

Document No. 4168
PERPETUAL CARE CEMETERY BOARD
CHAPTER 21
Statutory Authority: 1976 Code Sections 40-8-10 et seq.

21-1 through 21-27. Perpetual Care Cemetery Board

Synopsis:

The Perpetual Care Cemetery Board is amending current regulations 21-1 through 21-60 and deleting Regulation 21-61 through 21-64 to clarify and conform to the Perpetual Care Cemetery Practice Act. These regulations also are updated to reflect statutory amendments made to the South Carolina Perpetual Care Cemetery Act by 2002 Act 322.

The Notice of Drafting was published in the *State Register* on November 26, 2010.

Instructions:

Replace 21-1 through 21-27 as printed below.
Delete 21-60 through 21-64.

Text:

SUBARTICLE 1

21-1. General Purpose.

The general purpose of the Perpetual Care Cemetery Board is to protect the public and to regulate and supervise the activities of cemeteries licensed under the laws of South Carolina.

21-2. Definitions.

- (1) "Complaint log" is a required record, pursuant to Section 40-8-100(B), of written complaints received regarding cemeteries. This log must be kept in writing by the cemetery.
- (2) "Examined", as used in Section 40-8-100(A), and subsequently with "examination", means a special report to be determined by the board. The Cemetery Board will, as often as it deems necessary, make a physical examination of each cemetery within reasonable business hours to insure compliance with applicable laws.
- (3) "Financial institution" means a bank, trust company, or savings and loan association authorized by law to do business in this State.
- (4) "Licensed public accountant" means public accountant (PA) or certified public accountant (CPA) licensed in one of the United States or its territories and this accountant must practice independently from the cemetery company the accountant examines. Said accountant, pursuant to Section 40-8-100(A), shall examine a cemetery company's care and maintenance trust fund and merchandise fund every three (3) years even if there was not a previous account.
- (5) "Licensee" means a person or entity granted an authorization or license to operate pursuant to this chapter and refers to a person holding a license granted pursuant to this chapter.
- (6) "Nature preserve", for the purposes of this chapter, is a conservation burial ground for the internment of human remains.
- (7) "Opening/closing" means the process of opening and closing of a grave site, which must be done in a timely manner.
- (8) "Principal place of business" means the licensed cemetery's office or primary in-state location, as per Section 40-8-100(A).

(9) "Services" or "cemetery services" means any act or activity by a cemetery in relation to arranging, supervising, interring or disposing of the remains or commemorating the memory of deceased human beings.

(10) "Non-Profit Cemetery" means a cemetery owned by a non-profit group which has established 501(C)(3) status with the Internal Revenue Service (IRS).

21-3. Disclosures.

Pursuant to Section 40-8-100(G), a certified copy of the disclosures regarding fees to be placed in trust by the cemetery company must be sent to the board administrator.

21-4. Outer Burial Container.

Pursuant to Section 40-8-35, the cemetery must disclose to the purchaser of an outer burial container the identity of the manufacturer and the model of said container.

21-5. General Manager Requirements.

Pursuant to Section 40-8-90(A) (1)(d), the general manager of a cemetery must be a South Carolina resident and must have had at least two (2) years experience in perpetual care cemetery business.

21-6. Correct Documentation Required for Cemetery Application.

Pursuant to Section 40-8-90(A) (2), the ninety (90) day requirement for the grant or refusal of authority to organize a cemetery begins after all correct documentation, along with a completed application for organization of a cemetery, is received.

21-7. Records Retention.

(A) Pursuant to Section 40-8-100(A), all records maintained by cemeteries must be maintained on location and be available for inspection at all times. The Board may permit cemeteries with multiple locations to maintain records at its primary in-state location.

(B) Pursuant to Section 40-8-110(H), if an individual acting on the board's behalf must be sent to inspect/audit the records of the cemetery company, the cemetery is responsible for reasonable and necessary costs incurred.

21-8. Death of Cemetery Owner.

In case of the death of a cemetery owner, if the cemetery is inherited, a probate judge must appoint a qualified manager for the cemetery. Once probate is finalized, the manager must apply for a new license within sixty (60) days. (Section 40-8-90(B))

21-9. Policies and Procedures; Vendors.

(A) Pursuant to Section 40-8-100(H), policies and procedures must be approved by the board before being put into effect.

(B) Pursuant to Section 40-8-100(D), a policy or procedure may not be promulgated which unreasonably charges outside vendors more than the cemetery would charge for such services.

21-10. Meetings.

The Cemetery Board shall meet at least semiannually, and more often upon the call of the Chairman or upon written request of at least four members of the board.

SUBARTICLE 2

CARE AND MAINTENANCE TRUST FUNDS

21-11. Care and Maintenance Trust Funds.

(A) Pursuant to Section 40-8-110(C), each time a space is sold, the cemetery must deposit the amount which the cemetery charges for perpetual care into the Care and Maintenance Trust Fund. The trustee must furnish to the board, within ninety (90) days of the end of the calendar year, an annual summary of the beginning balance, all deposits, all withdrawals, and the ending balance of the trust account.

