

Article 9.

North Carolina Cemetery Act.

**§ 65-46. Short title.**

This Article 9 may be cited as "North Carolina Cemetery Act." (1975, c. 768, s. 1.)

**§ 65-47. Scope.**

(a) The provisions of this Article shall apply to all persons engaged in the business of operating a cemetery as defined herein, except cemeteries owned and operated by governmental agencies or churches.

(b) Any cemetery beneficially owned and operated by a fraternal organization or its corporate agent for at least 50 years prior to September 1, 1975, shall be exempt from the provisions of Article 9 of this Chapter.

(c) The provisions of this Article shall not apply to persons licensed under Article 13D of Chapter 90 of the General Statutes when engaging in activities for which a license is required under the Article.

(d) Expired January 23, 2015.

(e) A columbarium built in compliance with the requirements of former subsection (d) of this section is not subject to the provisions of Article 9 of this Chapter on or after January 23, 2015, as long as the columbarium (i) continues to exist on the grounds of a private, self-contained retirement community and (ii) continues to be reserved exclusively for the residents of that community. (1975, c. 768, s. 1; 1977, c. 686, s. 1; 1995, c. 509, s. 135.1(i); 2013-335, s. 1; 2014-115, s. 39.3(a).)

**§ 65-48. Definitions.**

As used in this Article, unless otherwise stated or unless the context or subject matter clearly indicates otherwise:

- (1) "Bank of belowground crypts" means any construction unit of belowground crypts acceptable to the Commission which a cemetery uses to initiate its belowground crypt program or to add to existing belowground crypt structures.
- (2) "Belowground crypts" consists of an interment space in preplaced chambers, either side by side or multiple depth, covered by earth and sod and are also known as lawn crypts, westminsters or turf top crypts.
- (3) "Cemetery" means any one or a combination of more than one of the following in a place used or to be used and dedicated or designated for cemetery purposes:
  - a. A burial park, for earth interment.
  - b. A mausoleum.
  - c. A columbarium.
- (4) "Cemetery broker" means a legal entity engaged in the business of arranging sales of cemetery products between legal entities and which sale does not involve a cemetery company, but does not mean funeral establishments or funeral directors operating under G.S. 90-210.25, when dealing between legal entities wherein one such entity shall be members of the family of a deceased person or other persons authorized by law to arrange for the burial and funeral of such deceased human being. The North Carolina Cemetery Act shall not apply to any cemetery broker selling less than five grave spaces per year.

- (5) "Cemetery company" means any legal entity that owns or controls cemetery lands or property and conducts the business of a cemetery, including all cemeteries owned and operated by governmental agencies, churches and fraternal organizations or their corporate agents for the duration of any sales and management contracts entered into with cemetery sales organizations or cemetery management organizations for cemetery purposes, or with any other legal entity other than direct employees of said governmental agency, church or fraternal organization.
- (6) "Cemetery management organization" means any legal entity contracting as an independent contractor with a cemetery company to manage a cemetery but does not mean individual managers employed by and contracting directly with cemetery companies operating under this Article.
- (7) "Cemetery sales organization" means any legal entity contracting with a cemetery which is exempt or not exempt under this Article to conduct sales of cemetery products, but does not mean individual salesmen or sales managers employed by and contracting directly with cemetery companies operating under this Article, nor does it mean funeral establishments or funeral directors operating under licenses authorized by G.S. 90-210.25 when dealing directly with a cemetery company and with members of the family of a deceased person or other persons authorized by law to arrange for the burial and funeral of such deceased human being.
- (8) "Columbarium" means a structure or building substantially exposed aboveground intended to be used for the interment of the cremated remains of a deceased person.
- (9) "Commission" means the North Carolina Cemetery Commission.
- (10) "Grave space" means a space of ground in a cemetery intended to be used for the interment in the ground of the remains of a deceased person.
- (11) "Human remains" or "remains" means the bodies of deceased persons, and includes the bodies in any stage of decomposition, and cremated remains.
- (12) "Mausoleum" means a structure or building substantially exposed aboveground intended to be used for the entombment of remains of a deceased person.
- (13) "Mausoleum section" means any construction unit of a mausoleum acceptable to the Commission which a cemetery uses to initiate its mausoleum program or to add to its existing mausoleum structures.
- (14) "Person" means an individual, corporation, partnership, joint venture, or association.
- (15) "Vault" means a crypt or underground receptacle which is used for interment in the ground and which is designed to encase and protect caskets or similar burial devices. For the purposes of this Article, a vault is a preneed item until delivery to the purchaser. (1943, c. 644, s. 2; 1967, c. 1009, s. 2; 1971, c. 1149, s. 1; 1975, c. 768, s. 1; 1977, c. 686, ss. 2, 3.)

#### **§ 65-49. The North Carolina Cemetery Commission.**

The North Carolina Cemetery Commission is established with the power and duty to adopt rules and regulations to be followed in the enforcement of this Article. (1975, c. 768, s. 1; 1989, c. 751, s. 7(5); 1991 (Reg. Sess., 1992), c. 959, s. 19; 2012-120, s. 3(a).)

**§ 65-50. Cemetery Commission; members, selection, quorum.**

(a) Membership. – The Cemetery Commission shall consist of nine members. The General Assembly shall appoint two members who own or manage or who have retired from owning or managing a cemetery in North Carolina, one of whom shall be recommended by the President Pro Tempore of the Senate and one of whom shall be recommended by the Speaker of the House of Representatives. The Governor shall appoint seven members as follows:

- (1) Two members who own or manage cemeteries in North Carolina.
- (2) Three members who are selected from six nominees submitted by the North Carolina Cemetery Association.
- (3) Two public members who have no financial interest in, and are not involved in management of, any cemetery or funeral related business.

(b) Terms. – Four members of the initial Commission shall be appointed for a term to expire June 30, 1977, and three members shall be appointed for a term to expire June 30, 1976. At the end of the respective terms of office of the initial members of the Commission, their successors shall be nominated in the same manner, selected from the same categories and appointed for terms of four years and until their successors are appointed and qualified.

