

BURIAL GROUNDS

Title 9

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TITLE 9

BURIAL GROUNDS

Chapter

1. General Provisions

2. (Reserved)

3. Regulation of Cemetery Companies

Enactment. Unless otherwise noted, the provisions of Title 9 were added November 15, 1972, P.L.1063, No.271, effective in 90 days.

CHAPTER 1

GENERAL PROVISIONS

Sec.

101. Definitions.

Enactment. Chapter 1 was added November 15, 1972, P.L.1063, No.271, effective in 90 days.

§ 101. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific chapters or other provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Cemetery." A place for the disposal or burial of deceased human beings, by cremation or in a grave, mausoleum, vault,

columbarium or other receptacle, but the term does not include a private family cemetery.

"Cemetery company." Any person who offers or sells to the public the ownership, or the right to use, any cemetery lot.

"Department." The Department of State acting through the Commissioner of Professional and Occupational Affairs.

"Institutional trustee." Any bank and trust company, trust company or national banking association having fiduciary powers.

"Lot." Includes a lot, plot or part of a cemetery.

"Permanent lot care fund." The permanent lot care fund required by the provisions of Chapter 3 of this title (relating to regulation of cemetery companies).

"Qualified trustee." An institutional trustee or an incorporated cemetery company when acting pursuant to the authority conferred by section 309 of this title (relating to incorporated cemetery company as qualified trustee).

CHAPTER 2

(Reserved)

Enactment. Chapter 2 (Reserved) was added November 15, 1972, P.L.1063, No.271, effective in 90 days.

CHAPTER 3

REGULATION OF CEMETERY COMPANIES

Sec.

- 301. Initial deposits by newly-organized cemetery companies.
- 302. Initial deposits by existing cemetery companies.
- 303. Periodic deposits.
- 304. Registration and filing affidavit of compliance.
- 305. Use of permanent lot care fund.
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- 312. Engaging in cemetery business in unauthorized manner.

Enactment. Chapter 3 was added November 15, 1972, P.L.1063, No.271, effective in 90 days.

Cross References. Chapter 3 is referred to in section 101 of this title.

§ 301. Initial deposits by newly-organized cemetery companies.

(a) **General rule.**--No cemetery company shall establish a cemetery, or dispose or make sale of any lot therein, without first causing to be deposited with a qualified trustee a sum of not less than \$25,000 as a permanent lot care fund.

(b) **Exceptions.**--The provisions of subsection (a) of this section shall not apply to any bona fide church or religious congregation or any association created by any such bona fide church or religious congregation.

Cross References. Section 301 is referred to in sections 304, 305, 306 of this title.

§ 302. Initial deposits by existing cemetery companies.

(a) **General rule.**--No cemetery company specified in

subsections (b) or (c) of this section shall dispose or make any sale of any lot situated in the cemetery of such cemetery company, without first causing to be deposited with a qualified trustee a sum of not less than \$50,000 as a permanent lot care fund.

(b) Unincorporated companies.--The provisions of subsection (a) of this section shall apply to every unincorporated cemetery company:

- (1) which established a cemetery on or after October 2, 1959; or
- (2) which extended or enlarged its cemetery or acquired additional lands for such purposes on or after October 2, 1959.

(c) Incorporated companies.--The provisions of subsection (a) of this section shall apply to:

- (1) a corporation not-for-profit incorporated on or after November 18, 1961; or
- (2) a corporation for profit incorporated on or after January 19, 1952.

(Dec. 3, 1993, P.L.485, No.71, eff. 60 days)

1993 Amendment. Act 71 amended subsec. (a).

Cross References. Section 302 is referred to in sections 304, 305, 306 of this title.

§ 303. Periodic deposits.

Every cemetery company shall set aside annually and deposit into a permanent lot care fund a sum equal to at least 15% of the gross amount of the funds arising from each of the following:

- (1) The sale of lots in the cemetery of such cemetery company or a sum equal to at least \$1 per square foot of each lot sold, whichever is greater.
- (2) The construction cost of each crypt sold in a mausoleum of the cemetery company or \$50 per crypt, whichever is greater.
- (3) The construction cost of each niche sold in a columbarium of the cemetery company or \$25 per niche, whichever is greater.

(Dec. 3, 1993, P.L.485, No.71, eff. 60 days)

Cross References. Section 303 is referred to in sections 305, 306 of this title.

