent maintenance fund. (4) The percentage of the proceeds of sales required to be deposited in the permanent maintenance fund or current maintenance fund by a particular cemetery corporation may be increased or diminished by order of the supreme court in a district where any portion of the cemetery is located. Such application may be made by the cemetery board on notice to the corporation or by the corporation on notice to the cemetery board.

(b) Perpetual care of lots. (1) Upon the application of a prospective purchaser of any lot, plot or part thereof and upon payment of the purchase price and the amount fixed as a reasonable charge for the perpetual care of any lot, plot or part thereof, every cemetery corporation shall include with the deed of conveyance an agreement perpetually to care for such lot, plot, or part thereof, to the extent that the income derived by the corporation from such amount will permit. (2) Such corporation also, upon the application of an owner or of the executor or administrator of a deceased owner of any lot and upon the payment of the amount fixed as a reasonable charge for the perpetual care of such lot, shall, and upon the application of any other person and the payment of such amount, may enter into a like agreement with him. Such agreement shall be executed and may be recorded in the same manner as a deed. (3) Any corporation organized under or subject to the provisions of this section may enter into an agreement in writing with any executor or executors, trustee or trustees, under a last will and testament to whom there has heretofore been, or may hereafter be, bequeathed a sum for the perpetual care of any lot, plot or part thereof in any such cemetery or with any administrator or administrators with the will annexed under any such will perpetually to care for such lot, plot or part thereof under the provisions of the terms of such last will and testament, and subject in all cases to the approval of the surrogate's court having jurisdiction over such trust estate. Such approval may be evidenced by the written endorsement of the surrogate on a duplicate original of such agreement filed in the surrogate's court. In case the surrogate shall approve such agreement any such executor, trustee or administrator with the will annexed thereupon shall pay over to the treasurer of such perpetual care fund of such cemetery corporation any moneys remaining or being in his hands belonging to such trust, and upon making such payment and accounting therefore to the surrogate's court may be discharged from said trust as such executor, trustee or administrator with the will annexed.

(c) Perpetual care fund. (1) Every cemetery corporation and every religious corporation having charge and control of a cemetery which heretofore has been or which hereafter may be used for burials, shall keep separate and apart from its other funds, all moneys and property received by it, whether by contract, in trust or otherwise, for the perpetual care and maintenance of any lot, plot or part thereof in its cemetery, and all such moneys or property so received by any such corporation are hereby declared to be, and shall be held by the corporation as trust funds. Any moneys and property so received, unless otherwise provided in the instrument under which such moneys or property

were received, shall be kept in a separate fund to be known as the perpetual care fund. (2) The principal of such funds, whether kept in the perpetual care fund or otherwise, and unless already so invested when received, shall be invested within a reasonable time after receipt thereof, and kept invested, in such securities as are permitted for the investment of trust funds by sections 11-2.2 and 11-2.3 of the estates, powers and trusts law. The income arising therefrom shall be used solely for the perpetual care and maintenance of the lot or plots or parts thereof for which such income has been provided. In addition, the governing board of the corporation may appropriate for expenditure solely for the perpetual care and maintenance of the lot or plots or parts thereof for which such income has been provided, a portion of the net appreciation in the fair market value of the principal of the trust as is prudent under the standard established by article five-A of this chapter, the prudent management of institutional funds act. In the event that a cemetery corporation seeks to appropriate any percentage of its net appreciation in its perpetual care fund in accordance with this subparagraph, the cemetery corporation shall provide notice of such appropriation to the cemetery board not less than sixty days in advance of such proposed appropriation and shall disclose such appropriation as part of and in addition to their annual reporting requirements as defined in section fifteen hundred eight of this article setting forth the amount of funds appropriated for such expenditure and its effect on the perpetual care funds. Such proposed appropriation shall become effective sixty days after receipt of such notice, unless the cemetery board within such sixty day period notifies the cemetery corporation that the board objects to the proposed appropriation. (3) The corporation may, for the purpose of investing and reinvesting such funds, add the same to any similar trust fund or funds and apportion shares or interest to each trust fund, showing upon its records at all times every share or interest. (4) The corporation may accept in trust for the perpetual care of a lot, plot or part thereof in its cemetery, property not made eligible for the investment of trust funds under the foregoing provisions of this subdivision and may retain such property in the form in which received, separate and apart from the perpetual care fund, if directed so to do by the instrument under which such property is received, so long as such property remains in the form in which it was received; but whenever such property is sold or otherwise disposed of, the proceeds of such sale or other disposition shall be invested in the manner heretofore provided in this subdivision for the investment of trust funds. The exchange of stock or evidences of indebtedness issued by a corporation for stock or evidences of indebtedness of the same corporation, or for stock, evidences of indebtedness, warrants or script received as a result of merger, consolidation or reorganization of such corporation, or the receipt of additional stock or evidences of indebtedness of such corporation, as a distribution by such corporation, shall not be deemed to be a disposition of the property originally received in trust, and such exchanged or additional property may be retained in place and stead of the property originally received, and under the same conditions. The corporation shall keep accurate accounts of all funds for the perpetual care and maintenance of cemetery lots, plots or parts thereof, separate and apart from its other funds. A copy of the record pertaining to each such perpetual care fund shall be at all times available at the office of the corporation during usual business hours, for inspection and copy by any owner of an endowed lot or his representative.

(d) Perpetual care fund; allocation of income and cost of care and

maintenance. On or before the fifteenth day of March in each calendar year the officers of every cemetery corporation shall fix and determine that portion of the income on the investment of the principal of the perpetual care fund during the calendar or fiscal year immediately preceding, to be apportioned to each separate lot or part thereof for which a perpetual care agreement has been made. The cost during such previous calendar or fiscal year of the care of each lot or part thereof shall be allocated and charged against the income so apportioned to it. Any excess of the income so apportioned over and above the allocated cost of the care and maintenance of such lot or part thereof shall be credited to such lot or part thereof, to be used in any future years to make up the deficiency if the income apportioned to such lot or part thereof should, in any year since September first, nineteen hundred forty-nine, or in any future year, fall, or have fallen, below the cost of care thereof.

(e) Designation of fiduciary corporation by directors or trustees of cemetery corporation to act as custodians of funds. Notwithstanding the provisions of any other law, the directors or trustees of cemetery corporations are hereby authorized to designate a bank or trust company to act as custodian and trustee of any or all of the respective funds of such cemetery corporation received by it for the perpetual care of lots in the cemetery thereof pursuant to subdivision (b), of this section, the permanent maintenance of such cemetery pursuant to subdivision (a) of this section, and for special purposes pursuant to subdivision (f) of this section. Such corporate trustee shall be designated by a resolution duly adopted by the board of directors or trustees and approved by a justice of the supreme court of the judicial district in which the cemetery of said corporation is located; and the directors or trustees of such cemetery corporation may, with the approval of the justice of the supreme court, revoke such trust, and either take over such trust fund or name another trustee to handle the same, but if not so revoked, such trust shall be perpetual. Any bank or trust company accepting any such cemetery fund shall keep the same separate from all other funds, except that it may, irrespective of any provision contained in this article invest the same in a legal common trust fund or in shares of a mutual trust investment company organized under the banking law, and shall pay over the net income to the directors or trustees of the cemetery corporation by whom it shall be expended and applied to the purpose for which such trust fund was paid to the cemetery corporations and accounted for in accordance with such subdivisions (a), (b) and (f) of this section.

(e-1) Monument maintenance fund. (1) A cemetery corporation may, subject to the approval of the cemetery board, establish and maintain a monument maintenance fund. Such a fund is hereby declared to be and shall be held by the cemetery corporation as a trust fund, for the purpose of providing notice if such monuments are damaged or defaced by an act of vandalism and for the restoration of such monuments. Two or more cemetery corporations may establish a joint monument maintenance fund.

(2) The principal of the fund shall be invested in securities permitted for the investment of trust funds by sections 11-2.2 and 11-2.3 of the estates, powers and trusts law. The principal of such fund shall remain inviolate, except that upon application to the supreme court in a district where a portion of the cemetery grounds is located, the court may make an order permitting the principal or a part thereof to be used for the purpose of restoring monuments damaged or defaced by an act of vandalism. The income arising from such investment shall be

used solely for the costs and expenses resulting from an act of vandalism against monuments in such cemetery.

(3) The fund shall be financed by a charge levied at the time of each interment at a rate established by each cemetery creating such a fund, subject to cemetery board approval pursuant to section fifteen hundred nine of this article. Such a charge shall be levied in addition to the approved rates for interment. The fund may also accept gifts, donations and bequests.

(4) Each cemetery creating such a fund shall promulgate rules and regulations to administer the fund, subject to cemetery board approval pursuant to section fifteen hundred nine of this article. Such rules shall include the conditions under which the income from such fund may be properly expended.

(5) The cemetery corporation shall keep accurate accounts of all moneys for the fund, separate and apart from its other funds.

(f) Acquisition of property for special purposes and in trust. (1) A cemetery corporation may acquire, otherwise than by condemnation, real or personal property, absolutely or in trust, in perpetuity or otherwise, and shall use the same or the income therefrom in pursuance of the terms of the instrument by which it was acquired, for the following purposes only: (i) The improvement or embellishment, but not the enlargement, of its cemetery; (ii) The construction, preservation or replacement of any building, structure, fence, wall, or walk therein; (iii) The erection, renewal or preservation of any tomb, monument, stone, fence, wall, railing or other erection or structure on or around its cemetery or any lot or plot therein; (iv) The planting or cultivation of trees, grass, shrubs, flowers or plants in or about its cemetery or any lot or plot therein; (v) The construction, operation, maintenance, repair and replacement of a crematory or columbarium or both in its cemetery; (vi) The care, keeping in order and embellishment of any lot, plot or part thereof or the structures thereon, in its cemetery, as prescribed in the instrument transferring such property to the cemetery corporation, or by the person or persons from time to time having possession, care and control of such lot, plot or part thereof, as the case may be. (2) All moneys and property received by a cemetery corporation in trust under this subdivision, unless otherwise provided in the instrument under which such moneys or property were received and unless already so invested when received, shall be invested within a reasonable time after the receipt thereof, and kept invested in such securities as are permitted for the investment of trust funds by sections 11-2.2 and 11-2.3 of the estates, powers and trusts law. The corporation may, for the purpose of investing and reinvesting such funds, add the same to any similar trust fund or funds and apportion shares or interests to each trust fund, showing upon its records at all times every share or interest. The cemetery corporation shall maintain a record for each such trust fund. Such record shall be at all times available at the office of the corporation during usual business hours, for inspection and copy by any owner of an endowed lot or his representative.

