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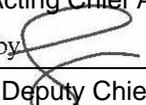
Item No. 14.1.11
Halifax Regional Council
August 2, 2016

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY:

John Traves, Q.C. Acting Chief Administrative Officer

Original Signed by 

Jane Fraser, Acting Deputy Chief Administrative Officer

DATE: July 19, 2016

SUBJECT: Policy for Acceptance and Adoption of Old, Abandoned, or Orphan Cemeteries

ORIGIN

September 22, 2015 Motion of Regional Council:

MOVED by Councilor Hendsbee, seconded by Councilor Craig:

THAT Halifax Regional Council request a staff report for the Municipality to develop policy and implement a process for the acceptance and adoption of old, abandoned or orphan cemeteries, and/or from any congregation and/or community groups that want to convey and transfer their cemeteries over to the Municipality for the purposes of ongoing maintenance and perpetual care. The staff report should include a potential inventory and potential budget implications. **AMENDED MOTION PUT AND PASSED UNANIMOUSLY.**

LEGISLATIVE AUTHORITY

Cemetery and Funeral Services Regulations, subsection 27 (2) states:

In the case of a cemetery which was operated by an organization other than a municipality, the organization which operated the cemetery may enter into a contract or agreement with the municipality in which the cemetery is located or with a municipality served by the cemetery, such that the municipality contracts or agrees to provide adequate maintenance for the cemetery. In such case, the responsibility of the municipality will be the same as though the cemetery were municipally operated.

Cemeteries By-law, subsection 3(1):

- (1) This by-law shall apply to the following cemeteries:
 - (a) Camp Hill Cemetery, Halifax
 - (b) Fairview Lawn Cemetery, Halifax
 - (c) Saint Paul's Cemetery (Old Burying Grounds), Halifax
 - (d) Mount Hermon Cemetery, Dartmouth
 - (e) Saint Paul's Cemetery, Dartmouth
 - (f) Dartmouth Common (Park Avenue) Cemetery, Dartmouth
 - (g) Saint Peter's Cemetery, Dartmouth

RECOMMENDATION

It is recommended that Halifax Regional Council direct staff to draft an Administrative Order defining the process for considering old, abandoned or orphan cemeteries as outlined in this report and that staff be directed to return to Council with the draft Administrative Order for Council's consideration.

BACKGROUND

The Halifax Regional Municipality (HRM) currently maintains seven cemeteries: Fairview Lawn, Camp Hill, Mount Hermon, Saint Paul's (Dartmouth), Saint Peter's, Dartmouth Common, and Saint Paul's (Old Burying Grounds) that is maintained by the Old Burying Ground Foundation through a partnership.

Fairview Lawn Cemetery was acquired in 1944 with a perpetual care fund and an opportunity for revenue through plot sales and expansion. Camp Hill has been owned and operated by the Municipality since its origin in 1844.

Similarly, the Dartmouth Common was owned by the City of Dartmouth from the time it opened until amalgamation. Mount Hermon was opened in 1929 and operated at that time by the City of Dartmouth. In 1975, the City of Dartmouth took ownership of Saint Paul's Cemetery (Dartmouth) which included a Mi'kmaq burial ground. Then in 1992, the City assumed Saint Peter's Cemetery on Victoria Road, both of which were privately owned and operated. Both of these cemeteries were part of the original Dartmouth Commons.

HRM is one of the first and only municipalities within the Maritimes engaged in the maintenance and operations of cemeteries. Staff research has indicated that the most similar municipal operating models are within the Province of Ontario. Designated by the province, the Ontario municipalities are responsible to assume ownership of any cemetery that becomes abandoned or which cannot be maintained by current owners. The City of Hamilton, for example, maintains and/or operates sixty-seven (67) cemeteries of which twenty-two (22) are active. While the City of Hamilton's intent is for the land assumption to be cost neutral, it was found that taxpayers generally subsidize the costs.

HRM operated cemeteries' operating budget 2016/17 for six cemeteries is three hundred and forty-four thousand dollars (\$344,000.00). As per the Cemeteries Service Review approved by Council in April 2010, HRM cemetery operations are to strive to be cost neutral to the tax payer with fees periodically reviewed and adjusted to meet these requirements. The most recent fee review of Administrative Order 20, Respecting Fees for Cemetery Services, was approved by Council on March 8, 2016.