§ 304. Registration and filing affidavit of compliance.

(a) Registration with State Real Estate Commission.--

- (1) Except as provided in paragraph (2), every cemetery company shall have a current and valid registration certificate issued by the State Real Estate Commission pursuant to the act of February 19, 1980 (P.L.15, No.9), known as the "Real Estate Licensing Act," before disposing of any lot in its cemetery or before carrying on any other cemetery business. The biennial fee for the registration certificate shall be \$25.

- (2) The provisions of paragraph (1) shall not apply to cemetery companies and cemeteries owned or controlled by a bona fide church or religious congregation or fraternal organization or by any association created by a bona fide church or religious congregation or fraternal organization.

(b) Affidavit of compliance.--Every cemetery company subject to the provisions of section 301 (relating to initial deposits

by newly-organized cemetery companies) or section 302 (relating to initial deposits by existing cemetery companies) shall, before disposing of any lot in its cemetery, cause to be filed in the Department of State an affidavit signed by a member or officer of the cemetery company stating that it has complied with the applicable section of this title, to which affidavit shall be attached an acceptance by a qualified trustee, acknowledging its acceptance of the trusteeship. The affidavit shall contain such other information as the department may require.

(Mar. 7, 1982, P.L.149, No.48, eff. 60 days)

§ 305. Use of permanent lot care fund.

The permanent lot care fund established by the deposits required by section 301 of this title (relating to initial deposits by newly-organized cemetery companies) through section 303 of this title (relating to periodic deposits) shall be used for the perpetual care, maintenance and preservation of the lots and grounds, and the repair and renewal of the buildings and property connected with and forming a part of the cemetery.

§ 306. Status and readjustment of permanent lot care fund.

(a) **Single fund.**--The permanent lot care fund established by the deposits required by section 301 of this title (relating to initial deposits by newly-organized cemetery companies) through section 303 of this title (relating to periodic deposits) shall constitute a single fund with respect to any cemetery and nothing contained in this chapter shall be construed to mean that two separate funds must be created.

(b) **Readjustment of fund.**--Whenever there shall be deposited in a permanent lot care fund pursuant to section 303 of this title (relating to periodic deposits) a sum equal to the amount of money required to be initially deposited therein pursuant to section 301 of this title (relating to initial deposits by newly-organized cemetery companies) or section 302 of this title (relating to initial deposits by existing cemetery companies) and proof of such fact is submitted to the qualified trustee, it shall be the duty of the qualified trustee thereupon to pay over to the cemetery company the amount so initially deposited by it in the permanent lot care fund free and clear of the restrictions and limitations of this chapter.

§ 307. Investment and operation of fund.

The permanent lot care fund shall be invested by the qualified trustee in the manner authorized for fiduciaries by the Fiduciaries Investment Act of 1949, and the qualified trustee, if an institutional trustee, shall pay semiannually the net income of the fund to the cemetery company for the purposes set forth in this chapter.

References in Text. The Fiduciaries Investment Act of 1949, referred to in this section, was repealed June 30, 1972, P.L.508, No.164, effective July 1, 1972. The subject matter is now contained in Chapter 73 of Title 20 (Decedents, Estates and Fiduciaries).

§ 308. Accounts of qualified trustee.

(a) **Institutional trustee.**--The qualified trustee, if an institutional trustee, shall file accounts in the court of common pleas of the county in which the cemetery, or any part thereof, is situate, which accounts shall be filed triennially and at such other times as the court may direct, and which accounts shall be audited, adjudicated and confirmed by the

court upon such notice to the parties in interest as the court may determine.

(b) Cemetery company as trustee.--An incorporated cemetery company acting as a qualified trustee under section 309 (relating to incorporated cemetery company as qualified trustee) shall file:

(1) Accounts in the court of common pleas of the county in which the majority of the cemetery is situate and duplicates of such accounts with the State Real Estate Commission. The accounts shall be filed on or before January 31 of each odd-numbered year and at such other times as the court may direct. The accounts shall be audited, adjudicated and confirmed by the court upon notice to the commission and such other parties in interest as the court deems appropriate.

(2) Interim reports with the State Real Estate Commission. The interim report shall be filed on or before January 31 of each even-numbered year and shall be on a form approved by the commission. The interim report shall include a list of all contributions to the permanent lot care fund, a list of all withdrawals made from the fund and the number of lots deeded during the previous calendar year. The interim reports required under this paragraph shall be in addition to, and not in lieu of, the complete biennial account required under paragraph (1).