(g) Trust for the care of burial ground. A cemetery corporation, incorporated under or by a general or special law, may receive tangible property, securities or funds in trust, and hold and invest the same and apply the principal or income thereof, in accordance with the terms of the trust, for the purpose of repairing, maintaining, improving or embellishing a burial ground, not constituting a part of the cemetery of such cemetery corporation, and located outside of a city of more than one million inhabitants and within ten miles of the cemetery of the

corporation accepting such trust. The directors of such corporation, or a majority of them and the treasurer, shall annually within sixty days after the close of each calendar or fiscal year, make, sign and shall file at the office of the corporation a detailed accounting and report of such trust funds held under this subdivision and the use made of such funds or of the income thereof for the preceding calendar or fiscal year, which shall include among other things, properly itemized, the securities in which the same is then invested, and any purchases, sales or other changes made therein during the period covered by such report. Such accounting and report shall be at all times available at the office of the corporation, during usual business hours, for inspection and copy by any lot owner or any contributor to such trust fund.

(h) Vandalism, abandonment and monument repair or removal. (1) Cemeteries incorporated under this article shall contribute to a fund created pursuant to section ninety-seven-r of the state finance law for the maintenance of abandoned cemeteries, including the construction of cemetery fences, placement of cemetery lights and replacement of cemetery doors and locks, for the restoration of property damaged by acts of vandalism, and for the repair or removal of monuments or other markers not owned by the cemetery corporation that have fallen into disrepair or dilapidation so as to create a dangerous condition. Such fund shall be administered by a board of trustees comprised of the secretary of state, the attorney general and the commissioner of health, or their designees, who shall serve without additional compensation.

(2) The fund shall be financed by contributions by the cemetery corporations of not more than five dollars (\$5.00) per interment or cremation in a manner to be determined by the New York state cemetery board. No contributions shall be collected upon the interment of the remains of a deceased person where a contribution was collected upon cremations.

(3) The moneys of the fund shall be expended equally for the maintenance of abandoned cemeteries previously owned by a corporation incorporated pursuant to this chapter or the membership corporations law and the repair of cemetery vandalism damage and the repair or removal of monuments or other markers not owned by the cemetery corporation, provided, however, that the cemetery board may determine that circumstances necessitate an unequal distribution due to specific needs and may provide for such distribution. For purposes of this section, the maintenance of abandoned cemeteries may include the construction of cemetery fences, placement of cemetery lights and replacement of cemetery doors and locks.

(4) Authorization for payments by the fund for maintenance of an abandoned cemetery shall be made by the secretary of state only upon approval by the cemetery board of an application by a municipality or other solvent not-for-profit cemetery corporation for fair and reasonable expenses required to be made by the municipality or other solvent not-for-profit cemetery corporation for maintenance of an abandoned cemetery; provided, however, that the cemetery board shall not approve any such application unless the municipality or other solvent not-for-profit cemetery corporation acknowledges that the responsibility for restoration and future care, preservation, and maintenance of such cemetery has been assumed by the municipality or other solvent not-for-profit cemetery corporation. For the purposes of this paragraph, such cemetery shall always be deemed an abandoned cemetery.

(5) Authorization for payments by the fund for the repair of vandalism damage shall be made by the secretary of state only on approval by the New York state cemetery board which shall determine:

(i) that an act of vandalism to the extent described by the cemetery corporation did take place;

(ii) that either a written report of the vandalism was filed with the local police or sheriff's department, or, that the cemetery, upon consent of the division, made a determination not to file the report because the publicity generated by filing the report would have adverse consequences for the cemetery;

(iii) that the cost of repairs is fair and reasonable; and

(iv) that the cemetery corporation has been unable to obtain funds from the lot owner, his spouse, devisees or descendants within a reasonable period of time nor are there adequate funds in the cemetery corporations monument maintenance fund, if such a fund has been established by the cemetery.

(6) Authorization for payments by the fund for the repair or removal of monuments or other markers not owned by the cemetery corporation shall be made by the secretary of state only on approval by the New York state cemetery board on application by the cemetery corporation showing:

(i) that the monuments or markers are so badly out of repair or dilapidated as to create a dangerous condition;

(ii) that the cost of remedying the condition is fair and reasonable;

(iii) that the cemetery corporation has given not less than sixty days notice to the last known owner to repair or remove the monument or other marker and the said owner has failed to do so within the time prescribed in said notice.

(7) The New York state cemetery board shall promulgate rules defining standards of maintenance, as well as what type of vandalism or out of repair or dilapidated monuments or other markers shall qualify for payment of repair or removal by the fund and the method and amount of payment of contributions described in subparagraph two of this paragraph upon the recommendation of the state cemetery board citizens advisory council created by section fifteen hundred seven-a of this article (State cemetery board citizens advisory council).

(8) Nothing contained in this paragraph is to be construed as giving a cemetery corporation an "insurable interest" in monuments or other embellishments on a plot, lot or part thereof, nor is it meant to imply that the cemetery corporation has any responsibility for repairing vandalism damage not covered by this fund, nor for repairing or removing out of repair or dilapidated monuments or other markers not owned by the cemetery corporation, nor shall it constitute the doing of an insurance business.

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Not-For-Profit Corporation

§ 1507-a. State cemetery board citizens advisory council.

(a) There is hereby created a state cemetery board citizens advisory council, to study, investigate, monitor and make recommendations with respect to the maintenance and operation of the state cemetery vandalism restoration, monument repair or removal and administration fund. Such advisory council shall study and investigate incidents of cemetery abandonment, vandalism and desecration, monitor the administration of such fund and recommend changes to improve the management of and expenditures from the state cemetery vandalism restoration, monument repair or removal and administration fund.

(b) The advisory council shall be composed of a member designated by the secretary of state, a member designated by the attorney general, a member designated by the commissioner of health, a member designated by the comptroller and a member designated by the commissioner of taxation and finance. The appointees to the advisory council shall not be employees of the department of state, department of law, department of health, department of audit and control or department of taxation and finance. Each of the members shall serve for a term of two years, provided, however, that the first appointments by the comptroller and commissioner of taxation and finance shall serve for a term of one year. Vacancies occurring other than by expiration of term shall be filled in the same manner as the original appointments for the balance of the unexpired term. Persons designated or appointed to the advisory council shall have demonstrated a long-standing interest, knowledge and experience in the care and preservation of gravesites. One member shall be elected chairman of the advisory council by a majority vote of the members of such council.

(c) The members of the advisory council shall receive no compensation for their services but shall be reimbursed for travel expenses incurred in the performance of their duties.

(d) The advisory council shall meet at least quarterly at the call of the chairman.

(e) The advisory council may request and shall receive from any department, division, board, bureau, commission, agency, public authority of the state or any political subdivision thereof such assistance and data as will enable it properly to carry out its activities hereunder and effectuate the purposes set forth herein.

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§ 1508. Reports by cemeteries.

(a) Annual report. Each cemetery corporation shall, on or before the fifteenth day of March after the end of its calendar year, or if on a fiscal year the seventy-fifth day after the close of such year, file with the cemetery board (1) a statement as to the condition of the permanent maintenance trust fund and a schedule of the assets of such fund. (2) a statement as to the condition of the perpetual care fund and a schedule of the assets of such fund. (3) a statement as to the condition of the moneys and properties received by the cemetery corporation in trust under the provisions of subdivisions (f) and (g) of section fifteen hundred seven of this article. (4) a statement of the gross proceeds of the sale of plots, lots and parts thereof, graves, niches and crypts showing the disposition of such proceeds and (5) a statement of changes in the number and amount of certificates of indebtedness in accordance with the provisions of paragraph three of subdivision (a) of section fifteen hundred eleven of this article. (6) a statement as to the condition of the monument maintenance fund, if any, and a schedule of the assets of such fund.

(b) Additional reports. The cemetery board may address to any cemetery corporations or its officers or any person any inquiry in relation to the transactions or conditions of the cemetery corporation or any matter connected therewith, and may require that a reply be verified. Failure to submit such reply within the time designated by the cemetery board shall subject the corporation, officer or person so addressed to the penalties provided in subdivision (d) hereof.

(c) Cemetery payment for administration. To defray the expenses of examination and administration, each cemetery corporation shall not later than March fifteenth in each calendar year, pay to the cemetery board the sum of three dollars per interment and cremation in excess of fifteen interments or cremations for the preceding calendar year. No contribution shall be collected upon the interment of the remains of a deceased person where a contribution was collected upon cremation.

(d) Failure to file report. Any cemetery corporation or individual failing to file any report or any schedule of rules, regulations and charges required by this article shall forfeit to the people of the state the sum of one hundred dollars for each day that each such report shall be delayed or withheld, except that the cemetery board may extend the time for filing any such report and may waive payment of any penalty or part thereof provided herein.

Not-For-Profit Corporation

§ 1509. Cemetery rules and regulations; charges and lot tax assessments.

(a) Rules and regulations. The directors of a cemetery corporation shall make reasonable rules and regulations for the use, care, management and protection of the property of the corporation and of all lots, plots and parts thereof; for regulating the dividing marks between the lots, plots and parts thereof; for prohibiting or regulating the erection of structures upon such lots, plots or parts thereof; for preventing unsightly monuments, effigies and structures within the cemetery grounds, and for the removal thereof; for regulating the introduction and care of plants, trees and shrubs within such grounds; for the prevention of the burial in a lot, plot or part thereof, of a body not entitled to burial therein; for regulating or preventing disinterments; for regulating the conduct of persons while within the cemetery grounds; for excluding improper persons and preventing improper assemblages therein. The directors may prescribe penalties for the violation of any such rule or regulation, not exceeding twenty-five dollars for each violation, which shall be recoverable by the corporation in a civil action.

(b) Charges for services. The directors of a cemetery corporation shall fix and make reasonable charges for any acts and services ordered by the owner and rendered by the corporation in connection with the use, care, including perpetual, annual and special care, management and protection of lots, plots and parts thereof. In determining said charges the directors shall consider the propriety and the fair and reasonable cost and expense of rendering the services or performing the work for which such charges are made.

(c) Cemetery board approval. (1) A cemetery corporation's rules, regulations and original charges shall not become effective unless and until approved by the cemetery board as hereinafter provided. (2) The directors of any cemetery corporation, organized on or before August thirty-first, nineteen hundred forty-nine, shall file in the office of the cemetery board the name and address of the corporation together with its rules, regulations and charges, and a statement showing the basis upon which they were made, within ninety days after the time this section as hereby amended takes effect. The directors of any cemetery corporation organized on or after September first, nineteen hundred forty-nine, shall file in the office of the cemetery board the name and address of the corporation together with its rules, regulations and charges, and a statement showing the basis on which they were made, within ninety days after the date of the filing of the certificate of incorporation in the department of state. (3) Within six months after the date of such filing, the cemetery board shall make and file in its office an order approving, disapproving or amending such rules, regulations and original charges in whole or part. Such rules, regulations and charges, if approved with or without amendment, shall become effective as approved upon the filing of such order by the cemetery board in its office. The cemetery board shall notify the directors of the action taken by it and its reasons therefor by registered mail addressed to the corporation at its principal office. In making its determination as to the schedule of charges the cemetery

board shall consider the propriety and the fair and reasonable cost and expense of rendering the services or performing the work for which such charges are made. In passing upon the rules and regulations, the cemetery board shall consider the interests of the members of the corporation and the public interest in the proper maintenance and operation of burial grounds. (4) The rules, regulations and charges of any cemetery corporation existing on or before August thirty-first, nineteen hundred forty-nine, shall remain in effect until the cemetery board files in its office an order pursuant to the provisions of subdivision three hereof. A cemetery corporation organized on or after September first, nineteen hundred forty-nine, may enforce the rules, regulations and charges filed by it in the office of the cemetery board until the cemetery board files in its office an order pursuant to the provisions of subdivision three hereof.