(B) Pursuant to Section 40-8-110(C), the cemetery must also trust the greater of 0.08 cents per square inch or the actual amount charged for the long term care of a marker. Dates of payment and deposit must be put in writing and recorded.

(C) Pursuant to Section 40-8-110(E), capital gains are not net income, but growth in the corpus. Net income is the current year's earnings of interest and dividends.

21-12. Report of Deposits.

The Cemetery Board requires a report of deposits, earnings, and withdrawals to the Care and Maintenance Trust Fund to be completed and mailed to the Cemetery Board annually on forms provided by the Cemetery Board.

21-13. Location of Fund.

No person will be allowed to withdraw or transfer all or any portion of the corpus of the care and maintenance trust funds of any cemetery to any depository authorized to conduct business in South Carolina. The board will not approve the creation of a new care and maintenance trust fund as called for under Code Section 40-8-110 unless the same is deposited with a trust institution authorized to conduct business in South Carolina.

21-14. Transfer of Funds.

Any cemetery which desires to transfer its care and maintenance trust funds must make written request to the Cemetery Board and provide the Cemetery Board with a copy of the new proposed Care and Maintenance Trust Fund Agreement. The Cemetery Board will then notify the cemetery, in writing, after study of the request and proposal, either authority for the transfer or the denial of the request.

21-15. Commingling of Deposits.

The trustees of care and maintenance trust funds may commingle the deposits in all such trusts for purposes of the management and investment of the funds.

SUBARTICLE 3

MERCHANDISE FUNDS

21-16. Reports of Deposits.

The Cemetery Board requires a report of deposits, earnings, and withdrawals to the Merchandise Fund to be completed and mailed to the Cemetery Board annually on forms provided by the Cemetery Board.

Pursuant to Section 40-8-110(F)(1), whether or not a merchandise account exists, the cemetery must annually report the existence of merchandise account information, including balances, if any.

21-17. Location of Fund.

The Cemetery Board will not approve the creation of a merchandise fund unless the same is deposited with a financial institution authorized to conduct business in South Carolina.

21-18. Deposits to Merchandise Fund.

No person shall offer to enter into, or enter into a contract, for the sale of a memorial, mausoleum crypt, or other cemetery merchandise that is to be used in connection with the interment of a deceased human being, wherein the memorial or other cemetery merchandise is not delivered or the mausoleum crypt is not constructed until the death, or at some future time, of the person for whose interment such personal property is to be furnished, except as provided below:

(a) Any person entering into any such contract as the seller shall deposit into a merchandise fund, established for that purpose with a financial institution authorized to conduct business in South Carolina, one hundred (100) percent of the actual cost, at time of deposit, of the personal property sold for future need.

(b) The deposit required to be made into such merchandise fund shall be made within sixty (60) days after the seller has received final payment of the purchase price provided for under such contract.

21-19. Withdrawals from Merchandise Fund.

The funds held shall remain intact, together with all interest accrued thereon, except as provided herein, until the memorial or other cemetery merchandise has been delivered.

(a) The costs for administering the merchandise fund may be paid from, and only from, the income earned by the fund or by the cemetery company.

(b) For the purpose of Code Section 40-8-110, only (1) the installation of said merchandise, meaning the placement of the marker, in the cemetery, or (2) the aboveground warehousing of said merchandise on the cemetery property, or (3) the deposit of one hundred (100) percent of the cost of said merchandise in the Merchandise Fund, or (4) another type of aboveground only warehousing of said merchandise that has prior approval of the Cemetery Board, will constitute the delivery of said merchandise. This regulation does not apply to lawn crypts.

SUBARTICLE 4

PRIVATE AND COMMUNITY MAUSOLEUMS AND BELOW GROUND CRYPTS FUNDS

21-20. Reports.

The Cemetery Board requires that a cemetery pre-file with the board, before it begins, a pre-construction mausoleum sales program, and that a report of deposits to the Pre-Construction Mausoleum Fund be completed and mailed to the Cemetery Board annually on forms provided by the Cemetery Board.

21-21. Deposits to Fund.

(a) Any person who enters into a contract for the sale of a space in a private family mausoleum or community mausoleum or bank of belowground crypts prior to the completed construction thereof shall establish a fund entitled "Pre-Construction Fund" with a financial institution authorized to conduct business in South Carolina. The pre-construction fund shall be administered and operated in the same manner as the merchandise fund provided for in Code Section 40-8-110(F), and shall be exclusive of the merchandise fund or other funds that may be required by law.

(b) The seller's cost of a space in a private or a community mausoleum or in a bank of belowground crypts shall be determined by the contract and plans between the cemetery company and the building contractor.

(c) When any memorial, mausoleum crypt, or other merchandise is sold in advance of need and not installed until a later date, one hundred (100) percent of actual cost to the seller at time of deposit must be placed in a financial institution within sixty (60) days after completion of the contract, with interest to accrue, and may not be withdrawn without the consent of the purchaser until the time of delivery or construction.

21-22. Withdrawals from Pre-Construction Fund.

The seller shall be entitled to withdraw all funds from the pre-construction fund after the Cemetery Board is satisfied that construction has been completed; provided, however, during construction of the mausoleum or bank of belowground crypts, the Cemetery Board shall authorize a specific percentage of the funds to be withdrawn when the cemetery company certifies that at least an equivalent percentage of construction has been completed.