(Mar. 7, 1982, P.L.149, No.48, eff. 60 days)

Special Provisions in Appendix. See section 3 of Act 48 of 1982 in the appendix to this title for special provisions relating to accounts of qualified trustees.

§ 309. Incorporated cemetery company as qualified trustee.

(a) General rule.--Every incorporated cemetery company may act as qualified trustee of the permanent lot care fund required by this chapter and may be appointed the original trustee, or, when for any reason a vacancy may occur in a trusteeship, substituted or successor trustee, and as such may receive devises, or gifts, the principal of which is to be held, in trust, in perpetuity or for a lesser period of time, for the care, maintenance, preservation, ornamentation or benefit of its cemetery, or the cemetery lots therein, upon giving its own bond without surety. The directors of any such corporation are hereby made trustees of any such funds so deposited or received, and neither such funds nor the income derived therefrom shall be used by such trustees for any purpose other than the purpose for which they were deposited, devised, donated, or otherwise acquired. The directors of such corporation shall cause accurate accounts to be kept of such trust funds separate and apart from the other funds of the corporation. Any such corporation may combine and merge the principal of two or more such trust funds and any funds so set aside in an omnibus fund for the purposes of investment of the same.

(b) Transfers to institutional fiduciary.--Any incorporated cemetery company may, by appropriate action of its stockholders or members and board of directors and with the approval of the court of common pleas of the county in which the cemetery, or any part thereof, is situated, transfer any of such funds to one or more institutional trustees, and with like investment restrictions, such transfer to be either revocable, or absolute and irrevocable, and upon the transfer of any such funds, the

incorporated cemetery company and its directors shall be relieved of all liability for the investment and reinvestment thereof.

Cross References. Section 309 is referred to in sections 101, 308 of this title.

§ 310. Penalties.

Any officer of any incorporated cemetery company or any member of any unincorporated cemetery company conducting or maintaining a cemetery or knowingly permitting the same to be conducted or maintained in violation of the provisions of this chapter, shall be guilty of a misdemeanor, and shall, upon conviction thereof, be sentenced to pay a fine of not more than \$1,000 or to undergo imprisonment for not more than one year, or both.

§ 311. Effect of chapter on articles of existing incorporated cemetery companies.

(a) **Statutory amendment.**--The articles of incorporation or charters of all existing incorporated cemetery companies shall be deemed to be amended to the extent necessary to give effect to the provisions of this chapter and to conform thereto.

(b) **Deletion of unnecessary matter.**--An existing incorporated cemetery company may by proper corporate proceedings delete from its articles of incorporation all or any part of any regulatory restrictions or limitations within the scope of this chapter.

§ 312. Engaging in cemetery business in unauthorized manner.

The State Real Estate Commission may investigate any cemetery company engaged in a business relating to cemetery lots, plots or mausoleum spaces, openings or foundations and fine the company up to \$1,000 or suspend or revoke the registration of the company in accordance with the provisions of section 604 of the act of February 19, 1980 (P.L.15, No.9), known as the "Real Estate Licensing Act," if it is determined that the cemetery company has violated any of the provisions of that act, the act of August 14, 1963 (P.L.1059, No.459), relating to future need sales for death and interment, or this chapter. If it is determined that a cemetery company is engaging in the business specified in this section without registering or while its registration is suspended, the criminal penalties provided for in section 303 of the "Real Estate Licensing Act" may be imposed.

(Mar. 7, 1982, P.L.149, No.48, eff. 60 days)

1982 Amendment. Act 48 added section 312.

**APPENDIX TO TITLE 9
BURIAL GROUNDS**

Supplementary Provisions of Amendatory Statutes

1982, MARCH 7, P.L.149, NO.48

§ 3. Accounts of qualified trustee.

(a) **General rule.**--The initial accounts required to be filed pursuant to 9 Pa.C.S. § 308(b)(1) (relating to accounts of qualified trustee) shall be filed within 24 months of the effective date of this amendatory act and shall cover the period

from January 1, 1981 through December 31, 1982. Thereafter accounts shall be filed on or before January 31 of each odd-numbered year.

(b) Interim reports.--The initial interim report required to be filed pursuant to 9 Pa.C.S. § 308(b)(2) shall be filed on or before January 31, 1984 and shall cover the period from January 1, 1983 through December 31, 1983.