DISCUSSION

Regional Council has requested a staff report to develop policy and implement a process for the acceptance and adoption of old, abandoned or orphan cemeteries, from any congregation and/or community groups that want to convey and transfer their cemeteries over to the Municipality for the purposes of ongoing maintenance and perpetual care. It was also requested that the staff report should provide a potential inventory and potential budget implications.

Legislative Framework

Cemeteries in Nova Scotia are regulated by the Province through the following legislation:

- (1) *Cemeteries and Monuments Protection Act* (Appendix A);
- (2) *Cemetery and Funeral Services Regulations* (Appendix B); and
- (3) *Cemetery and Funeral Services Act* (Appendix C).

Services under the Provincial legislation are provided by two departments: Service Nova Scotia and the Nova Scotia Department of Culture and Heritage.

Service Nova Scotia administers the *Cemeteries and Funeral Services Act* and regulations overseeing the licensing and administration requirements for privately-owned cemeteries that are operated on a for-profit basis. Cemeteries that are owned by municipalities and churches do not require a licence and are only subject to the following requirements:

Cemeteries and Monuments Protection Act:

22 (1) *The sale of a lot in a cemetery or of the right to use a lot in a cemetery
(b) vests in the purchaser the right to use the lot for burial;*

23 (1) *A lot in a cemetery or a right to use a lot in a cemetery which has been conveyed to a purchaser or is subject to a purchase agreement is exempt from taxation of any kind and is not liable to be seized or sold on execution for taxes or otherwise unless the purchaser holds it for resale.*

Cemeteries and Funeral Services Regulations:

35 (2) *The operator of any cemetery not formed for the purpose of gain or profit and containing 1500 lots or more shall be exempt from the provisions of Sections 7 and 8 of the Act and subsection (1) of Section 21 of the Act.*

The Nova Scotia Department of Culture and Heritage is responsible for legislation that determines acquisition of abandoned cemeteries. The practiced criteria for the Province to recommend declaration of cemetery abandonment includes having no active burials for approximately fifty (50) years, no upkeep by owner, community, public or individual, and owner is unknown or unable to locate. The provincial department is empowered to make abandonment declarations through the *Nova Scotia Provincial Cemeteries and Monuments Protection Act*. The Act outlines the Provincial process as follows:

- 4 (1) *Where the Minister is satisfied that*
- (a) a cemetery is no longer being used for the burial or permanent placement of human remains;*
 - (b) the owner of the cemetery is unknown, cannot be found or is unable to maintain the cemetery; and*
 - (c) the cemetery is not subject to active management,*
the Minister may, by order, declare the cemetery to be an abandoned cemetery and permit persons to enter the cemetery and carry out such work as the Minister thinks necessary to restore, preserve and protect the cemetery.

The current legislation provides declaration powers but does not require the Province to maintain or preserve the property. Essentially, in the event of abandonment, the Province has no legislative responsibilities in relation to cemetery conditions.

In the event a cemetery is abandoned and the Minister has yet to declare it as such under the applicable Act, there is an increased likelihood that the Municipality would become involved through the Dangerous and Unightly Premises Bylaw due to lack of maintenance by the property owner.

The policy development being requested by Council, however, is enabled and supported by the Cemetery and Funeral Services Regulations subsection 27 (2) which states:

In the case of a cemetery which was operated by an organization other than a municipality, the organization which operated the cemetery may enter into a contract or agreement with the municipality in which the cemetery is located or with a municipality served by the cemetery, such that the municipality contracts or agrees to provide adequate maintenance for the cemetery. In such case, the responsibility of the municipality will be the same as though the cemetery were municipally operated.

Given that municipal operation of cemeteries previously operated by other organizations is enabled through provincial regulations, and given that abandoned cemeteries are likely to become dangerous or unsightly properties; staff is recommending that an Administrative Order (AO) be developed to ensure that all requests for municipal operation are evaluated under consistent criteria and align with municipal policies. The proposed AO would outline the required contributions of financial and organizational data from the applicant who is no longer capable of operating a cemetery. This supports HRM's cost neutral approach and provides a preemptive opportunity for review of all potential implications including impacts of perpetual maintenance and operational costs. The AO would include the following requirements:

- A letter of request is required from the organization indicating that they are abandoning their cemetery. If the request is coming from a church/congregation, a letter is required from the governing/head of the church (not from the local parish);
- Compliance with any and all applicable national, provincial and municipal regulations at the time of request;
- A list of organization's rules, regulations or by-laws pertaining to the cemetery;
- Audited financial statements for seven (7) years, as available and pertaining to the cemetery, including:
 - Perpetual care fund accounts must be available to transfer to HRM for maintenance cost recovery; and
 - Pre-need (prepaid) funds for interments must be available for review and transfer to HRM ensuring all accumulated revenue is received by HRM.
- A Cemetery Plan prepared and the land surveyed and subdivided by a Nova Scotia Land surveyor or a professional engineer with all surveyor stakes visible. Plans must also include:
 - Plot owner's name, address, and type of plot purchased (cremation or casket);
 - The name of deceased, location in the plot, type of burial and date of burial for each plot; and
 - All available marketable plots for sale and active for burials.
- An inspection be undertaken to assess the current state of repair of the cemetery.
- Copies of any agreements the cemetery may have with third parties be provided to the Municipality, such as landscape companies; and
- Require an indemnification from liability from the operator of the cemetery.

Potential Inventory and Budget Implications:

The budget implications of adopting a policy for accepting old, abandoned or orphaned cemeteries is difficult to assess due to inconsistent cemetery data, and a need for financial and operational review of current services. The exact number of cemeteries owned by local congregations, community groups, or other owners within HRM is difficult to determine, as there are only five (5) that are required to be registered by the Province subject to the guidelines set out in the Cemetery and Funeral Services regulations. Staff's research regarding cemeteries in the HRM indicates there are approximately one hundred and seventy-eight (178) privately owned cemeteries. These cemeteries can be found on the following unverified website: (www.canadiangenealogy.net/novascotia/cemeteries). Through cross-referencing, however, sources indicated additional locations that could bring the total number to as high as two hundred (200).

Cemetery administration staff has determined an average cost of approximately forty-five hundred dollars (\$4500) per acre per annum to maintain cemeteries. This includes services of grass mowing, monument repairs, and spring and fall cleanups. The majority of expenses are largely offset through cost recovery achieved from the most active of six currently owned HRM cemetery sites.

Prior to accepting municipal operation of a proposed cemetery, significant consideration must be given to fees that are currently being levied at the cemetery in question. It is expected that the cemetery would operate under the fees schedule provided in AO 20. Following the guidelines of the 2010 Services Review, acquiring additional cemeteries that are unable to generate revenue to offset expenses will generally not be recommended under the proposed AO. The financial health of each property shall be assessed on a case-by-case basis. Costs would be transferred to the HRM, and subsequently taxpayers, if the properties cannot offset the costs.

Should Council approve staff's recommendation, the corresponding HRM By-Law C-700 and AO 20 would need to be amended to reflect the new AO. Upon Council approval of the amendments, staff will use the criteria to evaluate the five cemeteries identified in motion 11.3.2 on September 22, 2015 and any subsequent acquisition requests.

FINANCIAL IMPLICATIONS

The financial implications are detailed in the Discussion section (under the sub-heading "Potential Inventory and Budget Implications") and Risk Considerations section of this report.

RISK CONSIDERATIONS

There are financial, resources and hazard related risks associated with assumption of cemeteries. This includes current state of repair of each location and the amount of funds available to HRM through the organization's care fund. A "care fund" is an irrevocable trust fund required to be established by an operator for the specified care and maintenance of graves in a cemetery. There is a risk of care fund depletion before HRM acquisition. There could be an additional cost to HRM depending on the state of repair of each cemetery. Costs are associated with an increase in staffing or contract fees which may or may not be recuperated through revenue generated from each cemetery. There is a resource (financial, staffing, equipment) risk that includes HRM's ability to service the requested lots to the current service standard. Cemeteries are yet to be classified into varying service levels and are dependent upon the most active cemeteries to support those not able of generating revenues. This risk is augmented as there is difficulty in quantifying the actual number of potential cemetery acquisitions and estimating the subsequent financial impacts. Additionally, abandoned properties that become derelict can pose a safety hazard to the public and HRM staff.

COMMUNITY ENGAGEMENT

Service Nova Scotia Business Licensing Section and the Nova Scotia Department of Culture and Heritage were consulted throughout the development of this report.

ENVIRONMENTAL IMPLICATIONS

Implications not identified.