SUBARTICLE 5

LICENSING

21-23. Application and Filing Fee.

Any legal entity wishing to establish and operate a cemetery company, as defined in Code Section 40-8-30(6) must first obtain a license from the Cemetery Board. The legal entity shall file written application with the Cemetery Board. All applicable fees must be paid with the application.

21-24. Cemetery Company License.

Upon proper application for a Cemetery Company License, and where it appears after investigation that the criteria required by applicable laws have been met, the Cemetery Board shall issue said license to the applicant, provided that the required license fee has been paid.

21-25. Change of Control.

Any entity wishing to purchase or acquire control of an existing cemetery company shall first make written application to the Cemetery Board on the board's Application for Change of Control. This form provides space for the name and address of the present and the proposed new owner, along with the name of the corporation and the name of the cemetery. This form is available from the office of the Cemetery Board. The board also requires the following, including but not limited to:

- (1) an examination be made to establish compliance with all funding requirements;
- (2) a certificate signed by the purchaser assuming liabilities of the existing cemetery company;
- (3) the financial structure of the existing cemetery company;
- (4) a financial statement of the purchaser.

21-26. Cemetery Rules and Regulations.

Each cemetery shall submit to the Cemetery Board a copy of its rules and regulations for approval. After the Cemetery Board has approved the rules and regulations for a licensed cemetery, the cemetery, must before modifying, changing, or amending said rules and regulations, submit proposed amendments or changes to the Cemetery Board for approval.

21-27. Nature Preserve Exemption Requirements.

Prior approval of the Board is required for all licensing exemptions granted for a nature preserve cemetery. The proposed nature preserve cemetery must be duly licensed and approved by all other applicable licensing authorities. Perpetual care as it is defined in the South Carolina Perpetual Care Cemetery Act may not be offered. Burial or scattering of cremated remains is permissible.

- (a) Vaults are not permitted.
- (b) Decedents are not to have been embalmed, or embalmed only with approved nontoxic chemicals.
- (c) Burial containers are to be limited to those made from materials that are nontoxic/nonhazardous and natural/plant derived, with shrouds allowed.
- (d) An Integrated Pest Management (IPM) program must be implemented, so as to prohibit the use of pesticide other than in instances where it is required to eradicate invasive species.
- (e) Land criteria: A Nature Preserve Cemetery must:
 - (i) Be contiguous to, or in a position to augment the conservation goals of an ecologically significant park, wildlife corridor, critical habitat area, or permanently protected open space; or (with appropriate management practices) be large enough on its own to be considered a landscape-level conservation effort;
 - (ii) Operate only in areas of the property where burial would not degrade the land and the surrounding landscape;
 - (iii) Be owned by, or operated in conjunction with a government agency or a nonprofit conservation organization that is recognized by the Internal Revenue Service as a public charity and in business for at least five years (the "conservation partner"). The conservation partner must have legally binding

responsibility for perpetual stewardship of the land, both in the operational facility and in the conservation area(s), and must set all conservation policies; and

(iv) Utilize a deed restriction (if operator is a nonprofit conservation organization that has been established for at least five years) or a conservation easement that incorporates these standards. A conservation easement must also conform to all provisions of the Internal Revenue Code Section 170(h) and provide for public access to and through the site, particularly to connect it to adjoining protected open space, to the extent public use of the property is compatible with ecological goals.

(f) Start-up criteria. A Nature Preserve Cemetery must:

(i) Conduct a biological evaluation including baseline information on existing geology, hydrology, soils, and topography, and on both existing and potential vegetation and wildlife. This evaluation must be used by the facility designers and operators to ensure that existing site resources are not degraded, and that the potential for re-introducing native species is given appropriate consideration in design and planning;

(ii) Conduct an evaluation to determine potential erosion issues and measures necessary to prevent them;

(iii) Develop a plan for limiting visitation to sensitive areas as well as policies for families who choose “back country” or “off trail” burial;

(iv) Compile a plant list for use as memorial features for every area or “zone” of property where burial will take place, and a list of plants appropriate for use in restoration and/or preservation of native vegetation.

(v) Develop a plan for limiting the types, sizes, visibility of memorial markers/features to preserve or restore naturalistic vistas.

(g) Operations and management criteria. A Nature Preserve Cemetery must:

(i) Develop a plan for using native plants and for protecting or rescuing locally rare plants;

(ii) Establish an endowment fund to ensure the long term maintenance of the land and its trail system by setting aside at least five (5) percent of all burial plot sales;

(iii) Utilize excavation and burial techniques/technology that minimizes impact on surrounding land, and protects native plant diversity.

(iv) Develop a policy for dealing with unauthorized grave decoration and landscaping.

(v) Develop a “systems and operations” manual to be given to all staff members, contractors and volunteers that communicates the above criteria and the goals and methods of meeting them.

Fiscal Impact Statement:

There will be no additional cost incurred by the State or any political subdivision.

Statement of Rationale:

The regulations are amended to conform to 2002 Act 322.