(b1) Any vacancy shall be filled by the authority originally filling that position, except that any vacancy in appointments by the General Assembly shall be filled in accordance with G.S. 120-122.

(c) Removal. – The appointing authority shall have the power to remove any member of the Commission appointed by that authority from office for misfeasance, malfeasance and nonfeasance according to applicable provisions of law.

(d) Quorum. – A majority of the Commission shall constitute a quorum for the transaction of business.

(e) Officers. – At the first meeting of the Commission held after September 1, 1975, the Commission shall elect one of its members as its chair and another as its vice-chair, both to serve through June 30 of the next following year. Thereafter, at its first meeting held on or after July 1 of each year, the Commission shall elect from its members a president, vice president, and secretary-treasurer with no two offices to be held by the same person. All officers shall serve a term of one year and shall serve until their successors are elected and qualified. (1975, c. 768, s. 1; 2001-486, s. 2.1; 2012-120, s. 3(b).)

**§ 65-51. Principal office.**

The principal office of the Commission shall be in the City of Raleigh, North Carolina. Notice of all regular and special meetings of the Commission shall be advertised 10 or more days in advance in at least three newspapers in North Carolina having inter-county circulation in the State. Each member of the Commission shall receive per diem and allowances in accordance with G.S. 93B-5. Members of the Commission and other employees required to attend and legal counsel to the Commission shall be entitled to actual expenses while attending regular or special meetings of the Commission held other than in Raleigh, North Carolina. All salaries, compensation, and expenses of the Commission shall be paid from funds coming to the Commission pursuant to this Article. In no case shall any salary, compensation, or other expense of the Commission be charged against the General Fund. (1975, c. 768, s. 1; 2012-120, s. 3(c).)

**§ 65-52. Regular and special meetings.**

The Cemetery Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least four members. (1975, c. 768, s. 1.)

**§ 65-53. Powers.**

In addition to other powers conferred by this Article, the Cemetery Commission shall have the following powers and duties:

- (1) To employ staff, including legal counsel, as may be necessary to perform its duties and determine the compensation of its employees.
- (2) To examine a cemetery company's records when a person applies for a change of control of the company.
- (3) Investigate, upon its own initiative or upon a verified complaint in writing, the actions of any person engaged in the business or acting in the capacity of a licensee under this Article. The license of a licensee may be revoked or suspended for a period not exceeding two years, or until compliance with a lawful order imposed in the final order of suspension, or both, where the licensee in performing or attempting to perform any of the acts specified in this Article has been guilty of:
  - a. Failing to pay the fees required herein;
  - b. Failing to make any reports required by this Article;
  - c. Failing to remit to the care and maintenance trust fund, merchandise trust fund, or preconstruction trust fund the required amounts;
  - d. Making any substantial misrepresentation;
  - e. Making any false statement of a character likely to influence or persuade;
  - f. A continued and flagrant course of misrepresentation or making of false promises through cemetery agents or salesmen;
  - g. Violating any provision of this Article or rule promulgated by the Commission; or
  - h. Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.
- (4) To hold hearings in accordance with the provisions of this Article and Article 3A of Chapter 150B of the General Statutes to subpoena witnesses and to administer oaths to or receive the affirmation of witnesses before the Commission.

In any show cause hearing before the Commission held under the authority of Article 3A of Chapter 150B of the General Statutes where the Commission imposes discipline against a licensee, the Commission may recover the costs, other than attorneys' fees, of holding the hearing against all respondents jointly, not to exceed two thousand five hundred dollars (\$2,500).

- (5) To apply to the courts, in its own name, for injunctive relief to prevent violations of this Article or violations of any rules adopted pursuant to this Article. Any court may grant injunctive relief regardless of whether criminal prosecution or any other action is instituted as a result of the violation. A single violation is sufficient to invoke the injunctive relief under this subdivision. In any such action, an order or judgment may be entered awarding such temporary

or permanent injunction as may be deemed proper; provided, that before any such action is brought the Commission shall give the cemetery at least 20 days' notice in writing, stating the alleged violation and giving the cemetery an opportunity within the 20-day period to cure the violation. In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction, or permanent injunction, the court shall have the power and jurisdiction to impound and to appoint a receiver for the property and business of the defendant, including books, papers, documents, and records appertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violation of this Article through or by means of the use of said property and business. The Commission may institute proceedings against the cemetery or its officers, whereafter an examination, pursuant to this Article, a shortage in the care and maintenance trust fund, merchandise trust fund or mausoleum and belowground crypts preconstruction trust fund is discovered, to recover said shortage.

- (6) Whenever any special additional audit or examination of a licensee's premises, facilities, books or records is necessary because of the failure of the licensee to comply with the requirements imposed in this Article or by the rules and regulations of the Commission, to charge a fee based on the cost of the special examination or audit, taking into consideration the salary of any employees involved in the special audit or examination and any expenses incurred.
- (7) To promulgate rules and regulations requiring licensees to file with the Commission plans and specifications for the minimum quality of any product sold. The sale of any product for which plans and specifications required by the rules and regulations have not been filed or sale of any product of a lesser quality than the plans and specifications filed with the Commission is a violation of this Article.
- (8) When the Commission finds that failure by a licensee to maintain a cemetery properly has caused that cemetery to be a public nuisance or a health or safety hazard, the Commission may bring an action for injunctive relief, against the responsible licensee, in the superior court of the county in which the cemetery or any part thereof is located.
- (9) To acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and Council of State. Collateral pledged by the Commission for an encumbrance is limited to the assets, incomes, and resources of the Commission.
- (10) To purchase, rent, or lease equipment and supplies and purchase liability insurance to cover the activities of the Commission, its operations, or its employees. (1943, c. 644, s. 17; 1971, c. 1149, s. 8; 1973, c. 732, s. 2; 1975, c. 768, s. 1; 1977, c. 686, ss. 4-6; 1979, c. 888, ss. 1-3; 1981 (Reg. Sess., 1982), c. 1153; 1987, c. 488, s. 8; c. 827, s. 1; 1991, c. 653, s. 3; 2012-120, s. 3(d).)

#### **§ 65-53.1. Inspectors.**

(a) The Commission may appoint one or more agents who shall serve at the pleasure of the Commission and who shall have the title "Inspector of the North Carolina Cemetery Commission."