ALTERNATIVES

- (1) Council could choose to direct staff to reject all future requests for municipal operation of cemeteries from other organizations.
- (2) Council could continue the status quo of considering municipal operation of cemeteries from other organizations without the benefit of any municipal policy framework.

ATTACHMENTS

Appendix A Cemeteries and Monuments Protection Act
Appendix B Cemetery and Funeral Services Regulations
Appendix C Cemetery and Funeral Services Act

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Bonnie Murphy, Cemetery Administrator, Parks, 902.490.6236



Cemeteries and Monuments Protection Act

CHAPTER 9

OF THE

ACTS OF 1998

amended 2001, c. 6, s. 99; 2011, c. 13

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An Act to Provide for the Protection of Cemeteries and Monuments

title amended 2011, c. 13, s. 1

Short title

1 This Act may be cited as the Cemeteries and Monuments Protection Act. *1998, c. 9, s. 1; 2011, c. 13, s. 2.*

Interpretation

2 In this Act,

- (a) "abandoned cemetery" means a cemetery that is declared to be an abandoned cemetery pursuant to this Act;
- (b) "cemetery" means land that is set apart or used as a place for the burial of human remains and, for greater certainty, includes all tombstones, gravemarkers and other monuments located thereon and any buildings or structures located thereon for the permanent placement of human remains;
- (c) "Minister" means the Minister of Communities, Culture and Heritage;
- (d) "monument" means land or a public structure set aside to commemorate an event, an individual or a group. *1998, c. 9, s. 2; 2011, c. 13, s. 3.*

Supervision and management of Act

3 The Minister has the general supervision and management of this Act. *1998, c. 9, s. 3.*

Declaration

4 (1) Where the Minister is satisfied that

- (a) a cemetery is no longer being used for the burial or permanent placement of human remains;
- (b) the owner of the cemetery is unknown, cannot be found or is unable to maintain the cemetery; and
- (c) the cemetery is not subject to active management,

the Minister may, by order, declare the cemetery to be an abandoned cemetery and permit persons to enter the cemetery and carry out such work as the Minister thinks necessary to restore, preserve and protect the cemetery.

(2) An order made pursuant to subsection (1) is ineffective unless and until the order is deposited in the manner prescribed by the regulations in the registry of deeds for the registration district in which the cemetery is located.

(2A) Where real property has been registered pursuant to the Land Registration Act, an order made pursuant to subsection (1) is ineffective unless and until the order is recorded in the register for the parcel established pursuant to that Act in which the real property is located in the manner prescribed by the Land Registration Act for the registration district in which the cemetery is located.

(3) No action lies against a person by reason only of acting in accordance with an order made pursuant to this Section. *1998, c. 9, s. 4; 2001, c. 6, s. 99; 2011, c. 13, s. 4.*

Right to pass

5 Any person may go on foot upon and across any uncultivated lands or Crown lands for the purpose of visiting a cemetery or monument during daylight hours for purposes usually associated with cemetery or monument visits, as the case may be. *1998, c. 9, s. 5; 2011, c. 13, s. 5.*

Power to grant right-of-way

6 (1) Notwithstanding the Private Ways Act, any person may present a petition to the Governor in Council pursuant to that Act for an order in council declaring that the person is entitled to acquire under Part I of that Act a right to pass and repass over lands for the purpose of gaining access to an abandoned cemetery from a public street or road and egress from the abandoned cemetery to a public street or road, and the Private Ways Act applies to the petition as if the petition were a petition referred to in subsection 2(1) of that Act, except that clause 2(2)(a) of that Act does not apply to the petition.

(2) An order in council pursuant to subsection (1) is ineffective unless and until it is registered in accordance with Section 13 of the Private Ways Act. *1998, c. 9, s. 6.*

Limitation on use of cemetery

7 (1) No person may use a cemetery for any purpose other than for the burial or permanent placement of human remains or memorialization.

(2) Subsection (1) does not apply to a person who, for valuable consideration, acquires an interest in property without notice that the property is set apart or used as a place for the burial or permanent placement of human remains, unless at the time of the acquisition, an order relating to the property, made pursuant to Section 4, is on deposit in a registry of deeds in accordance with Section 4.