(d) Services not in list of charges. In the event that a cemetery corporation provides any services not included in the list of charges, and for which a charge cannot reasonably be fixed in advance, the charges made therefor shall be reviewable by the cemetery board. In the event that the cemetery board determines that an excessive, unauthorized or improper charge has been made for such services or that the services have not been properly performed, it may direct the cemetery corporation to pay to the person from whom such charge was collected a sum equivalent to three times the amount of the excess as determined by the cemetery board, or in the case of work not properly performed, it may direct the cemetery corporation to perform the work properly.

(e) Amendment and modification. (1) The rules and regulations of a cemetery corporation may be amended or added to by the corporation by filing such proposed amendments or additions in the office of the cemetery board but no such amendment or addition shall be effective unless and until an order approving such amendments or additions is made by the cemetery board and filed in its office in the same manner as that applicable to the original filing of the rules, regulations and charges of the cemetery corporation. (2) The charges of a cemetery corporation may be amended or added to by the corporation by filing an application containing such proposed amendment or addition in the office of the division of cemeteries and shall be processed in accordance with subparagraph three of this paragraph. The cemetery board shall consider the propriety and the fair and reasonable costs and expense of rendering the services or performing the work for which such charges are made. The effective rules, regulations or charges of a cemetery corporation may be amended, modified or vacated by the cemetery board at any time. The cemetery board shall notify the directors of the action taken by it and its reasons therefor by registered or certified mail addressed to the corporation at its principal office. In amending, modifying or vacating any rule, regulation or charge, the cemetery board shall be guided by the standards set forth in subparagraph three of paragraph (c) of this section. (3) Any application setting forth the proposed amendment of, or addition to, the charges of a cemetery corporation as provided for by subparagraph two of this paragraph shall be processed in accordance either with clauses A, B and C of this subparagraph or in accordance with clause D of this subdivision.

A. Within thirty-five days following receipt of the application, the board or the division may request from the cemetery corporation any additional information or documentation deemed necessary to complete such application, and such application shall not be complete for the purposes of compliance with this subparagraph until the requested information has been received. If no such request is made, the

application shall be deemed to be complete on the thirty-fifth day after its receipt by the division.

B. An application setting forth the proposed amendment of, or addition to, the charges of a cemetery corporation shall be deemed to be approved for any cemetery corporation holding, including unrestricted funds, cash and investments totalling less than four hundred thousand dollars, if the board does not object to the proposed charges within sixty days following: (i) the date on which the application shall have been deemed to be complete or (ii) the date on which the requested information necessary to complete the application shall have been received, whichever is later. If the board objects to the proposed charges, it shall notify the directors in writing with the reasons therefor, such notice to be mailed by registered or certified mail to the corporation at its principal office, not less than three business days before the end of such sixty day period. If the board approves such amendment of or addition to the charges, it shall do so by order.

C. An application setting forth the proposed amendment of, or addition to, the charges of a cemetery corporation shall be deemed to be approved for any cemetery corporation holding, including unrestricted funds, cash and investments totalling more than four hundred thousand dollars, if the board does not object to the proposed charges within ninety days following: (i) the date on which the application shall have been deemed to be complete or (ii) the date on which the requested information necessary to complete the application shall have been received, whichever is later. If the board objects to the proposed charges, it shall notify the directors in writing with the reasons therefor, such notice to be mailed by registered or certified mail to the corporation at its principal office, not less than three business days before the end of such ninety day period. If the board approves such amendment of or addition to the charges, it shall do so by order.

D. A cemetery may apply to the cemetery board for an increase in any or all of its approved charges by submitting a schedule to the cemetery board showing its currently approved charges and the proposed charges after applying the employment cost index to said charges as it appears in the United States Department of Labor, Bureau of Labor Statistics, Series ECU10001A, not seasonally adjusted, total compensation, civilian, twelve month percent change for all workers schedule or any subsequent schedule that may be adopted by the United States Department of Labor, Bureau of Labor Statistics, as a replacement for the aforementioned schedule. Any application by a cemetery under this subparagraph will prohibit application under subparagraph two of this paragraph for one year from the effective date of the approved increase under this subparagraph. An application setting forth the proposed changes in charges shall be deemed to be approved if the board does not object to the proposed charges within sixty-days following the date on which the application is submitted by a cemetery. If the board objects to the proposed charges, it shall notify the directors in writing with the reasons therefore, such notice to be mailed to the corporation at its principal office, not less than three business days before the end of such sixty day period. If the board approves such amendment of or addition to the charges, it shall do so by order. The cemetery board shall not approve application by a cemetery under this subparagraph if (i) the proposed percentage increases exceed the employment cost index percentages as provided in this subparagraph; (ii) there have been invasions of the permanent maintenance fund by the cemetery that have not been repaid or are not currently being repaid; (iii) the cemetery is currently not in compliance with any court order or any cemetery board

order that is not under judicial review under paragraph (d) of section 1504; (iv) the cemetery has not filed in a timely manner its annual reports with the division of cemeteries as required under section 1508 (Reports by cemeteries); (v) all assessments as required under paragraph (c) of section 1508 (Reports by cemeteries) and vandalism fund payments as required under subparagraph two of paragraph (h) of section 1507 (Trust funds) have not been paid.

(f) Lot tax assessment. (1) If the funds of a cemetery corporation applicable to the improvement and care of its cemetery, or applicable to the construction of a receiving vault therein for the common use of lot owners, be insufficient for such purposes, the directors of the corporation, not oftener than once in any year and for such purposes only, may, upon the prior approval of the cemetery board, which shall determine the necessity and propriety thereof, levy a tax on some basis to be determined by the directors of such corporation, but no such tax shall exceed two dollars on any one lot, except that with the written consent of two-thirds of the lot owners or by the vote of a majority of the lot owners present at an annual meeting, or at a special meeting duly called for such purpose, such tax may be for an amount which shall not exceed a total of five dollars per annum per lot, and the tax on any one lot shall not exceed five dollars per annum but the taxes may be levied upon each lot in the first instance for a sum sufficient for the improvement and care of the lot, but no greater sum than five dollars shall be collected in any one year. The whole tax levied may be collected in sums of five dollars in successive years in the manner herein provided. (2) Notice of such tax shall be served on the lot owners or where two or more persons are owners of the same lot, on one of them, either personally, or by leaving it at his residence, with a person of mature age and discretion, or by mail, if he resides in a city, town or village where the office of the corporation is not located, or in case the residence or whereabouts of the owner cannot be ascertained, by publication once a week for four successive weeks in a newspaper published in the town where such cemetery is located, or if no newspaper is published in such town then in some newspaper published in the county where such cemetery is located. (3) If such tax remain unpaid for more than thirty days after the service of such notice, the president and secretary of the corporation may issue a warrant to the treasurer of the corporation, requiring him to collect such tax in the same manner as school collectors are required to collect school taxes; and such treasurer shall have the same power and be subject to the same liabilities in executing such warrant as a collector of school taxes has or is subject to by law in executing a warrant for the collection of school taxes. (4) If the taxes so levied remain unpaid for five years after the levying of such tax the amount thereof with interest shall be a lien on the unused portion of the lot which is subject to such tax, and no portion of the lot so taxed shall be used by the owner thereof for burial purposes, while any such tax remains unpaid. (5) If at the expiration of five years from the date of the service of the first notice of assessment as herein provided, any such assessment or the interest thereon shall remain unpaid, the corporation may sell the unused portion of such lot at public auction upon the cemetery grounds, in the following manner: If the person owning such lot resides within the state, a written notice, under the seal of such cemetery corporation, if it have a seal, and the hand of the president or secretary thereof, stating the amount of such tax or taxes unpaid and that such unused portion of such lot will be sold at a time therein to be specified, not less than twenty days from the date of the service of

such notice, shall be personally served upon such owner; if such owner is not a resident of the state, or if the place of his residence cannot with due diligence be ascertained, or if, for any other reason satisfactory to the court, personal service cannot with due diligence be made upon such owner, such cemetery corporation, or any of its officers, may present a duly verified petition stating the facts to the county court of the county in which such cemetery lands are situated, or to the supreme court, and such court may upon satisfactory proof, by its order, direct the service of such notice in the manner provided by the civil practice law and rules for the substituted service of a summons. The president or secretary of such corporation, or any suitable and proper person appointed by it or by the court, upon filing proof of publication and service of such notice as provided by section three hundred fourteen of the surrogate's court procedure act may make such sale, and such sale may be adjourned from time to time for the accommodation of the parties or for other proper reasons. Previous notice of such sale shall be posted at the main entrance of the cemetery. Prior to such sale such corporation shall cause such lot to be resurveyed and replotted showing the part thereof not used for burial purposes and only such unused portion shall be sold. The cemetery corporation may at any such sale purchase any such lots or parts of lots. The surplus remaining after paying all assessments, interest, cost and charges shall be set aside by the corporation, as a fund for the care and improvement of the portion of such lot that has been used for burial purposes. In case the proceeds of such sale shall amount to more than thirty dollars the person making it shall make his report, under oath, to the court, of the proceedings and shall state the amount for which such lot was sold and that it was sold to the highest responsible bidder, together with the names of the purchasers, and the court may and in a proper case shall, by order, confirm the sale; in all other cases the person making such sale shall file in the office of the county clerk of the county in which the cemetery lands are situated a like report duly verified; on the filing of such order of confirmation or such report, as the case may be, the ownership of the unoccupied portion of such lot shall vest in the purchaser thereof. (6) The directors of any such corporation may make a contract with a lot owner which shall provide for the payment by him of an agreed gross sum in lieu of further taxes and assessments and that upon the payment of such gross sum the lot of such owner shall be thereafter exempt from taxes and assessments.

(g) Purchases through office of general services. Notwithstanding the provisions of any general, special or local law, any officer or agent of a cemetery corporation subject to the provisions of this article authorized to make purchases of commodities and services may make such purchases through the office of general services subject to such rules as may be established from time to time pursuant to section one hundred sixty-three of the state finance law; provided that any such purchase shall exceed five hundred dollars and that the cemetery corporation for which such officer or agent acts shall accept sole responsibility for any payment due the vendor. All purchases shall be subject to audit and inspection by the cemetery corporation for which made. Two or more cemetery corporations may join in making purchases pursuant to this section and, for the purposes of this section, such groups shall be deemed a cemetery corporation.