(b) To determine compliance with the provisions of this Article and regulations promulgated under this Article, inspectors may do the following:

(1) Enter the office, establishment, or place of business in North Carolina of any cemetery broker, cemetery company, cemetery management organization, cemetery sales organization, or preneed sales licensee to inspect the records, office, establishment, or facility or to inspect the practice conducted or license of any licensee.

(2) Inspect criminal and probation records of licensees and applicants for licenses under this Article to obtain evidence of their character.

(c) Inspectors may serve papers and subpoenas issued by the Commission or any office or member thereof under authority of this Article and shall perform other duties prescribed or ordered by the Commission.

(d) The Commission may prescribe an inspection form to be used by the inspectors in performing their duties.

(e) Upon request by the Commission, the Attorney General of North Carolina shall provide the inspectors with appropriate identification cards signed by the Attorney General or his or her designated agent. In lieu of identification cards, the Commission may design and issue badges to inspectors. (2012-120, s. 3(e).)

#### **§ 65-54. Annual budget of Commission; collection of funds.**

The Commission shall prepare an annual budget and shall collect the sums of money required for this budget from yearly fees and from any other sources provided in this Article. On or before July 1 of each year, each licensed cemetery shall pay a license fee to be set by the Commission in an amount not to exceed six hundred dollars (\$600.00). In addition, each licensed cemetery shall pay to the Commission an inspection fee for each grave space, niche, or mausoleum crypt when the certificate of interment right is issued and shall pay a fee for each vault, belowground crypt, memorial, or opening and closing of a grave space that is included in a preneed cemetery contract. The inspection fee for each grave space, niche, or mausoleum crypt is payable when the certificate of interment right is issued and may not exceed four dollars (\$4.00). The fee for each of the listed items that are included in a preneed cemetery contract is payable when the contract is made and may not exceed ten dollars (\$10.00). (1975, c. 768, s. 1; 1977, c. 686, s. 7; 1987, c. 488, s. 1; 1991, c. 653, s. 1; 2004-202, s. 1.)

#### **§ 65-54.1. Commission records are confidential.**

Records, papers, and other documents containing information collected or compiled by the Commission, its members, or employees as a result of a complaint, investigation, inquiry, or interview in connection with an application for license, or in connection with a license holder's professional ethics and conduct, shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Any notice or statement of charges against a license holder or applicant, or any notice to a license holder or applicant of a hearing to be held by the Commission, is a public record even though it may contain information collected and compiled as a result of a complaint, investigation, inquiry, or interview conducted by the Commission. If any record, paper, or other document containing information collected and compiled by the

Commission is admitted into evidence in a hearing held by the Commission, it shall then be a public record within the meaning of Chapter 132 of the General Statutes. (2012-120, s. 3(f).)

**§ 65-55. License; cemetery company.**

(a) No legal entity shall engage in the business of operating a cemetery company except as authorized by this Article and without first obtaining a license from the Commission.

(b) Any legal entity wishing to establish a cemetery shall file a written application for authority with the Commission on forms provided by the Commission.

(c) Upon receipt of the application and filing fee to be set by the Commission in an amount not to exceed one thousand six hundred dollars (\$1,600), the Commission shall cause an investigation to be made to establish the following criteria for approval of the application:

- (1) The creation of a legal entity to conduct cemetery business, and its proposed financial structure.
- (2) A perpetual care trust fund agreement, with an initial deposit of not less than fifty thousand dollars (\$50,000) and with a bank cashier's check or certified check attached for the amount made payable to the trustee. The trust fund agreement must be executed by the applicant, accepted by the trustee, and conditional only upon approval of the application.
- (3) A plat of the land to be used for the cemetery, showing the location of the cemetery and the access roads to the cemetery.
- (4) Designation by the legal entity wishing to establish a cemetery of a general manager. The general manager must be a person of good moral character and have at least one year's experience in cemeteries.
- (5) Development plans sufficient to ensure the community that the cemetery will provide adequate cemetery services and that the property is suitable for use as a cemetery.

(d) The Commission, after receipt of the investigating report, shall grant or refuse to grant the authority to organize a cemetery based upon the criteria set forth in G.S. 65-55(c).

(e) If the Commission intends to deny an application, it shall give written notice to the applicant of its intention to deny. The notice shall state a time and a place for a hearing before the Commission and a summary statement of the reasons for the proposed denial. The notice of intent shall be mailed by certified mail to the applicant at the address stated in the application at least 15 days prior to the scheduled hearing date. The applicant shall pay the costs of this hearing as assessed by the Commission unless the applicant notifies the Commission by certified mail at least five days prior to the scheduled hearing date that a hearing is waived. Any appeals from the Commission's decision shall be to the court having jurisdiction of the applicant or the Commission.

(f) If the Commission intends to grant the authority, it shall give written notice that the authority to organize a cemetery has been granted and that a license to operate will be issued upon the completion of the following:

- (1) Establishment of the care and maintenance trust fund and receipt by the Commission of a certificate from the trust company, certifying receipt of the initial deposit required under this Article.
- (2) Full development, ready for burial, of not less than two acres including a completed paved road from a public roadway to said developed section, certified by inspection of the Commission or its representative.

- (3) A description, by metes and bounds, of the acreage tract of such proposed cemetery, together with evidence, by title insurance policy or by certificate of an attorney-at-law, certifying that the applicant is the owner in fee simple of such tract of land, which must contain not less than 30 acres, and that the title to not less than 30 acres is free and clear of all encumbrances. In counties with a population of less than 35,000 population according to the latest federal decennial census the tract need be only 15 acres.
- (4) A plat of the cemetery showing the number and location of all lots surveyed and permanently staked for sale. (1943, c. 644, s. 9; 1957, c. 529, s. 3; 1967, c. 1009, s. 9; 1975, c. 768, s. 1; 1977, c. 686, s. 8; 1987, c. 488, s. 2; 1991, c. 653, s. 2; 2004-202, s. 2.)