(3) Where real property is registered pursuant to the Land Registration Act, subsection (1) does not apply to a person who, for valuable consideration, acquires an interest in property without notice that the property is set apart or used as a place for the burial or permanent placement of human remains, unless at the time of the acquisition, an order relating to the property, made pursuant to Section 4, is recorded in accordance with Section 4 in the register for the parcel established pursuant to that Act. *1998, c. 9, s. 7; 2001, c. 6, s. 99.*

Consequences of discovery of human remains

8 (1) Where there is no evidence on the surface of land that the land is a cemetery, but a person discovers, under the surface, human remains, that person shall

- (a) immediately report the discovery to the Minister; and
- (b) except to the extent permitted by the Minister, not carry out any activity that would result in disturbing the remains.

(2) Every person who violates subsection (1) is guilty of an offence against this Act. *1998, c. 9, s. 8.*

Offence

9 Every person who desecrates, damages or destroys a cemetery or monument is guilty of an offence against this Act. *1998, c. 9, s. 9; 2011, c. 13, s. 6.*

Preservation of existing powers of court

10 Nothing in this Act shall be construed as limiting or modifying the power or authority of a court to order the disinterment and removal of remains from a cemetery and interment of those remains in a suitable location. *1998, c. 9, s. 10.*

Penalty

11 Every person who is guilty of an offence against this Act is liable, on summary conviction, to a fine not exceeding twenty thousand dollars or, on default of payment, imprisonment for a period not exceeding two years less a day. *1998, c. 9, s. 11; 2011, c. 13, s. 7.*

Regulations

12 (1) The Governor in Council may make regulations

- (a) prescribing the manner in which an order made pursuant to this Act shall be deposited and preserved in a registry of deeds;
- (b) defining any word or expression used but not defined in this Act;
- (c) respecting any matter deemed necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the Regulations Act. *1998, c. 9, s. 12.*



This consolidation is unofficial and is for reference only. For the official version of the regulations, consult the original documents on file with the [Registry of Regulations](#), or refer to the [Royal Gazette Part II](#).

Regulations are amended frequently. Please check the list of [Regulations by Act](#) to see if there are any recent amendments to these regulations filed with the Registry that are not yet included in this consolidation.

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Cemetery and Funeral Services Regulations
made under Section 28 of the
Cemetery and Funeral Services Act
R.S.N.S. 1989, c. 62
O.I.C. 84-156 (February 7, 1984), N.S. Reg. 16/84
as amended to O.I.C. 2015-96 (March 31, 2015, effective June 1, 2015), N.S. Reg. 76/2015

Effective September 1, 2016, these regulations are amended by N.S. Reg. 115/2016.

- 1 No person shall solicit another person to enter into an agreement respecting or offer for sale to or sell to another person
 - (a) a prearranged funeral plan;
 - (b) a pre-need cemetery plan; or
 - (c) a cemetery lot or the right to use a lot in a cemetery,unless he is licensed as a seller or as a salesperson of a licensed seller.

- 2 No person shall be licensed as a seller unless
 - (a) he provides a copy of the last audited financial statement;
 - (b) he provides a list of persons employed or engaged by the seller;
 - (c) he provides a copy of all purchase agreements in use or intended to be used;
 - (d) he provides a bond in the amount specified in ~~Regulation~~ [Section] 12;
 - (e) he completes the application form prescribed by the Registrar;
 - (f) he pays the annual fee of \$66.00;

Clause 2(f) amended: O.I.C. 2015-96, N.S. Reg. 76/2015.

 - (g) in the case of a seller of cemetery lots or the right to use a lot in the cemetery, he has submitted an irrevocable trust agreement for the care fund and it has been approved by the Registrar;

- (h) in the case of a seller of prearranged funeral plans or pre-need cemetery plans, he has submitted a copy of the agreement made between the applicant and a chartered bank, loan or trust company respecting trust accounts; and
- (i) in the case of a seller who is not a funeral home operator or a cemetery owner, he has submitted a copy of an agreement between the applicant and a funeral home operator or a cemetery owner to provide the goods and services.

3 No person shall be licensed as a salesperson unless

- (a) he is an individual, 19 years of age or older;
- (b) he is a salesperson of a licensed seller;
- (c) he completes the application form prescribed by the Registrar;
- (d) he pays the annual fee of \$33.00 and

Clause 3(d) amended: O.I.C. 2015-96, N.S. Reg. 76/2015.