Not-For-Profit Corporation

§ 1510. Cemetery duties.

(a) Posting and distribution of rules, regulations, charges and prices. The rules, regulations, charges, and prices of lots, plots or parts thereof shall be suitably printed and shall be conspicuously posted by the corporation in each of its offices. A printed copy of prices of lots, plots or parts thereof shall be made available upon request by any person for up to the actual price of the printing of the copy. For each day in which the corporation fails to post the rules, regulations, charges and prices the corporation shall be subject to a penalty of twenty-five dollars which may be recovered in a civil action by the cemetery board. For each instance in which the corporation fails to make available a copy of the prices of lots, plots, or parts thereof, to a person who request such copy, the corporation shall be subject to a penalty of twenty-five dollars which may be recovered in a civil action by the cemetery board. The cemetery board may waive the payment of the penalty or any part thereof.

(b) Surveys and maps of cemetery. (1) Every cemetery corporation, from time to time, as land in its cemetery may be required for burial purposes, shall survey and subdivide such lands and make and file in the office of the corporation a map thereof, open to public inspection, delineating the lots or plots, avenues, paths, alleys and walks and their respective designations; a true copy thereof shall upon its written request, be filed with the cemetery board. Any unsold lots, plots or parts thereof, in which there are no remains, by order of the directors, may be resurveyed and altered in shape or size, and properly designated on such map. (2) Every cemetery corporation shall provide reasonable access to every lot, plot and grave. This provision shall not be applicable where on September first, nineteen hundred forty-nine such access cannot be provided without the disinterment of a body or bodies. A cemetery corporation shall not permit or allow a body to be interred hereafter in a path, alley, avenue or walk shown on the cemetery maps or actually in existence. Nothing herein contained, however, shall prevent a cemetery corporation in special cases from enlarging a lot by selling to the owner thereof the access space next to such lot, and permitting interments therein, provided reasonable access to such lot and to adjoining lots is not thereby eliminated, and provided the approval of the cemetery board shall have first been obtained.

(c) Record of burials or cremations. A record shall be kept of every burial in the cemetery of a cemetery corporation, showing the date of burial, the name, age, and place of birth of the person buried, when these particulars can be conveniently obtained, and the lot, plot, or part thereof, in which such burial was made. A copy of such record, duly certified by the secretary of such corporation, shall be furnished on demand and payment of such fees therefor as are allowed the county clerk for certified copies of records. Notwithstanding any other provision of this section, all cemetery corporations which conduct cremations shall maintain permanent records of the name of the deceased human being, the funeral home from which the remains were received, the receipt of delivery of the deceased human remains, the authorizing agent for the cremation, and the manner of disposition of the cremains. Such records

may be reviewed by the division of cemeteries at any time.

(d) When burial not to be refused. No cemetery corporation shall refuse or deny the right of burial and the privileges incidental thereto in any lot, plot or part thereof to those otherwise lawfully entitled to be buried therein, for any reason except for the non-payment of interment charges and the purchase price of the lot, plot or part thereof, in accordance with the terms of the contract of purchase or except as provided in subdivision (f) of section fifteen hundred nine of this article.

(e) Removals. A body interred in a lot in a cemetery owned or operated by a corporation incorporated by or under a general or special law may be removed therefrom, with the consent of the corporation, and the written consent of the owners of the lot, and of the surviving wife, husband, children, if of full age, and parents of the deceased. If the consent of any such person or of the corporation can not be obtained, permission by the county court of the county, or by the supreme court in the district, where the cemetery is situated, shall be sufficient. Notice of application for such permission must be given, at least eight days prior thereto, personally, or, at least sixteen days prior thereto, by mail, to the corporation or to the persons not consenting, and to every other person or corporation on whom service of notice may be required by the court.

(f) Expenses of improving vacant lot. Whenever a person having a lot in a cemetery shall vacate the same by a removal of all the bodies therefrom, and leave such lot in an unsightly condition for one month, the corporation may grade, cut, fill or otherwise change the surface thereof, without reducing the area of the lot. The expense, not exceeding ten dollars, shall be chargeable to the lot. If the owners of such lot, within six months after such expense has been incurred, shall not repay such expense, the corporation may sell the lot at public auction upon the cemetery grounds, previous notice of such sale having been posted at the main entrance of the cemetery, and mailed to the owners of such lot at their last-known post office address, at least ten days prior to the day of sale, and shall pay the surplus, if any, on demand to the owners of such lot.

(g) Removal or correction of dangerous conditions in cemetery lots. Any plant life, fencing or embellishment or structure other than a mausoleum, monument or mound, in a lot, plot or part thereof which becomes so worn, neglected, broken or deteriorated that its continued existence is a danger to persons or property within the cemetery grounds may be removed, repaired or corrected by the cemetery corporation at its own cost and expense, provided it first gives not less than fifteen days notice by registered or certified mail to the last known owner at his last known address to repair or remove such object and the said owner shall fail to repair or remove the object within the time provided in said notice. In the event of such removal, correction or repair by the cemetery corporation it shall, within twenty days thereafter, notify the lot owner, by registered or certified mail addressed to him at his last known address, of the action taken by the cemetery corporation. Nothing herein contained shall be construed to affect, supersede or impair any contract, rule or regulation duly approved by the cemetery board, or right or obligation of the cemetery corporation, nor shall it be construed as placing any legal duty or obligation to exercise any right authorized by this subdivision.

(h) Repair or notice as to non-dangerous damage or defacement. Except as otherwise provided by rule or regulation of the cemetery board pursuant to subparagraph two-a of paragraph (c) of section fifteen

hundred four of this article, in the event a lot, plot or part thereof is substantially damaged or defaced which does not present a dangerous condition to persons or property, or in the event a mausoleum, monument or mound in a lot, plot or part thereof is substantially damaged or defaced, and the correction of such condition is not subject to the provisions of paragraph (g) of this section or section fifteen hundred ten-a of this article, the cemetery corporation within thirty days of the discovery of this condition may at its own cost and expense repair the damage or defacement, or if it determines not to do so, the corporation shall within such thirty day period notify the owner, his or her distributee or the person filing an affidavit with such corporation pursuant to the provisions of paragraph (e) of section fifteen hundred twelve of this article of such condition at the last address of such owner, distributee or person appearing on the books and records of the corporation. The notice shall be sent by first class mail and a certificate of mailing shall be obtained. Nothing herein contained shall be construed as establishing any right of damages not otherwise provided by law, rule or contract in any person against the cemetery corporation for failure to repair any condition described or give notice thereof as provided for in this paragraph.

(i) Record of inscriptions to be filed. Whenever, under any general or special law, any cemetery is abandoned or is taken for a public use, the town board of the town or the governing body of the city in which such cemetery is located, shall cause to be made, at the time of the removal of the bodies interred therein, an exact copy of all inscriptions on each headstone, monument, slab or marker erected on each lot or plot in such cemetery and shall cause the same to be duly certified and shall file one copy thereof in the office of the town or city clerk of the town or city in which such cemetery was located and one copy in the office of the state historian and chief of the division of history in the department of education at Albany. In addition to such inscriptions, such certificate shall state the name and location of the cemetery so abandoned or taken for a public use, the cemetery in which each such body was so interred and the disposition of each such headstone, monument, slab or marker.

(j) Grave markers. No cemetery corporation, which provides for the burial of persons of the Jewish faith, shall promulgate any rule or regulation prohibiting the use of cement beds as a means of demarcating a specific grave area. Such cemetery corporations shall provide this service to all persons of the Jewish faith requesting this method of marking a grave when such grave area is provided through the agency of a membership or religious corporation or unincorporated association or society which provides burial benefits for the members. Subject to the rules and regulations promulgated by the cemetery board, such cemetery corporations shall establish the schedule of charges to be assessed for installation and maintenance of cement beds. The schedule of charges shall be filed with and approved by the cemetery board. Such regulation may require the payment of the cost of perpetual care as a condition to such installation and maintenance. The charges assessed shall be paid by the person requesting the service. The provisions of this paragraph shall only be applicable within the counties contained within the first, second, tenth and eleventh judicial districts as such districts are arranged pursuant to section one hundred forty of the judiciary law.

(k) Notice and restoration as to damage and defacement due to vandalism. In the event a monument is damaged or defaced by an act of vandalism, the cemetery corporation shall, within thirty days of the discovery of such damage, notify the owner, his distributee or the

person filing an affidavit with such corporation pursuant to the provisions of paragraph one of subdivision (e) of section fifteen hundred twelve of this article of such damage in the manner provided in subdivision (h) of this section. The cost and expense of such notice may be provided from the fund where such fund exists. If a fund has been established, the cemetery corporation shall restore the monument with moneys from such fund. If such a fund has not been established or where such fund is inadequate to restore the monument, the cemetery corporation may restore such monument at its own cost and expense. Nothing herein contained shall be construed as establishing any right of damages not otherwise provided by law, rule or contract in any person against the cemetery corporation for failure to restore any monument if no monument maintenance fund exists or if such fund is inadequate to restore such monument.

(l) Removal of monument. No person or organization shall remove a monument without authorization in the form of a court order from a court of competent jurisdiction, or without the written authorization of the owner of a burial plot, or the lineal descendants of the deceased, if such owner or lineal descendants are known, and without obtaining written approval from a duly incorporated cemetery association, which association shall keep a record of all such written approvals. The provisions of this section shall not prohibit the removal, in accordance with rules and regulations promulgated by the secretary of state, of a monument for the purpose of repair, nonpayment or adding inscriptions as authorized by a cemetery association or as permitted in this article. A violation of any provision of this paragraph shall be punishable by a fine not to exceed five hundred dollars.

(m) Use of construction and demolition debris for burial. No cemetery corporation or religious corporation having charge and control of a cemetery which heretofore has been or which hereafter may be used for burials, shall use construction and demolition debris, as that term is defined in 6 NYCRR 360-1.2, for the purpose of burying human remains.

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Not-For-Profit Corporation

§ 1510-a. Repair or removal of monuments.

(a) Cemetery corporations may repair or remove any monuments or other markers not owned by the cemetery corporation that have fallen into disrepair or dilapidation so as to create a dangerous condition, provided that the cemetery corporation has given not less than sixty days notice by registered or certified mail to the last known owner at that person's last known address to repair or remove the monument or other marker and the said owner has failed to do so within the time provided in said notice.

(b) In the event that the last known owner cannot be found, the notice may be given by publishing the same once each week for three consecutive weeks in a newspaper published or circulated in the county in which the cemetery is located. Such notice shall be addressed to the last known owner and to all persons having or claiming any interest in or to the burial lot on which the monument or other marker is located. The notice shall date from the date of mailing such notice by registered or certified mail, or the date of the third publication in the newspaper.

(c) Any monument or other marker that is removed as provided for in this section shall be replaced with a flush bronze or granite marker suitably inscribed if replacement is appropriate for identification purposes.