**§ 65-56. Existing companies; effect of Article.**

Existing cemetery companies at the time of the adoption of this Chapter shall continue in full force and effect and be granted a license but shall hereafter be operated in accordance with the provisions of Article 9 of this Chapter. (1975, c. 768, s. 1.)

**§ 65-57. Licenses for sales organizations, management organizations and brokers.**

(a) No legal entity shall engage in the business of a cemetery sales organization, a cemetery management organization or a cemetery broker except as authorized by this Article, and without first obtaining a license from the Commission.

(b) Any legal entity wishing to establish and operate the business of a cemetery sales organization, a cemetery management organization or a cemetery broker shall file a written application for authority with the Commission on forms provided by the Commission which must contain such of the following documents and information as may be required by the Commission:

- (1) The appointment of a North Carolina resident to receive service of any lawful process in any noncriminal proceedings arising under this Chapter against the applicant, its principal owners, principal stockholders, directors and general manager or their personal representatives.
- (2) The states or other jurisdictions in which the applicant presently is conducting the business activity applied for or other similar businesses and any adverse order, judgment or decree entered against the applicant in each jurisdiction or by any court.
- (3) The applicant's name, address and the form, date and jurisdiction of the organization and the address of each of its offices within or without this State.
- (4) The name, address, principal occupation for the past five years of every director and officer of the applicant or person occupying a similar status or performing similar functions.
- (5) Copies of the articles of incorporation or articles of partnership or joint venture agreement or other instrument establishing the legal entity of the applicant.

(c) The application shall be accompanied by an initial filing fee to be set by the Commission in an amount not to exceed one thousand dollars (\$1,000) for cemetery sales organization and cemetery management organization and an initial filing fee to be set by the Commission in an amount not to exceed five hundred dollars (\$500.00) for a cemetery broker. If ninety percent (90%) or more of the applicant is owned by an existing cemetery company operating under the North Carolina Cemetery Act, then the initial filing fee shall be one half of the sums set



out herein. On or before July 1 of each year, each licensed cemetery sales organization, cemetery management organization, or cemetery broker shall pay a license renewal fee to be set by the Commission in an amount not to exceed six hundred dollars (\$600.00) per year.

(d) Upon receipt of the application and filing fee, the Commission shall cause an investigation to be made of the legal entity to conduct the business applied for and the qualification of said legal entity to do business in North Carolina.

(e) The Commission, after receipt of the investigation report, shall grant or refuse to grant the authority to organize the organization applied for after it determines that the applicant possesses good character and general fitness or, in the case of a business association, employs and is directed by personnel of good character and general fitness.

(f) If the Commission intends to deny an application, it shall give written notice to the applicant of its intention to deny. The notice shall state a time and a place for hearing before the Commission and a summary statement of the reasons for the proposed denial. The notice of intent shall be mailed by certified mail to the applicant at the address stated in the application at least 15 days prior to the scheduled hearing date. Any appeals from the Commission's decision shall be to the court having jurisdiction of the applicant, or in the event of an out-of-state applicant, then to the court having jurisdiction of the Commission.

(g) If the Commission intends to grant the authority, it shall give written notice that the authority to organize the business applied for has been granted and that a license to operate will be issued upon presentment to the Commission of a statement of employment between the applicant and the cemetery or cemeteries to be serviced thereby.

(h) Any person or any cemetery sales organization or any cemetery management organization or any cemetery broker violating the provisions of this section is guilty of a Class 1 misdemeanor, and shall be subject to revocation of the license to operate. (1975, c. 768, s. 1; 1977, c. 686, ss. 9, 10; 1993, c. 539, s. 500; 1994, Ex. Sess., c. 24, s. 14(c); 2004-202, s. 3.)

#### **§ 65-58. Licenses for persons selling preneed grave space.**

(a) No person shall offer to sell preneed grave spaces, mausoleum crypts, niches, memorials, vaults or any other preneed cemetery merchandise or services under any plan authorized for any cemetery, cemetery sales group, or cemetery management group, before obtaining a license from the Commission.

(b) Persons wishing to obtain a license shall file a written application with the Commission on forms provided by the Commission. The Commission may require such information and documents as it deems necessary to protect the public interest.

(c) The application shall be accompanied by a filing fee to be set by the Commission in an amount not to exceed one hundred dollars (\$100.00) to cover the expenses of processing and investigation. After processing and investigation, the Commission shall grant, or refuse to grant, the license applied for. The license fee for a two-year term shall be set by the Commission but shall not exceed one hundred dollars (\$100.00).

(d) If the Commission refuses to grant the license applied for, it shall give written notice to the applicant. The notice shall state a time and a place for hearing before the Commission, and a summary statement of the reasons for the refusal to grant the license. The notice shall be mailed by registered mail or certified mail to the applicant at the address stated in the application at least 30 days prior to the scheduled hearing date.

(e) If the Commission intends to grant the license, it shall give written notice that the license will be issued upon presentment to the Commission of a duly executed statement of employment between the applicant and the cemetery or cemeteries to be serviced thereby.

(f) The provisions of Article 4 of Chapter 150B of the General Statutes of North Carolina relating to "Judicial Review" shall apply to appeals or petitions for judicial review by any person or persons aggrieved by an order or decision of the Commission.

(g) Repealed by Session Laws 1977, c. 686, s. 12. (1943, c. 644, s. 15; 1967, c. 1009, s. 14; 1975, c. 768, s. 1; 1977, c. 686, ss. 11, 12; 1987, c. 827, s. 1; 2004-202, s. 4.)

### **§ 65-59. Application for a change of control; filing fee.**

A person who proposes to acquire control of an existing cemetery company, whether by purchasing the capital stock of the company, purchasing an owner's interest in the company, or otherwise acting to effectively change the control of the company, shall first make application on a form supplied by the Commission for a certificate of approval of the proposed change of control. The application shall contain the name and address of each proposed new owner. The Commission shall issue a certificate of approval only after it determines that the proposed new owners are qualified by character, experience, and financial responsibility to control and operate the cemetery company in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in control. An application for approval of a change of control must be completed and accompanied by a filing fee to be set by the Commission in an amount not to exceed one thousand six hundred dollars (\$1,600). The Commission shall not approve any change of control until the applicant has provided sufficient evidence that any trust account required under G.S. 65-66(b) and G.S. 65-70(b) is maintained and funded in the required amount. If the cemetery company posted a performance bond in lieu of any trust account required under G.S. 65-66(b) and G.S. 65-70(b), then the Commission shall not approve any change of control until the applicant has provided sufficient evidence that the performance bond is being appropriately maintained and in an amount sufficient to cover all payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services. (1975, c. 768, s. 1; 1987, c. 488, s. 4; 1991, c. 653, s. 4; 2004-202, s. 5; 2010-102, s. 1.)