- (e) if required by the Registrar, he provides a bond.

4 No seller's licence shall be renewed unless the seller

- (a) files a report, prescribed by the Registrar, within three months immediately following the end of the seller's fiscal year, which has been completed by a public accountant licensed under the Public Accountants Act and signed by the seller, that states that the seller has kept, in connection with the sale of prearranged funeral plans, pre-need cemetery plans, or cemetery lots or the rights to use a cemetery lot, the records and accounts required by the Act and regulations in respect of money or other valuable property received by him in trust from purchasers for and during the fiscal year;
- (b) completes the renewal application prescribed by the Registrar;
- (c) updates all information filed with the original application;
- (d) pays the annual fee; and
- (e) if required by the Registrar, provides additional information.

5 No salesperson's licence shall be renewed unless the salesperson

- (a) completes the renewal application prescribed by the Registrar;
- (b) updates all information filed with the original application;
- (c) pays the annual fee; and
- (d) if required by the Registrar, provides a bond.

6 The Registrar may require at any time any further information or material to be submitted by any applicant or any licensed person within a specified time limit, and may require if he so desires verification by affidavit or otherwise of any information or material then or previously submitted.

- 7** The Registrar may refuse to licence or renew a licence where a person
- (a) has violated any provision of the Act or regulations;
 - (b) has made a material misstatement in the application for his licence or in any of the information or material submitted by him to the Registrar;
 - (c) has been guilty of misrepresentation, fraud, or dishonesty; or
 - (d) has demonstrated that it is not in the public interest that he be licensed.
- 8** (1) Every seller and salesperson shall, in all verbal or written communication regarding the sale of prearranged funeral plans, pre-need cemetery plans and cemetery lots or the right to use a lot, use the name under which he obtained his licence and identify his licence by the number it bears.
- (2) A salesperson shall in addition give the name of the seller by whom he is engaged.
- 9** (1) The transfer of the licence from one person to another is prohibited.
- (2) The termination of the employment of a salesman with a licensed seller shall operate as a cancellation of the licence of such salesman until, upon receipt of application from such salesman, the Registrar reissues the licence.
- 10** (1) The Registrar shall require an applicant for a licence or a renewal of a licence to provide a bond before the licence will be issued or renewed.
- (2) The Registrar may at any time require to be delivered a bond or such other collateral security as he deems necessary.
- 11** (1) Any bond required to be given under the Act or by the Registrar shall be in one of the following forms:
- (a) surety bond;
 - (b) bond of guarantor; or
 - (c) such other form as the Registrar may from time to time specify.
- (2) For purposes of these regulations
- (a) a “surety bond” means a bond of a guarantee company which is a three party undertaking naming a principal, obligee and surety under which the surety agrees to indemnify the obligee against loss arising from the failure of the principal to comply with the provisions of the Act or the regulations made pursuant thereto;
 - (b) a “bond of a guarantor” means an instrument whereby a principal (person seeking bond coverage) and a guarantor (another person) jointly pledge collateral security of a predetermined amount to the Province of Nova Scotia which may be forfeited in the event of any violation by the principal of the provisions of the Act or the regulations made pursuant thereto;

(c) “collateral security” means negotiable securities such as stocks, bonds and debentures that have a market value and can be sold providing they are properly endorsed and are in bearer form.

(3) A bond of a guarantor shall in all instances be accompanied by collateral security acceptable to the Registrar in an amount as prescribed by the Registrar.

(4) The collateral security referred to in subsection (3) shall be deposited with the Minister of Finance and Treasury Board and maintained at a market value of not less than that prescribed.

[Note: The reference to the Minister of Finance has been updated in accordance with Order in Council 2013-348 under the Public Service Act, R.S.N.S. 1989, c. 376, effective October 22, 2013.]

12 The amount of the bond required to be given by an applicant shall be as follows:

(a) in the case of a seller of prearranged funeral plans or pre-need cemetery plans

(i) where there are 1 to 30 plans.....\$5000.00

(ii) where there are 31 to 60 plans.....\$10 000.00

Subclause 12(a)(ii) amended: O.I.C. 2007-533, N.S. Reg. 401/2007.

(iii) where there are 61 to 90 plans\$15 000.00

(iv) where there are more than 90 plans.....\$20 000.00

(b) in all other cases, the amount of the bond shall be at the discretion of the Registrar.