(d) Nothing contained herein shall be construed as establishing any right of damages not otherwise provided by law, rule or contract in any person against the cemetery corporation for failure to repair or remedy any condition described or give notice thereof as provided for in this section.

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Not-For-Profit Corporation

§ 1506-b. Transfer of lands of Valley View Rural Cemetery.

Notwithstanding any other provision of law to the contrary, the board of trustees of the Valley View Rural Cemetery Association in the town of Dover Plains, New York, may by resolution of such board, sell, lease or transfer any portion of the lands of Valley View Rural Cemetery to the parish of St. Charles Borromeo in the town of Dover Plains, New York, for cemetery purposes for the adjoining and contiguous cemetery of the parish of St. Charles Borromeo.

Not-For-Profit Corporation

§ 1511. Cemetery indebtedness.

(a) Certificates of indebtedness. (1) If a cemetery corporation be indebted for lands purchased for cemetery purposes, or for services rendered or materials furnished in connection with the necessary and proper preservation or improvement of its cemetery or for moneys borrowed exclusively for payment of such services or materials, the directors, by the concurring vote of a majority of their whole number, with the consent of the creditor to whom such indebtedness is owing, may issue certificates under the corporate seal, signed by the president and secretary, for such amount, payable at the times and at the rate of interest agreed upon but not to exceed six per centum per annum; provided, however, that there be first obtained from the cemetery board an order approving the issuance of such certificates. In the case of certificates of indebtedness issued for moneys borrowed exclusively for payment for services rendered or materials furnished in connection with the necessary and proper preservation or improvement of its cemetery the consent of the creditor to whom such indebtedness is owing shall not be required. (2) Such approval shall be given by the cemetery board only if it determines that the amount of the certificates proposed to be issued does not exceed the fair and reasonable value of the services rendered or materials furnished or the purchase price of real property as fixed in accordance with subdivision (b) of this section. No certificate issued shall be valid or enforceable unless there has first been issued by the cemetery board an order of approval as herein provided. No certificate shall be for less than one hundred dollars. The certificate shall be transferable by delivery, unless therein otherwise provided. (3) The directors shall keep an account of the number and amount of such certificates, the persons to whom issued, the date of maturity, the rate of interest and the purpose for which the same were issued. Each cemetery corporation shall file with the cemetery board a verified statement setting forth all changes in such account during the previous calendar or fiscal year. (4) The directors shall set aside from the proceeds of sales of lots, plots and parts thereof such sums to pay such certificates at maturity as they deem necessary. Until the certificates are paid the holders thereof shall be entitled at all meetings of the corporation, to one vote for each one hundred dollars of indebtedness remaining unpaid, except that those certificates of indebtedness issued for moneys borrowed exclusively for payment of services or materials shall have no voting power. The certificates shall not be a lien upon any lot, plot or part thereof belonging to a lot owner.

(b) Application of proceeds of sales of lots. (1) At least one-half of the proceeds of sales of lots or the use thereof remaining after the deductions for the portion thereof required to be deposited in the permanent maintenance fund and current maintenance fund together with the expenses of sale shall be applied by a cemetery corporation to the payment of the purchase price of the real property acquired by it. The remainder of such proceeds shall be applied by the corporation to preserving, improving and embellishing the cemetery grounds and the avenues and roads leading thereto, and to defraying its expenses and discharging its liabilities. After the payment of such purchase price,

and the expense of surveying and laying out the cemetery, all the proceeds of such sales shall be applied to the improvement, preservation and embellishment of the cemetery and to such expenses and liabilities.

(2) Where a corporation has agreed with a person from whom any such lands were purchased to pay therefor a specified share not exceeding one-half of the proceeds of sales of lots therein or the use thereof, such corporation may continue to make payments as so agreed, provided however that there be first deducted from said proceeds of sales the amount required to be deposited in the permanent maintenance fund and current maintenance fund as aforesaid together with the expenses of sale. The balance of such proceeds shall continue to be applied by the corporation to the preservation, improvement and embellishment of the cemetery, and the expenses and liabilities of the corporation. Where the corporation has heretofore agreed to pay a specified share of the proceeds as aforesaid in payment of the purchase price of land, the prices of lots or the use thereof in force when such purchase was made, shall not be changed, while the purchase price remains unpaid, without the written consent of a majority in interest of the persons from whom the lands were purchased or their legal representatives. (3) A corporation which has heretofore issued certificates of land shares which entitle the owner to a specified share in the proceeds of the sale of lots, may purchase such certificates with its surplus or reserve funds and hold such certificates for the benefit of its surplus or reserve funds, but such certificates may not thereafter be sold or reissued.

(c) Certificates of stock formerly issued. If a cemetery corporation, incorporated under a law repealed by the membership corporations law, prior to September first, eighteen hundred ninety-five, converted its outstanding indebtedness or certificates of indebtedness into certificates of stock, in pursuance of law, no interest shall accrue to the holders of such stock, but they shall receive annually or semi-annually a dividend thereon for their proportional part of the entire surplus or net receipts of the corporation over and above current expenses; or if the proportion of the net receipts or surplus which stockholders shall be entitled to receive shall have been fixed by agreement at the time of issuing such stock, such stockholders shall be entitled to receive dividends in accordance with such agreement. Such certificates of stock shall be transferable only on the books of the corporation on the surrender of the certificate, unless otherwise provided on the face thereof, and on every such surrender a new certificate of stock shall be issued to the person to whom the same has been transferred; and the holders of such stock shall be entitled, in person or by proxy, to one vote for every share thereof, at each meeting of the corporation. A register of the stock issued by the corporation shall be kept by its directors showing the date of issue, the number of shares, the par value thereof, the name of each person to whom issued, the number of the certificates therefor; and all transfers of such stock shall be noted and entered in such register, and the certificates surrendered shall be deemed canceled by the issue of a new certificate, and the surrendered certificate shall be destroyed. Any director may become the holder or transferee of such stock for his own individual use or benefit. No such stock shall be a lien on the lot of any individual lot owner within the cemetery limits; and no other or greater liability of the corporation issuing such stock shall be created or deemed to exist than may be necessary to enforce the faithful application of the surplus or net receipts of the corporation to and among the holders of the stock in the manner hereinbefore specified. A cemetery which has heretofore issued such certificates of

stock is a membership corporation and not a stock corporation.

(d) Retirement of certificates of stock of certain cemetery corporations. If a cemetery association, incorporated under a law repealed by chapter five hundred fifty-nine of the laws of eighteen hundred ninety-five has changed certificates of indebtedness into certificates of stock, pursuant to chapter one hundred seven of the laws of eighteen hundred seventy-nine, and such stock remains unimpaired, such association may retire such stock and issue in exchange therefor certificates of indebtedness representing the par value of such stock, such certificates of indebtedness to bear interest at a rate not exceeding six per centum per annum from the date of the last preceding dividend payment; provided, however, the exchange of such stock for certificates of indebtedness shall be authorized at a duly called meeting of such association by the affirmative vote of at least two-thirds of the stock issued and outstanding and of at least two-thirds of all votes cast at such meeting in favor of such exchange. Any holder of such stock not voting in favor of the exchange of such stock for certificates of indebtedness may at any time prior to the vote upon such exchange, or if notice of the meeting to vote upon such exchange was not mailed to him at least twenty days prior to the taking of such vote, then within twenty days after the mailing of such notice, object to such exchange and demand payment for his stock and thereupon such stockholder or the corporation shall have the right, subject to the same conditions and provisions contained in section six hundred twenty-three of the business corporation law, to have such stock appraised and paid for as provided in such section. Such objection and demand must be in writing and filed with the corporation. The provisions of this section relating to certificates of indebtedness and the rights of the holders thereof shall apply to certificates of indebtedness issued as provided in this subdivision. The stocks so retired shall not be reissued by such association and it shall have no right thereafter to issue any certificates of stock.

(e) Purchase, retirement and exchange of stock. (1) A cemetery corporation which has issued certificates of stock, pursuant to chapter one hundred seven of the laws of eighteen hundred seventy-nine, or chapter two hundred sixty-seven of the laws of eighteen hundred ninety-four, may purchase such certificates of stock with its surplus or reserve funds, and hold such certificates for the benefit of its surplus or reserve funds, but such certificates of stock so purchased may not thereafter be sold or reissued. (2) A cemetery corporation which has issued certificates of stock may also effect the retirement of such stock as follows: The board of directors of such corporation shall adopt by vote of a majority of the entire number of such directors a plan for such retirement which shall include the fixing of a price which the corporation will pay for all shares of stock then outstanding, which price shall, in the opinion of such directors, represent the fair value of such stock. The said plan shall be submitted to a duly called meeting of the members of such corporation and, if approved by the affirmative vote of at least two-thirds of all votes cast at such meeting, including the affirmative vote of the holders of record of at least two-thirds of all shares of stock issued and then outstanding exclusive of any shares of stock held by the corporation, shall become binding upon all stockholders, and they shall proceed to transfer and surrender to the corporation their certificates of stock and to receive payment therefor in accordance with the terms of such plan. Any holder of shares of such stock not voting in favor of such plan may at any time prior to the vote approving such plan, or if notice of the meeting to

vote upon such plan was not mailed to him at least twenty days prior to the taking of such vote, then within twenty days after the mailing of such notice, but in any event within ten days after the taking of such vote, by written notice filed with such corporation, object to such plan and demand appraisal of his shares. Thereupon, such stockholder or the corporation shall have the right, subject to the same conditions and provisions contained in section six hundred twenty-three of the business corporation law, to have such stock appraised and paid for as provided in such section. (3) A cemetery corporation which has issued certificates of stock may also effect the exchange of such stock as follows: The board of directors of such corporation shall adopt by a vote of a majority of the entire number of such directors a plan for the exchange of all shares of stock then outstanding for a like number of participating certificates. Such participating certificates shall entitle the owners to a specified share not exceeding, collectively, one-half of the proceeds of sales of lots therein or the use thereof after first deducting from such proceeds of sale the amount required to be deposited in the permanent maintenance fund and current maintenance fund as provided in and pursuant to subdivision (a) of section fifteen hundred seven of this article, together with the expenses of sale. Such plan shall then be submitted to the cemetery board for its approval. In making its determination the cemetery board shall consider and may condition its approval on the purposes of this section. Thereafter, if the cemetery board approves such plan, or in the event the cemetery board conditioned its approval and the conditions imposed have been accepted by a vote of a majority of the entire board of directors of the corporation, such plan shall be submitted to a duly called meeting of the members of such corporation, and, if approved by the affirmative vote of at least two-thirds of all votes cast at such meeting, including the affirmative vote of the holders of record of at least ninety per centum of all shares of stock issued and then outstanding exclusive of any shares of stock held by the corporation, shall become binding upon all stockholders. The stockholders shall then proceed to transfer and surrender to the corporation their shares of stock and to receive in exchange therefor participating certificates in accordance with the terms of such plan. Any holder of shares of such stock not voting in favor of such plan may at any time prior to the vote approving such plan, or if notice of the meeting to vote upon such plan was not mailed to him at least twenty days prior to the taking of such vote, then within twenty days after the mailing of such notice, but in any event within ten days after the taking of such vote, by written notice filed with such corporation, object to such plan and demand appraisal of his shares. Thereupon, such stockholder or the corporation shall have the right, subject to the same conditions and provisions contained in section six hundred twenty-three of the business corporation law, to have such stock appraised and paid for as provided in such section. Each such participating certificate issued in exchange for a share of stock shall entitle the holder thereof to one vote for each certificate at all meetings of the corporation. The prices of lots or the use thereof at the time when such exchange is made shall not be changed, while such participating certificates remain outstanding, without the written consent of a majority in interest of the holders thereof except as now or hereafter authorized by law. The shares of stock so exchanged shall not be reissued by such corporation and it shall have no right thereafter to issue any shares of stock.