### **§ 65-60. Records.**

A record shall be kept of every burial in the cemetery of a cemetery company, showing the date of burial, name of the person buried, together with lot, plot, and space in which such burial was made therein. All sales, trust funds, accounting records, and all other records of the licensee shall be available at the licensee's principal place of business in this State and shall be readily available at all reasonable times for examination by an authorized representative of the Commission. (1975, c. 768, s. 1.)

#### **§ 65-60.1. Trustees; qualifications; examination of records; enforcement.**

(a) The term "corporate trustee" as used in this Article shall mean a bank, credit union, or trust company authorized to do business in North Carolina under the supervision of the Commissioner of Banks, Credit Union Administrator, or any other corporate entity; provided that any corporate entity other than a bank, credit union, or trust company which acts as trustee under this Article shall first be approved by the Cemetery Commission and shall be subject to supervision by the Cemetery Commission as provided herein.

(b) Any corporate entity, other than a bank, credit union, or trust company, which desires to act as trustee for cemetery funds under this Article shall make application to the Commission for approval. The Commission shall approve the trustee when it has become satisfied that:

- (1) The applicant employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others.
- (2) The applicant will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized.
- (3) The applicant will act as trustee for cemetery funds which will exceed five hundred thousand dollars (\$500,000) in the aggregate.
- (4) The applicant is authorized to do business in North Carolina and has adequate facilities to perform its duties as trustee.

(c) Any trustee under this Article, other than a bank, credit union, or trust company under the supervision of the Commissioner of Banks, shall maintain records relative to cemetery trust funds as the Commission may by regulation prescribe. The records shall be available at the trustee's place of business in North Carolina and shall be available at all reasonable times for examination by a representative of the Commission. The records shall be audited annually, within 90 days from the end of the trust fund's fiscal year, by an independent certified public accountant, and a copy of the audit report shall be promptly forwarded to the Commission.

(d) Whenever it appears that an officer, director, or employee of a trustee, other than a bank, credit union, or trust company, is dishonest, incompetent, or reckless in the management of a cemetery trust fund, the Commission may bring an action in the courts to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

(e) Any trustee shall invest and reinvest cemetery trust funds in the same manner as provided by law for the investment of trust funds by the clerk of the superior court; provided, however, that this subsection does not apply to a perpetual trust fund described in G.S. 65-64 or cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e), which may be invested and reinvested in accordance with G.S. 32-71. (1977, c. 686, s. 15; 1979, c. 888, s. 9; 1995, c. 509, s. 135.3(a); 2010-102, s. 2.)

**§ 65-61. Required trust fund for care and maintenance; remedy of Commission for noncompliance.**

No cemetery company shall be permitted to establish, or operate if already established, a cemetery unless provision is made for the future care and maintenance of such cemetery by establishing a trust fund and designating a corporate trustee to administer said fund in accordance with a written trust agreement. If any cemetery company refuses or otherwise fails to provide or maintain an adequate care and maintenance trust fund in accordance with the provisions of this Article, the Commission, after reasonable notice, shall proceed to enforce compliance under the powers vested in it under this Article; provided any nonprofit cemetery corporation, incorporated and engaged in the cemetery business continuously since and prior to 1915 and whose current trust assets exceed seven hundred fifty thousand dollars (\$750,000) shall not be required to designate a corporate trustee. The trust fund agreement shall contain and include the following: name, location, and address of both the licensee and the trustee showing the date of agreement together with the amounts required deposited as stated in this Article. No person shall withdraw or transfer any portion of the corpus of the care and maintenance trust fund without first obtaining written consent

from the Commission. (1943, c. 644, s. 9; 1957, c. 529, s. 3; 1967, c. 1009, s. 9; 1975, c. 768, s. 1; 1977, c. 686, s. 13.)

**§ 65-62. Individual contracts for care and maintenance.**

At the time of making a sale or receiving the initial deposit hereunder, the cemetery company shall deliver to the person to whom such sale is made, or who makes such deposit, an instrument in writing which shall specifically state that the net income of the care and maintenance trust fund shall be used solely for the care and maintenance of the cemetery, for reasonable costs of administering such care and maintenance and for reasonable costs of administering the trust fund. (1975, c. 768, s. 1.)

**§ 65-63. Requirements for perpetual care fund.**

A cemetery company may not cause or permit advertising of a perpetual care fund in connection with the sale or offer for sale of its property unless the amount deposited in the fund is at least one hundred dollars (\$100.00) or ten percent (10%) of the retail sale price, whichever is greater, per grave space, niche, or mausoleum crypt sold. Nothing may prohibit an individual cemetery from requiring a perpetual care deposit for grave memorial markers to be deposited in the perpetual care fund so long as the same assessment is uniformly applied to all grave memorial markers installed in the cemetery. (1943, c. 644, s. 5; 1957, c. 529, s. 1; 1967, c. 1009, s. 3; 1971, c. 1149, s. 3; 1975, c. 768, s. 1; 1979, c. 888, s. 4; 1987, c. 488, s. 5; 1991, c. 653, s. 5; 2004-202, s. 6.)