13 (1) Any bond delivered under this Act shall be forfeited upon the demand of the Registrar where

(a) the person in respect of whose conduct the bond is conditioned or any representative, agent or salesman of that person has been convicted of

(i) an offence under this Act or any regulation, or

(ii) an offence involving fraud, theft or conspiracy to commit an offence involving fraud; or theft under the Criminal Code (Canada);

or

(b) judgment in respect of a claim arising out of a prearranged funeral plan, a pre-need cemetery plan or the sale of lot in a cemetery or the right to use a lot has been given against the person in respect of whose conduct the bond is conditioned or against any representative, agent or salesman of that person; or

(c) the person in respect of whose conduct the bond is conditioned commits an act of bankruptcy, whether or not proceedings have been taken under the Bankruptcy Act (Canada); or

(d) a decision has been rendered by the Registrar in writing stating in effect that after consideration and investigation of a complaint, he is satisfied that the person in respect of whose conduct the bond is conditioned or any representative, agent or salesman of that person

- (i) has violated any provision of this Act or has failed to comply with any of the terms, conditions or restrictions to which his licence is subject or is in breach of contract, and
- (ii) has departed from Nova Scotia or been out of Nova Scotia, remains out of Nova Scotia or departs from his normal place of abode or otherwise absents himself or in the case of a corporation, the name thereof has been struck off the register of companies,

and such conviction or judgment, order or decision has become final by reason of lapse of time or having been confirmed by the highest court to which any appeal may be taken.

- (2) Notwithstanding the fact that Her Majesty the Queen in the right of Her Province of Nova Scotia has not suffered any loss or damages, every bond delivered to the Registrar under this Act or regulations shall be construed as being a penal bond and where any such bond is forfeited pursuant to this Act the amount due and owing as a debt to Her Majesty the Queen in the right of Her Province of Nova Scotia by the person bound thereby shall be determined as if Her Majesty suffered such loss or damages as would entitle Her Majesty to be entitled to the maximum amount of the liability prescribed by the bond.
 - (3) For the purpose of every act and omission occurring during the period of licensing, every bond shall continue in force for a period of two years after the licence or renewal thereof to which it relates lapses or is cancelled.
 - (4) Notwithstanding any other provision of this Act, the total liability of the insurer under the bond shall not at any time exceed the face value of the bond.
 - (5) Where new bonds have been issued from time to time by the same guarantor party on the expiry of previous bonds all such bonds shall be deemed to be one continuing bond and the maximum amount for which the guarantor party shall be liable shall be the face value of the bond last issued upon expiry of a previous bond.
 - (6) Where a bond secured by the deposit of collateral security with the Registrar is forfeited under this Act, the Registrar may sell the collateral security at the current market price.
- 14** Where a bond has been forfeited and the Registrar has not received notice in writing of any claim against the proceeds of the bond or such part as remains in his hands within two years of the forfeiture, the Registrar may pay the proceeds of the bond or the collateral security or any part remaining, to any person who made a payment under the bond or who deposited the collateral security, after first deducting the amount of any expenses that have been incurred in connection with any investigation or otherwise relating to the direct seller or salesman in respect of whose conduct the bond was conditioned.

Trust accounts

- 15 (1)** Every seller of prearranged funeral plans and pre-need cemetery plans shall maintain a separate account designated as a trust account in a chartered bank, loan or trust company in the Province, for each individual who has purchased a prearranged funeral plan or pre-need cemetery plan, in which shall be deposited all money received from the sale of the prearranged funeral plan or the pre-need cemetery plan together with any income earned thereon and he shall at all times keep such money separate and apart from money belonging to himself, and shall disburse such monies only in accordance with Section 15 of the Act.

- (2) Every seller shall establish a trust ledger for their trust account and each month shall prepare and maintain in their trust ledger full details of money deposited and money disbursed for each pre-arranged funeral plan or pre-need cemetery plan, including all of the following:
- (a) the name of the purchaser;
 - (b) the purchase agreement number of the plan;
 - (c) the number of beneficiaries covered by the plan;
 - (d) for money that is deposited,
 - (i) the amount deposited,
 - (ii) the date it is deposited,
 - (iii) the names of all beneficiaries for whom it is deposited, and
 - (iv) whether the amount deposited is a deposit in full, an initial ~~instalment~~ [instalment] deposit, an ~~instalment~~ [instalment] deposit or final deposit;
 - (e) for money, including interest, that is disbursed,
 - (i) the amount disbursed,
 - (ii) the date it is disbursed,
 - (iii) to whom it is disbursed,
 - (iv) the names of all beneficiaries for whom it is disbursed, and
 - (v) whether the disbursement means that the contract is fulfilled, partially fulfilled or cancelled;
 - (f) the total amount of interest accrued during that month;
 - (g) the opening and closing trust account balances for the month.