(f) Exchange of certificates for shares. The directors of a cemetery corporation, which has issued certificates for shares, from time to time

by resolution, may fix the value of each of such shares and authorize the acceptance by the corporation of such certificates at the value so fixed in payment for land. All certificates so accepted shall be immediately cancelled and shall not be again issued.

Not-For-Profit Corporation

§ 1512. Rights of lot owners.

(a) Lots; indivisible and inalienable. All lots, plots or parts thereof, the use of which has been conveyed as a separate lot, shall be indivisible, except with the consent of the lot owner or lot owners and the corporation, or as in this section provided. After a burial therein, the same shall be inalienable, except as otherwise provided.

(b) Interest of deceased lot owner. Upon the death of an owner or co-owner of any lot, plot or part thereof, unless the same shall be held in joint tenancy, or tenancy by the entirety, the interest of the deceased lot owner shall pass to the devisees of such lot owner, but, if such interest be not effectually devised, then to his or her descendants then surviving, and if there be none, then to the surviving spouse, and if there be none, then to those entitled to take the real and personal property of the deceased lot owner pursuant to article four of the estates, powers and trust law provided, however, that no interest in any lot, plot or part thereof shall pass by any residuary or other general clause in a will and such interest shall pass by will only if the lot, plot or part thereof sought to be devised is specifically referred to in such will. The surviving spouse of a deceased lot owner during his or her life and the owners from time to time of the deceased lot owner's lot, plot or part thereof, shall have in common the possession, care and control of such lot, plot or part thereof.

(c) Purchase for burial of decedent. Whenever a lot, plot or part thereof shall be purchased by the executor, administrator or representative of a decedent from estate funds for the burial of the decedent, the surviving spouse of the decedent shall have the right of interment therein, and the deed shall run to the names of the distributees, other than the surviving spouse, of the decedent, or to "The distributees, other than the surviving spouse, of, deceased", if there be such surviving spouse, otherwise to "The distributees of....., deceased." If the deed shall run to "The distributees, other than the surviving spouse of, deceased," or to "The distributees of, deceased," the executor, administrator or representative shall, at the time of delivery of the deed to such lot, plot or part thereof, file with the corporation an affidavit setting forth the names and places of residence of all the decedent's distributees, and the corporation shall be entitled to rely upon the truth of the statements contained in such affidavit.

(d) Right of interment. A deceased person shall have the right of interment in any lot, plot or part thereof of which he or she was the owner or co-owner at the time of his or her death, or in any tomb erected thereon. The surviving spouse shall have the right of interment for his or her body in a lot or tomb in which the deceased spouse was an owner or co-owner at the time of his or her death, except where all the available burial spaces in a lot or tomb have been designated for the interment of persons other than the surviving spouse, pursuant to subdivision (f) of this section, and a right to have his or her body remain permanently interred or entombed therein, except, that such body may be removed therefrom as provided in subdivision (e) of section fifteen hundred ten of this article. Such right may be enforced and

protected by his or her personal representatives. The remains of a spouse, parent or child of a person who is an owner or co-owner thereof may be interred in such lot or tomb without the consent of any person claiming any interest therein, subject, however, to the following rules and exceptions: (A) The place of interment in such lot shall be subject to the reasonable determination by a majority of the co-owners or in the absence of such determination by the cemetery corporation or its officer or agent having immediate charge of interments. (B) Any husband or wife living separate from the other and owning a lot in which the other, but for this section, would have no right of burial, at least thirty days before the death of the other, may file with the cemetery corporation a written objection to the interment of the other, and thereupon there shall be no right of interment under this subdivision. (C) A parent or child owning a lot in which the other would have no right of burial but for this section, at least thirty days before the death of the other, may file with the cemetery corporation a written objection to the interment of the other, and thereupon there shall be no right of interment under this subdivision. In such case, if the parent or child so excluded from burial in such lot shall die without having any place of interment, then the person filing such objection shall at once provide for the other a suitable place of burial in a convenient cemetery. The cost of such place of interment shall be chargeable to the decedent's estate, if any. (D) This section shall not permit a burial in any ground or place contrary to or in violation of any precept, rule, regulation or usage of any church or religious society, association or corporation restricting burial therein. This subdivision shall not limit any existing right of burial under other provisions of law, nor shall it limit or curtail the right of alienation, under the rules of the cemetery corporation wherein such lot is situated, by the owner of a lot before the death of the person for whose remains the right of burial is provided herein, and there shall be no right of burial in any lot sold by its owner, before the death of the person for whose remains the right of burial is provided herein.

(e) More than one person entitled to possession and control. (1) At any time when more than one person is entitled to the possession, care and control of such lot, any of the persons so entitled thereto may file with the corporation an affidavit setting forth the names and places of residence of all the persons entitled to the possession, care and control of such lot, and the corporation shall be entitled to rely upon the truth of the statements contained in such affidavit. The corporation shall be entitled to collect a reasonable fee for filing and recording such affidavit and other documents filed in its office. (2) At any time when more than one person is entitled to the possession, care or control of such lot, plot or part thereof, the persons so entitled thereto shall file with the corporation a designation of a person who shall represent the lot, plot or part thereof, and so long as they shall fail to designate, the corporation may make such designation. A distributee may release his or her interest in a lot, plot or part thereof, to the other distributees, and a joint owner may release or devise to the other joint owners, his or her right in the lot, plot or part thereof, on conditions specified in the release or will, the original or certified copy of which shall be filed in the office of the corporation. The surviving spouse not excluded from the right of burial under the provisions of subdivision (d) of this section, at any time may release his or her right in such lot, plot or part thereof, but no conveyance or devise by any other person shall deprive him or her of such right.

(f) Designation of persons who may be interred. At any time all the

owners of a lot, and any surviving spouse having a right of interment therein, may execute, acknowledge and file with the corporation an instrument, and the sole owner of a lot may, in a testamentary instrument admitted to probate, make a provision, which may (A) designate the person or persons or class of persons who may thereafter be interred in said lot or in a tomb in such lot and the places of their interment; (B) direct that upon the interment of certain named persons, the lot or tomb in such lot shall be closed to further interments; (C) direct that the title of the lot shall upon the death of any one or more of the owners, descend in perpetuity to his, her or their distributees, unaffected by any devise. In any case in which an irrevocable designation of a person, persons or class of persons who may be interred in any lot or tomb has been made pursuant to this subdivision and in which the designated person or persons, or all of the known class of designated persons, have died and have not been buried in the places designated in said lot or tomb, or have by a written instrument duly signed and acknowledged and filed with the corporation, renounced the right of interment pursuant to such designation, then, and in any such event, the then owner or owners of said lot or tomb and any surviving spouse having the right of interment therein, may designate another person or persons or class of persons who may thereafter be interred in said lot or in a tomb in said lot, and the places of their interment, unless the original designation clearly indicated not only that it was irrevocable, but also that no further designations were to be made. Any designation provided for by this subdivision except a designation by testamentary instrument, shall be deemed revocable unless such instrument provides otherwise. In the event an owner or co-owner of a lot is under the age of eighteen years, any designation provided for by this subdivision, except a designation by testamentary instrument, may be executed and acknowledged by the parent or general or testamentary guardian for and on behalf of such owner or co-owner, provided, however, that no such designation may be made unless a place of interment shall remain available in said lot or in a tomb in such lot for the interment of each owner or co-owner of the lot under the age of eighteen years, and any designation so made may be revoked by the owner or co-owner upon reaching the age of eighteen years except with respect to burials effected before that time. A designation made by a parent or guardian on behalf of an infant owner or co-owner who is over the age of fourteen years must contain the written consent of such infant owner or co-owner.

(g) Lot owner voting. Each owner of full age of a lot in the cemetery of the corporation, as shown in the records of the cemetery at the time of the purchase of the lot from the corporation, or if there be two or more owners, then one of them designated in writing by a majority of them, may cast, in person or by proxy, one vote at meetings of the corporation in respect to each such lot so owned. At such meetings, each owner of a certificate of stock heretofore lawfully issued shall be entitled to one vote for each share of stock owned by him and each owner of a certificate of indebtedness shall be entitled to one vote for each one hundred dollars of such indebtedness remaining unpaid. No lot owner shall be entitled to vote unless all assessments against the lot of such owner shall have been paid. A quorum for the transaction of business, unless the certificate of incorporation or by-laws otherwise provide, shall be five members entitled to vote at the meeting. In the event a lot owner has executed a proxy which has been in effect for five or more years, the cemetery corporation shall not honor such proxy unless it is presented with proof that the lot owner has been sent a written notice at the address listed in the records of the corporation at least thirty

days prior to the meeting at which the proxy is to be exercised advising the lot owner that the proxy is still effective. The notice shall identify the date, time and place of such meeting, and the name of the person holding the proxy and shall state that it may, unless the proxy provides otherwise, be terminated at any time. Such notice need not be mailed more frequently than every fifth year.

(h) Plots owned by religious corporations, unincorporated associations, or other entities that provide burial benefits for its members. With respect to any lot, plot or part thereof owned by a membership or religious corporation or unincorporated association or other entity that provides burial benefits for its members, and requires the cemetery to obtain a burial authorization from the membership, religious corporation, unincorporated association, or other entity, the following rules shall apply:

(1) If a cemetery receives a request to bury an individual who was a member of a membership, religious corporation, unincorporated association, or other entity that owns the lot, plot or part thereof in which the burial would be made, and despite reasonable efforts on the part of the family of the deceased, the funeral home, and/or the cemetery, no representative of the membership, religious corporation, unincorporated association, or other entity that owns the lot, plot or part thereof in which the burial would be made can be located to authorize the burial, the cemetery may, at its discretion, proceed with the interment provided that documentary evidence indicating a specific grave reservation in the lot, plot or part thereof, for the deceased individual is provided to the cemetery and further that the cemetery has recorded such reservation on its books and in its records;

(2) If the decedent is within the first degree of consanguinity to an individual already interred in the lot, plot or part thereof, or the spouse of the decedent is already interred in the lot, plot or part thereof, the cemetery may, at its discretion, proceed with the interment, provided some form of documentary evidence is provided to the cemetery as to the decedent's right of burial in the lot, plot or part thereof;

(3) The right of memorialization shall, under the circumstances described in this paragraph, pass to the person with the right of possession of the body at the time of burial; and

(4) Neither the cemetery nor the funeral director shall be liable for any claims, in law or equity, relating to the failure to obtain authorization from the membership, religious corporation, unincorporated association, or other entity for the use of the plot, lot, or portion thereof provided that the requirements of this paragraph have been met.