**§ 65-64. Deposits to perpetual care fund.**

(a) Deposits to the care and maintenance trust fund must be made by the cemetery company holding title to the subject cemetery lands on or before the last day of the calendar month following the calendar month in which final payment is received as provided herein; however the entire amount required to be deposited into the fund shall be paid within four years from the date of any contract requiring the payment regardless of whether all amounts have been received by the cemetery company. If the cemetery company fails to make timely deposit, the Commission may levy and collect a late filing fee of one dollar (\$1.00) per day for each day the deposit is delinquent on each grave space, niche or mausoleum crypt sold. The care and maintenance trust fund shall be invested and reinvested by the trustee in accordance with G.S. 32-71. Investments may be made through means of a common trust fund as described in G.S. 53-163.5. Cemetery trust funds held in a fund designated as Trust Fund "A" pursuant to G.S. 65-64(e) may be invested and reinvested in accordance with G.S. 32-71. The fees and other expenses of the trust fund shall be paid by the trustee from the net income thereof and may not be paid from the corpus. To the extent that the net income is not sufficient to pay the fees and other expenses, the fees and other expenses shall be paid by the cemetery company.

(b) When a municipal, church-owned or fraternal cemetery converts to a private cemetery as defined in G.S. 65-48, then the cemetery shall establish and maintain a care and maintenance trust fund pursuant to this section; provided, however, the initial deposit for establishment of this trust fund shall be an amount equal to fifty dollars (\$50.00) per space for all spaces either previously sold or contracted for sale in the cemetery at the time of conversion or fifty thousand dollars (\$50,000), whichever sum is greater.

(c) Repealed by 1991 (Regular Session, 1992), c. 1007, s. 35.

(d) In each sales contract, reservation or agreement wherein burial rights are priced separately, the purchase price of the burial rights shall be the only item subject to care and maintenance trust fund deposits; but if the burial rights are not priced separately therein, the full amount of the contract, reservations or agreement shall be subject to care and maintenance trust fund deposits as provided herein, unless the purchase price of the burial rights can be determined from the accounting records of the cemetery company.

(e) When the amount deposited in the perpetual care fund required by this Article of any cemetery company shall amount to one hundred fifty thousand dollars (\$150,000), anything in this Article to the contrary notwithstanding, the cemetery company may make all deposits thereafter either into the original perpetual care trust fund or into a separate fund established as an irrevocable trust, designated as Perpetual Care Trust Fund "A," and invested by the trustee, in accordance with G.S. 32-71. Funds in a trust fund designated as Trust Fund "A" may not be invested in another cemetery company.

(f) For special endowments for a specific lot, grave, or a family mausoleum, memorial, marker, or monument, the cemetery may set aside the full amounts received for this individual special care in a separate trust or by a deposit to a savings account in a bank, credit union, or savings and loan association located within and authorized to do business in the State; provided, however, if the licensee does not set up a separate trust or savings account for the special endowment the full amount thereof shall be deposited in Perpetual Care Trust Fund "A." (1943, c. 644, s. 10; 1957, c. 529, s. 4; 1967, c. 1009, s. 10; 1971, c. 1149, s. 5; 1975, c. 768, s. 1; 1977, c. 686, s. 14; 1979, c. 888, ss. 5, 6; 1987, c. 488, ss. 3, 6; 1991, c. 653, s. 6; 1991 (Reg. Sess., 1992), c. 1007, s. 35; 1995, c. 509, s. 135.3(b), (c); 2004-202, ss. 7, 8; 2010-102, s. 3.)

#### **§ 65-65. Trust fund; financial reports.**

Within 60 days after the end of the calendar or fiscal year of the cemetery company, the trustee shall furnish adequate financial reports with respect to the care fund on forms provided by the Commission. However, the Commission may require the trustee to make such additional financial reports as it may deem advisable. (1975, c. 768, s. 1.)

#### **§ 65-66. Receipts from sale of personal property or services; trust account; penalties.**

(a) It shall be deemed contrary to public policy if any person or legal entity receives, holds, controls or manages funds or proceeds received from the sale of, or from a contract to sell, personal property or services which may be used in a cemetery in connection with the burial of or the commemoration of the memory of a deceased human being, where payments for the same are made either outright or on an installment basis prior to the demise of the person or persons so purchasing them or for whom they are so purchased, unless the person or legal entity holds, controls or manages the funds, subject to the limitations and regulations prescribed in this section. This section shall apply to all cemetery companies or other legal entities that offer for sale or sell personal property or services which may be used in a cemetery in connection with the burial of, or the commemoration of the memory of, a deceased human being, but shall exclude persons holding a license under Article 13D of Chapter 90 of the General Statutes.

(b) Any cemetery company or other entity entering into a contract for the sale of personal property or services, to be used in a cemetery in connection with disposing of, or commemorating the memory of a deceased human being wherein the use of the personal property or the furnishing of services is not immediately requested or required, shall comply with the following requirements and conditions:

- (1) The cemetery company or other entity shall deposit an amount equal to sixty percent (60%) of all proceeds received on the contracts into a trust account, either in the form of an account governed by a trust agreement and handled by a corporate trustee or in the form of a passbook savings account, certificates of deposit for time certificates, or money-market certificates with a licensed and insured bank, credit union, or savings institution located in the State of North Carolina until the amount deposited equals sixty percent (60%) of the actual sale price of the property or services sold. The accounts or deposits or both shall be in the name of the cemetery company or other entity in a form which will permit withdrawals only with the participation and consent of the Cemetery Commission as required by subdivision (4) of this subsection.
- (2) All funds received on account of a contract for the sale of the personal property or services, whether the funds be received directly from the purchaser or from the sale or assignment of notes entered into by the purchase or otherwise, shall be deposited into the trust account as required by subdivision (1) of this subsection.
- (3) All deposits required herein shall be made into the trust account so established on or before the last day of the month following receipt of the funds by the cemetery company or other entity.
- (4) Withdrawals from a trust account may be made by the depositor, but only with the written approval of the Commission or officer or employee of the Commission authorized to act for the Commission. Withdrawals may be made only upon delivery of the merchandise or services for which the funds were deposited, cancellation of a contract, the presence of excess funds in the trust account, or under other circumstances deemed appropriate by the Commission. The Commission shall promulgate rules and regulations governing withdrawals from trust accounts, including time and frequency of withdrawals, payments that will be made with the withdrawals, notice to the Commission prior to withdrawals, the number and identity of persons other than the owner who are authorized by the owner to make withdrawals, the officers and employees of the Commission authorized to approve withdrawals, and any other matters necessary to implement the provisions of this subdivision. Withdrawals will not be allowed if the amount remaining in the trust account would fall below sixty percent (60%) of all proceeds received on account of contracts for the sale of the personal property or services.
- (5) If for any reason a cemetery company or other entity who has entered into a contract for the sale of personal property or services cannot or does not provide the personal property or perform the services called for by the contract after request in writing to do so, the purchaser or his heirs or assigns or duly authorized representative shall be entitled to receive the entire amount paid on the contract and any income if any, earned thereon by the trust account.
- (6) Every year after September 1, 1975, the cemetery company, the trustee or other entity shall within 75 days after the end of the calendar year, file a financial report of the trust funds with the Commission, setting forth the principal thereof, the investments and payments made, the income earned and disbursed;

provided, however, that the Commission may require the cemetery, trustee, or other entity to make the additional financial reports as it may deem advisable.