Not-For-Profit Corporation

§ 1513. Sale of burial rights.

(a) Conveyance of lots. (1) Except as otherwise provided in this subdivision the right to use any lot, plot or part thereof may be sold or conveyed only by the cemetery corporation. (2) It shall be unlawful for any person, firm or corporation to purchase or for a cemetery corporation to sell a lot, plot or part thereof for the purpose of resale. This provision, however, shall not prohibit the sale to its members of lots, plots or parts thereof, or the right to use any lot, plot or part thereof, by a membership or religious corporation or unincorporated association or society which provides burial benefits for its members. (3) It shall be unlawful for a cemetery corporation to pay or offer to pay, or for any person, firm or corporation to receive, directly or indirectly, a commission, bonus, rebate or other things of value for, or in connection with, the sale of any lot, plot or part thereof, or the sale of space in a public mausoleum, or the furnishing by or through the cemetery corporation of any service, merchandise, wares, goods or articles. The provisions of this paragraph shall not apply to a person regularly employed and supervised by the cemetery corporation. (4) A violation of this subdivision shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars or not more than six months imprisonment or both. Each violation shall constitute a separate offense.

(b) Prices for burial rights and instruments of conveyance. (1) The directors must fix and determine the prices of the burial lots, plots or parts thereof, and keep a plainly printed copy of the schedules of such prices conspicuously posted in each of the offices of the corporation, open at all reasonable times to inspection, and shall file a schedule of such prices in the office of the cemetery board. (2) Unless its certificate of incorporation or by-laws otherwise provide, and subject to its rules and regulations, the corporation shall sell and convey to any person the use of the lots, plots or parts thereof designated on the map filed in the office of the corporation, on payment of the prices so fixed and determined, but need not sell and convey more than one lot, plot or part thereof to any one person. Conveyances of lots, plots and parts thereof shall be signed by the president or vice-president and treasurer or assistant treasurer of the corporation. A written contract for the sale or use of a lot, plot or part thereof shall have attached thereto and made a part thereof a copy of the rules and regulations of the cemetery corporation or such parts of such rules and regulations as relate to the size and placement of monuments, restrictions on plot usage, warranties, obligations of the cemetery corporation and financial obligations and duties of the lot owner. If a lot, plot or part thereof is sold without a written contract, the corporation shall, before any part of the purchase price is paid by the purchaser, deliver to the purchaser a copy of the rules and regulations or such parts thereof as would be required to be attached to a written contract. Nothing in this subdivision shall prevent the subsequent amendment of such rules and regulations to increase the charges for services rendered by the corporation or in other particulars by or with the consent of the cemetery board under section fifteen hundred nine of this article. (3) A

cemetery corporation that shall sell a lot, plot or part thereof, in excess of the price shown on the schedule filed in the office of the cemetery board, and any person acting for or on behalf of the cemetery corporation in connection with such sale, shall each forfeit to the people of the state of New York a sum equivalent to three times the excess amount so paid. Such penalty may be recovered in a civil action by the cemetery board. (4) The instrument of conveyance of any burial lot, plot or part thereof shall include the actual amount paid therefor and a description showing the dimensions of the property conveyed, and the plot number, section and block number as they appear on the cemetery map.

(c) Resale by lot owner. Before any burial shall have been made in any such lot, plot or part thereof, or, if all the bodies therein have been lawfully removed, the lot owner may sell or convey such lot, plot or part thereof subject to the prior approval of the cemetery board. Such approval shall not be granted unless the owner of such lot, plot or part thereof shall have offered it to the cemetery corporation within two years prior to the application for such approval, in writing by registered or certified mail, at the price paid therefor by said lot owner, together with simple interest at the rate of four per centum per annum, and the cemetery corporation shall have failed to accept such offer within thirty days after the making thereof. In the event the lot owner shall have acquired the lot, plot or part thereof other than by purchase, and provided the cemetery corporation and the lot owner cannot agree upon a price, the cemetery board shall fix a price therefor. In arriving at the price the cemetery board shall take into consideration the original price for which the cemetery corporation sold the lot, plot or part thereof, and any other circumstances or factor which equitably relates to the price. The secretary of the cemetery corporation shall file and record in its books all instruments of transfer. An owner may convey or devise to the corporation his right and title in and to any such lot, plot or part thereof.

(d) Lots held in inalienable form. (1) No portion of the cemetery of a cemetery corporation which any person other than the corporation is entitled to use for burial purposes, or in which bodies have been buried and not removed, shall be sold, mortgaged or leased by the corporation. A cemetery corporation may convey any lot so that upon such conveyance, or after an interment therein, such lot shall be forever inalienable, and upon the death of the lot owner shall pass to such person or persons as may be designated in the conveyance or if no such designation be made, shall descend as provided in section fifteen hundred twelve of this article. Any one or more of the owners of such a lot may release or devise to any other owner of the lot his interest therein on such conditions as shall be specified in the release or will. (2) Any person who is the sole owner of the burial rights in a cemetery lot, plot or any part thereof, in which a burial has been made, may give his entire interest, or, if not prohibited by the rules and regulations of the cemetery corporation, any portion thereof to any person within the third degree of consanguinity to the owner, or, in the event that no such person exists, within the fourth degree of consanguinity to such owner. Such conveyance shall be made subject to the right of interment of the spouse of any deceased owner, which right said spouse may release at any time, but no conveyance or devise by any other person shall deprive the surviving spouse of such right. Burial rights shall not be conveyed pursuant to the provisions of this subparagraph more frequently than once in any ten-year period. (3) A cemetery corporation may take and hold any lot conveyed or devised to it by the lot owner so that

thereafter it will be inalienable, and the interments therein shall be restricted to such person or class of persons as may be designated in the conveyance or devise. (4) The title of a lot owner shall not be affected by the dissolution of the corporation, by non-user of its corporate rights and franchises by any act of forfeiture on its part, by any alienation of its property or by incumbrance thereon made or suffered by it.

Not-For-Profit Corporation

§ 1513-a. Reacquisition of a lot, plot or part thereof by a cemetery corporation.

A cemetery corporation may, upon application and approval by the cemetery board, reacquire, resubdivide, and resell a lot, plot or part thereof under the following circumstances:

(a)(i) If the records of the corporation demonstrate that the lot, plot or part thereof was purchased more than seventy-five years prior to the application of the corporation; and (ii) if no burials have been made in the lot, plot or part thereof or all the bodies therein have been lawfully removed; and (iii) if neither the owner or owners of the lot, plot or part thereof nor any person having a credible claim to ownership who has visited, made payments in respect of or engaged in any other proprietary activities with respect to the lot, plot or part thereof can be identified after a reasonable search conducted by the cemetery corporation, it shall be conclusively presumed that the owner or owners of the lot, plot or part thereof have abandoned their burial rights. A reasonable search consists of a search of: (1) all cemetery records to determine the name of the owner or owners of the lot, plot or part thereof, their last known addresses and all information available to the cemetery relating to any person buried in the lot, plot or part thereof and the names and last known addresses of any persons making inquiry about or visiting the lot, plot or part thereof; (2) a search for the death certificates and the probated wills of the owner or owners of the lot, plot or part thereof; (3) the posting of notice by the cemetery at the entrance to the cemetery and in the cemetery office, if any, of its intention to declare the lot, plot or part thereof abandoned; (4) the mailing of such notice certified mail with return receipt requested to the owner or owners of the lot, plot or part thereof and each person identified during the reasonable search at their last known addresses; (5) publication of such notice once in each week for three successive weeks, in two newspapers of regular commercial circulation by subscription and/or newsstand sale, to be designated by the county clerk of the county where the cemetery is located which in his or her judgement, given the ethnic, religious, geographic or other related demographic characteristics of the owner or owners of the lot, plot or part thereof and each person identified through the reasonable search and the predominant readership of such newspapers are best calculated to inform the owner or owners of the lot, plot or part thereof and each person identified through the reasonable search of any application pursuant to the provisions of this section; and (6) the preparation of an affidavit describing the steps taken by the cemetery corporation to ascertain the identity of and to contact the current owner or owners of the lot, plot or part thereof or next-of-kin thereof or any other persons identified in the course of the reasonable search who might have relevant information and the results of such steps. After the filing with the cemetery board of proof of compliance with the above requirements in form and substance reasonably satisfactory to such board and upon approval by the cemetery board, the lot, plot or part thereof may be resold by the cemetery to any party in compliance with the cemetery rules and regulations provided, however, that any monument

subsequently placed on such lot, plot or part thereof shall conform to the general appearance of any existing monuments in said section of lots, plots or parts thereof, if any.

(b) If (i) the circumstances described in paragraph (a) of this section exist except that one or more burials have been made in a lot, and the last burial was made more than seventy-five years prior to the application, (ii) the lot, plot or part thereof can be subdivided to create new graves, (iii) the bodies have not been lawfully removed, and (iv) the cemetery submits an application to the cemetery board which complies with the requirements set forth in paragraph (a) of this section, it shall be conclusively presumed that the lot owner has abandoned the right to make further burials in the lot, the lot may be subdivided, and the resubdivided lot, plot or parts thereof which do not contain the remains of the deceased persons may be resold by the cemetery corporation as provided in this section. Nothing in this section shall permit a cemetery corporation to declare abandoned a lot, plot or part thereof, where such lot, plot or part thereof was purchased for multiple depth burials and where one or more burials has occurred or authorized a cemetery corporation to remove a monument or other embellishment to facilitate the resale of such lot, plot or part thereof, except as provided by section fifteen hundred ten of this article.

(c) If the owner or owners of a lot, plot or part thereof can be identified, the cemetery corporation, with the consent of the owner or owners of the lot, plot or part thereof, the lot, plot or part thereof may be resubdivided, and the resubdivided lot, plot or part thereof which does not contain the remains of deceased persons may be resold by the cemetery corporation, provided, however, if no burial has been made in the lot, plot or part thereof, in the twenty-five year period preceding such application, the owner of a lot, plot or part thereof has notified his or her parents, spouse, issue, brothers, sisters, grandparents, and grandchildren, if any, of the application to the cemetery board, and provided further, however, if a burial has been made in this lot, plot or part thereof during such twenty-five year period, the spouse and issue of such deceased person are also notified, and provided further, in either case the owner of the lot, plot or part thereof satisfies the cemetery board that none of the persons notified have agreed within forty-five days of notification to purchase the lot, plot or part thereof at the price provided under paragraph (c) of section fifteen hundred thirteen of this article.