(c) Whenever a contract for the sale of personal property or services or both allocates payments to apply to one item at a time under a specific schedule, the contract shall be considered divisible. Title to each item of personal property or the right to each item of services shall pass to the purchaser upon full payment for that item regardless of the remaining balance on other items under the same contract.

(d) Any contract for the sale of personal property or services or both shall state separate costs for each item of personal property, for each act of installation required by the contract, for opening and closing each grave space, and for each other item of services included in the contract.

(e) All contracts for the sale of personal property or services or both must be printed in type size as required by the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and regulations adopted pursuant to that act.

(f) In the event of prepayment, interest charged shall be no more than the interest earned on the unpaid balance computed on a percent per month basis for each month or part of a month up to the date of final payment. Any excess interest which has been paid by the purchaser must be refunded to him, his assigns, or his representative within 30 days after the final payment. No penalty or additional charge for prepayment may be required.

(g) In lieu of the deposits required under subsection (b) of this section, the cemetery company or other entity may post with the Commission a good and sufficient performance bond by surety company licensed to do business in North Carolina and in an amount sufficient to cover all payments made directly or indirectly by or on account of purchasers who have not received the purchased property and services. Money received from the sale or assignment of notes entered into by the purchasers, or otherwise, shall be treated as payments made by the purchasers.

(h) The Commission shall have the power and is required from time to time as it may deem necessary to examine the business of any cemetery company or other entity writing contracts for the sale of the property or services as herein contemplated. The written report of the examination shall be filed in the office of the Commission. Any person or entity being examined shall produce the records of the company needed for the examination.

(i) Any provision of any contract for the sale of the personal property or the performance of services herein contemplated under which the purchaser or beneficiary waives any of the provisions of this section shall be void.

(j) Repealed by Session Laws 1991, c. 653, s. 7.

(k) Nothing in this section shall apply to persons or legal entities holding licenses under Article 13D of Chapter 90 of the General Statutes when engaging in activities for which a license is required under that Article.

(l) If any report is not received within the time stipulated by the Commission or herein, the Commission may levy and collect a late filing fee of twenty-five dollars (\$25.00) per month for each month of delinquency.

(m) Within 30 days following the execution of a contract for the sale of personal property or performance of services, a purchaser may cancel his contract by giving written notice to the seller. The seller may cancel the contract, upon default by purchaser, by giving written notice to the purchaser. Within 30 days of notice of cancellation, the cemetery company or other entity shall refund to purchaser the principal amount on deposit in the trust account for his benefit on any undelivered merchandise or services. This amount (no other obligations owed the purchaser by the

seller) shall constitute the purchaser's entire entitlements under the contract. The seller may not terminate the contract without complying with this subsection.

(n) A cemetery company shall not require the purchaser or consumer of a grave space, mausoleum, or mausoleum section to purchase a vault from the cemetery company or from any other particular seller of vaults as a condition to the purchase or use of a grave space, mausoleum, or mausoleum section but may require that a casket be enclosed within a vault. A cemetery company may charge a reasonable fee not to exceed twenty dollars (\$20.00) for delivery of vaults or inspection of vaults that are purchased from a person other than the cemetery company. (1975, c. 768, s. 1; 1979, c. 888, s. 7; 1987, c. 488, s. 7; 1991, c. 653, s. 7; 1995, c. 509, s. 135.1(j), (k); 2004-202, s. 9; 2010-102, s. 4.)

#### **§ 65-67. Applications for license.**

Applications for renewal license must be submitted on or before July 1 each and every year in the case of an existing cemetery company. Before any sale of cemetery property in the case of a new cemetery company or a change of ownership or control as indicated in G.S. 65-59, an application for license must be submitted and license issued. (1975, c. 768, s. 1.)

#### **§ 65-68. License not assignable or transferable.**

No license issued under G.S. 65-67 shall be transferable or assignable and no licensee shall develop or operate any cemetery authorized by this Article under any name or at any location other than that contained in the application for such license. (1975, c. 768, s. 1.)

#### **§ 65-69. Minimum acreage; sale or disposition of cemetery lands.**

(a) Each licensee shall set aside a minimum of 30 acres of land for use by said licensee as a cemetery, and shall not sell, mortgage, lease or encumber the same.

(b) The fee simple title, or lesser estate, in any lands owned by licensee and dedicated for use by it as a cemetery, which are contiguous, adjoining, or adjacent to the minimum of 30 acres described in subsection (a), may be sold, conveyed, or disposed of, or any part thereof, by the licensee, for use by the new owner for other purposes than as a cemetery; provided that no bodies have been previously interred therein; and provided further, that any and all titles, interests, or burial rights which may have been sold or contracted to be sold in such lands which are the subject of such sale shall be conveyed to and revested in the licensee prior to consummation of any such sale, conveyance or disposition.

(c) Any licensee may convey and transfer to a municipality or county its real and personal property together with moneys deposited with the trustee; provided said municipality or county will accept responsibility for maintenance thereof and prior written approval of the Commission is first obtained.

(d) The provisions of subsections (a) and (b) of this section relating to the requirement for minimum acreage shall not apply to those cemeteries licensed by the Commission on or before July 1, 1967, which own or control a total of less than 30 acres of land; provided that such cemeteries shall not dispose of any of such lands. A nongovernment lien or other interest in land acquired in violation of this section is void.

(e) Notwithstanding subsection (a) of this section, cemeteries licensed by the Commission, or initially incorporated with the North Carolina Secretary of State, between July 2, 1967, and September 1, 1975, may sell, mortgage, lease, or encumber the minimum acres of land required



by subsection (a) of this section, provided notice is given to the Commission 10 days prior to the transaction, if all of the following criteria are met:

- (1) At the time of licensure or initial incorporation, the population of the county in which the cemetery is located did not exceed 45,000 people according to the appropriate federal decennial census.
- (2) Another private or public cemetery is located within a five mile radius of the cemetery that is subject to the proposed transaction.
- (3) At least 15 acres of cemetery land remain for use by the licensee as a cemetery, without mortgage, lease, or encumbrance.
- (4) The purchaser of the land shall transfer to the perpetual care fund an amount equal to ten percent (10%) of the consideration or value of the interest conveyed, on up to 15 acres sold, within 60 days of the sale. (1975, c. 768, s. 1; 1991, c. 653, s. 8; 2016-83, s. 1.)

**§ 65-70. Construction of mausoleums and belowground crypts; trust fund for receipts from sale of preconstruction crypts; compliance requirements.**

(a) A cemetery company shall be required to start construction of that section of a mausoleum or bank of belowground crypts in which sales, contracts for sale, reservations for sales or agreements for sales are being made, within 48 months after the date of the first sale. The construction of the mausoleum section or bank of belowground crypts shall be completed within five years after the date of the first sale made; provided, however, extensions for completion, not to exceed three years, may be granted by the Commission for good reasons shown.

(b) A cemetery company which plans to offer for sale space in a section of a mausoleum or bank of underground crypts prior to its construction shall establish a preconstruction trust account. The trust account shall be administered and operated in the same manner as the merchandise trust account provided for in G.S. 65-66 and shall be exclusive of the merchandise trust account or the other trust accounts or funds that may be required by law. The personal representative of any purchaser of the space who dies before completion of construction shall be entitled to a refund of all moneys paid for the space including any income earned thereon.

(c) Before a sale, contract for sale, reservation for sale or agreement for sale in the first mausoleum section or bank of underground crypts in each cemetery may be made the funds (one hundred twenty percent (120%) of construction cost) to be deposited to the preconstruction trust account shall be computed as to the section or bank of crypts and the trust account payments must be made on or before the last day of the calendar month following receipt by the cemetery company or its agent of each payment. The trust account portion of each payment shall be computed by dividing the cost of the project plus twenty percent (20%) of the cost, as computed by a licensed contractor, engineer or architect by the number of crypts in the section or bank of crypts to ascertain the cost per unit. The unit cost shall be divided by the contract sales price of each unit to obtain a percentage which shall be multiplied by the amount of each payment. The formula shall be computed as follows:

Cost plus twenty percent (20%) divided by number of crypts = cost per unit

Cost per unit divided by contract sales price = percentage

Percentage x payment received = deposit required to preconstruction trust account.

(d) The cemetery company shall be entitled to withdraw the funds from the preconstruction trust account only after the Commission has become satisfied that construction has been completed; provided, however, that during construction of the mausoleum or bank of belowground

crypts the Commission may, in its discretion, authorize a specific percentage of the funds to be withdrawn when it appears that at least an equivalent percentage of construction has been completed.

(e) If a mausoleum section or bank of underground crypts is not completed within the time limits set out in this section the corporate trustee, if any, shall contract for and cause the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company. In the event there is no corporate trustee, the Commission shall appoint a committee to serve as trustees to contract for and cause the project to be completed and paid therefor from the trust account funds deposited to the project's account paying any balance, less cost and expenses, to the cemetery company.

(f) In lieu of the payments outlined hereunder to the preconstruction trust account the cemetery company may deliver to the Commission a good and sufficient completion or performance bond in an amount and by surety companies acceptable to the Commission. (1975, c. 768, s. 1; 1977, c. 686, ss. 16, 17; 1979, c. 888, s. 8; 2010-102, s. 5.)

#### **§ 65-71. Penalties.**

(a) Except as provided in this subsection, a person violating any provisions of this Article is guilty of a Class 1 misdemeanor. Each failure to deposit funds in a trust fund in accordance with this Article is a separate offense. A person that has failed to deposit funds in a trust fund in accordance with this Article and whose delinquent deposits equal or exceed twenty thousand dollars (\$20,000) is guilty of a Class I felony.

(b) The officers and directors or persons occupying similar status or performing similar functions of any cemetery company, cemetery sales organization, cemetery management organization, or cemetery broker, as defined in this Chapter, failing to make required contributions to the care and maintenance trust fund and any other trust fund or escrow account are liable for any offense based on the failure and upon conviction for the offense shall be punished in the manner prescribed by law. (1943, c. 644, s. 14; 1967, c. 1009, s. 13; 1975, c. 768, s. 1; 1991, c. 653, s. 9; 1993, c. 539, ss. 501, 1281; 1994, Ex. Sess., c. 24, s. 14(c); 2021-84, s. 2.)

#### **§ 65-72. Burial without regard to race or color.**

(a) It shall be the public policy of the State that all cemetery companies or other legal entities conducting or maintaining public or private cemeteries shall sell to all applicants and bury all deceased human beings on equal terms without regard to race or color. Anything contrary hereto is void and of no legal effect. Bylaws, rules and regulations, contracts, deeds, etc., may permit designation of parts of cemeteries or burial grounds for the specific use of persons whose religious code required isolation. Any program offering free burial rights to veterans or any other person or group of persons shall not be conditioned by any requirement to purchase additional burial rights or merchandise.

(b) Any cemetery company or other legal entity violating the provisions of this section shall be guilty of a Class 1 misdemeanor, and each violation of this section shall constitute a separate offense. (1975, c. 768, s. 1; 1993, c. 539, s. 502; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§ 65-73. Validation of certain deeds for cemetery lots executed by suspended corporations.**

Any deed for a cemetery lot or lots which was executed prior to January 1, 1979, and which would have been valid if the charter of the grantor corporation had not been suspended at the time the deed was executed, is hereby validated. (1979, c. 225, s. 1.)