(d) Upon the sale of a lot, plot or part thereof reacquired by the corporation under the provisions of paragraph (a), (b), or (c) of this section, thirty-five percent of the net proceeds shall be placed in the permanent maintenance fund and sixty-five percent shall be placed in the current maintenance fund.

(e) If the owner of the lot, plot or part thereof is subsequently identified, the cemetery corporation shall: (i) return all unsold lots, plots or parts thereof if any, to the owner if so requested; and (ii) with respect to any lots, plots or parts thereof that have been sold pursuant to this section, at the option of the owner of the lot, plot or part thereof; either (1) provide the owner, at no cost to the owner, with a lot, plot or part thereof comparable to any lot, plot or part thereof that was sold by the cemetery corporation or (2) provide the owner with the proceeds from the sale of the lot, plot or part thereof reacquired under this section with interest thereon from the date of the sale at six percent per annum.

(f) The provisions of this section shall not apply to a lot, plot or

part thereof whose record owner is a corporation or unincorporated association or society having among its activities or its former activities the provision of burial benefits for its members.

(g) The provisions of this section shall not violate the burial requirements of sectarian sections of cemetery corporations.

(h) Monuments to be erected on a lot, plot or parts thereof, following the resale of a lot, plot or part thereof, shall conform to the rules and regulations or other requirements of the cemetery corporation and shall conform to the size, style and type of monuments in the section of the cemetery where such resale occurs.

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Not-For-Profit Corporation

§ 1514. Misdemeanor; general penalty.

Wherever under the provisions of this article a person violating any part thereof is deemed to be guilty of a misdemeanor and no specific penalty is provided, the penalty for each separate violation shall be imprisonment for not more than six months or a fine of not more than five hundred dollars, or both.

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§ 1515. Actions affecting cemetery corporations.

In any action or proceeding affecting or instituted by any cemetery corporation the cemetery board shall be served with notice thereof in the same manner as any necessary party and shall take such steps in the action or proceeding as it may deem necessary to protect the public interest.

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Not-For-Profit Corporation

§ 1516. Sale of monuments.

(a) No cemetery corporation shall engage in the sale of monuments, not including flush bronze markers, nor shall such monuments be displayed for sale on the property of a cemetery corporation.

(b) No cemetery corporation shall authorize or permit any employee or director thereof to advertise or make known his or her relationship to such corporation while engaged in the sale of monuments outside of his or her employment by the cemetery corporation.

(c) With regard to the sale of flush granite markers, the cemetery board shall adopt reasonable rules and regulations to exempt cemetery corporations from the provisions of paragraph (a) of this section where a practice for the sale of such flush granite markers was established with the knowledge and approval of the cemetery board prior to the effective date of this section.

Not-For-Profit Corporation

§ 1517. Crematory operations.

Cemetery corporations that operate a crematory shall have the following duties and obligations:

(a) Maintenance and privacy. (1) A crematory facility shall be maintained in a clean, orderly, and sanitary manner, with adequate ventilation and shall have a temporary storage area available to store the remains of deceased human beings pending disposition by cremation, the interior of which shall not be accessible to the general public.

(2) Entrances and windows of the crematory facility shall be maintained at all times to secure privacy, including (i) doors shall be tightly closed and rigid; (ii) windows shall be covered; and (iii) entrances shall be locked and secured when not actively attended by authorized crematory personnel.

(b) Cremation process. (1) The cremation process shall be conducted in privacy. No person except authorized persons shall be admitted into the retort area, holding facility, or the temporary storage facility while the remains of deceased human beings are being cremated. Authorized persons, on admittance, shall comply with all rules of the crematory corporation and not infringe upon the privacy of the remains of deceased human beings.

(2) The following are authorized persons: (i) licensed, registered funeral directors, registered residents, and enrolled students of mortuary science; (ii) officers and trustees of the cemetery corporation; (iii) authorized employees or their authorized agents of the cemetery corporation; (iv) public officers acting in the discharge of their duties; (v) authorized instructors of funeral directing schools; (vi) licensed physicians or nurses; and (vii) members of the immediate family of the deceased and their authorized agents and designated representatives.

(c) Identification of deceased human beings. (1) No crematory shall cremate the remains of any deceased human being without the accompanying cremation permit, required pursuant to section four thousand one hundred forty-five of the public health law which permit shall constitute presumptive evidence of the identity of the said remains. In addition, all crematories situated outside the city of New York, must comply with paragraph (b) of subdivision two of section four thousand one hundred forty-five of the public health law pertaining to the receipt for the deceased human being. From the time of such delivery to the crematory, until the time the crematory delivers the cremains as directed, the crematory shall be responsible for the remains of the deceased human being. Further, a cremation authorization form must accompany the permit required in section four thousand one hundred forty-five of the public health law. This form, provided or approved by the crematory, must be signed by the next of kin or authorizing agent attesting to the permission for the cremation of the deceased, and disclosing to the crematory that such body does not contain a battery, battery pack, power cell, radioactive implant, or radioactive device, if any, and that these materials were removed prior to the cremation process.

(2) Upon good cause being shown rebutting the presumption of the identity of such remains, the cremation shall not commence until

reasonable confirmation of the identity of the deceased human being is made. This proof may be in the form of, but not limited to, a signed affidavit from a licensed physician, a member of the family of the deceased human being, the authorizing agent or a court order from the state supreme court within the county of the cemetery corporation. Such proof shall be provided by the authorizing agent.

(3) The crematory shall have a written plan to assure that the identification established by the cremation permit accompanies the remains of the deceased human being through the cremation process and until the identity of the deceased is accurately and legibly inscribed on the container in which the cremains are placed.

(d) Opening of container holding the remains of the deceased human being. (1) The casket, alternative container, or external wrappings holding the remains of the deceased human being shall not be opened after delivery to the crematory unless there exists good cause to confirm the identity of the deceased, or to assure that no material is enclosed which might cause injury to employees or damage to crematory property, or upon reasonable demand by members of the immediate family or the authorized agent.

(2) In such instances in which the casket, alternative container, or wrappings are opened after delivery to the crematory, such action shall only be conducted by the licensed funeral director or registered resident delivering the remains of the deceased human being and if necessary, with the assistance of crematory personnel and a record shall be made, which shall include the reason for such action, the signature of the person authorizing the opening thereof, and the names of the person opening the container and the witness thereto, which shall be retained in the permanent file of the crematory. The opening of the container shall be conducted in the presence of the witness and shall comply with all rules and regulations intended to protect the health and safety of crematory personnel.

(e) Ceremonial casket cremation disclosure. In those instances in which the remains of deceased human beings are to be delivered to a crematory in a casket that is not to be cremated with the deceased, timely disclosure thereof must be made by the person making the funeral arrangements to the crematory that prior to cremation the remains of the deceased human being shall be transferred to an alternative container. Such signed acknowledgement of the authorizing person, that the timely disclosure has been made, shall be retained by the crematory in its permanent records.

(f) Transferring remains. (1) The remains of a deceased human being shall not be removed from the casket, alternative container, or external wrappings in which it is delivered to the crematory unless explicit, signed authorization is provided by the person making funeral arrangements or by a public officer discharging his or her statutory duty, which signed authorization shall be retained by the crematory in its permanent records.

(2) When the remains of a deceased human being are to be transferred to an alternative container, the transfer shall be conducted in privacy with dignity and respect and by the licensed funeral director or registered resident who delivered those remains and if necessary, with the assistance of crematory personnel. The transferring operation shall comply with all rules and regulations intended to protect the health and safety of crematory personnel.

(g) Commingling human remains. The cremation of remains of more than one deceased human being in a retort at any one time is unlawful, except upon the explicit, signed authorization provided by the persons making

funeral arrangements and the signed approval of the crematory, which shall be retained by the crematory in its permanent records.

(h) Processing of cremains. (1) Upon the completion of the cremation of the remains of a deceased human being, the interior of the retort shall be thoroughly swept so as to render the retort reasonably free of all matter. The contents thereof shall be placed into an individual container and not commingled with other cremains. The cremation permit shall be attached to the individual container preparatory to final processing.

(2) A magnet and sieve, or other appropriate method of separation, may be used to divide the cremains from unrecognizable incidental or foreign material.

(3) The incidental and foreign material of the cremation process shall be disposed of in a safe manner in compliance with all sanitary rules and regulations as byproducts.

(4) The cremains shall be pulverized until no single fragment is recognizable as skeletal tissue.

(5) The pulverized cremains shall be transferred to a sealable container or containers whose inside dimension shall be of suitable size to contain the entire cremains of the person who was cremated.

(6) The prescribed sealable container or containers shall be accurately and legibly labeled with the identification of the human being whose cremains are contained therein, in a manner acceptable to the division of cemeteries.

(i) Disposition of cremains. The authorizing agent shall be responsible for the final disposition of the cremains. Cremains must be disposed of by placing them in a grave, crypt, or niche, by scattering them in a designated scattering garden or area, or in any manner whatever on the private property of a consenting owner or by delivery to the authorizing agent or a person specifically designated by the authorizing agent. Upon completion of the cremation process, if the cemetery corporation has not been instructed to arrange for the interment, entombment, inurnment or scattering of the cremains, the cemetery corporation shall deliver the cremains to the individual specified on the cremation authorization form or the funeral firm of record. The delivery may be made in person or by registered mail. Upon receipt of the cremains, the individual receiving them may transport them in any manner in the state without a permit, and may dispose of them in accordance with this section. After delivery, the cemetery corporation shall be discharged from any legal obligation or liability concerning the cremains. If, after a period of one hundred twenty days from the date of the cremation, the authorizing agent has not instructed the cemetery corporation to arrange for the final disposition of the cremains or claimed the cremains, the cemetery corporation may dispose of the cremains in any manner permitted by this section. The cemetery corporation, however, shall keep a permanent record identifying the site of final disposition. The authorizing agent shall be responsible for reimbursing the cemetery corporation for all reasonable expenses incurred in disposing of the cremains. Upon disposing of the cremains, the cemetery corporation shall be discharged from any legal obligation or liability concerning the cremains. Except with the express written permission of the authorizing agent, no person shall:

(1) dispose of cremains in a manner or in a location so that the cremains are commingled with those of another person. This prohibition shall not apply to the scattering of cremains at sea, by air, or in an area located in a cemetery and used exclusively for those purposes; and

(2) place cremains of more than one person in the same temporary

container or urn.

(j) Crematory operation certification. Any employee of a crematory whose function is to conduct the daily operations of the cremation process shall be certified by an organization approved by the division of cemeteries. Proof of such certification must be posted in the crematory and available for inspection at any time. Any new employees of a crematory required to be certified under this section shall be certified within one year of their employment. Any employees of a crematory required to be certified under this section and retained prior to the effective date of this paragraph shall be certified within one year of such effective date. Renewal of such certification shall be completed every five years from the date of certification.