Subsection 15(2) replaced: O.I.C. 2007-533, N.S. Reg. 401/2007.

Subsection 15(3) repealed: O.I.C. 2007-533, N.S. Reg. 401/2007.

- (4) Each month, every seller shall prepare and maintain a monthly bank reconciliation or reconciliations which correctly reconcile the statement or passbook figures of the depository with the figures shown as on deposit in trust according to the seller's books of account.

Subsection 15(4) amended: O.I.C. 2007-533, N.S. Reg. 401/2007.

- (5) Every seller shall keep all of the following for all of their trust accounts:
- (a) duplicate deposit slips;
 - (b) cancelled cheques;

- (c) bank statements or pass books;
- (d) duplicates of proofs of deposits required by subsection (7);
- (e) duplicates of semi-annual statements required by subsection (9);
- (f) a copy of all pre-arranged funeral plan and pre-need cemetery plan purchase agreements;
- (g) trust ledgers.

Subsection 15(5) replaced: O.I.C. 2007-533, N.S. Reg. 401/2007.

- (6) Every seller shall deposit all monies received from the sale of prearranged funeral plans or pre-need cemetery plans within one week of receipt of such monies.
- (7) Every seller shall ensure that a purchaser of a pre-arranged funeral plan or pre-need cemetery plan receives proof of deposit of the purchaser's payment to a trust account by the following deadlines:
 - (a) for a plan that is not being purchased by instalment payments, no later than 21 days after the date the seller receives payment for the plan from the purchaser;
 - (b) for a plan that is being purchased by instalment payments, no later than 21 days after the date the seller receives the initial instalment payment from the purchaser.

Subsection 15(7) added: O.I.C. 2007-533, N.S. Reg. 401/2007.

- (8) Proof of deposit is a record verified by the financial institution that states all of the following:
 - (a) the name of the purchaser;
 - (b) the amount of the deposit;
 - (c) the date of the deposit.

Subsection 15(8) added: O.I.C. 2007-533, N.S. Reg. 401/2007.

- (9) If a pre-arranged funeral plan or pre-need cemetery plan is purchased by instalment payments, the seller shall also give the purchaser proof of deposit at least semi-annually confirming deposit of all other payments received from the purchaser.

Subsection 15(9) added: O.I.C. 2007-533, N.S. Reg. 401/2007; amended: O.I.C. 2008-120, N.S. Reg. 111/2008.

16 Pursuant to [sub]section 15(2) of the Act, the percentage which the seller of a prearranged funeral plan or a pre-need cemetery plan may retain on account of administrative expenses shall not exceed 10%.

Purchase agreements

16A(1) A seller shall use sequentially numbered purchase agreements for pre-arranged funeral plan purchase agreements and pre-need cemetery plan purchase agreements.

- (2) A purchase agreement shall contain the following words directly above the purchaser's signature, in bold type and no smaller than 10 pts in size:

By law, the seller of pre-arranged funeral plans or pre-need cemetery plans must deposit all the money you pay them, less any administrative expenses agreed to in this purchase agreement, into a trust account at a financial institution. The seller must also ensure you are given written proof of the deposit no later than 21 days after they receive the money from you. If the seller has

agreed to allow you to pay by instalments, the seller must give you written proof of deposit of the first payment no later than 21 days after they receive the payment, and must give you written proof at least semi-annually confirming deposit of your other payments. If you do not receive the required proof of deposit, please contact the seller and, if the matter continues to be unresolved, please contact the office of the Registrar of Cemetery and Funeral Services (*insert the current phone number for the Registrar*).

Subsection 16A(2) replaced: O.I.C. 2008-120, N.S. Reg. 111/2008.

- (3) A purchase agreement for a pre-arranged funeral plan shall be titled “Purchase Agreement for Pre-Arranged Funeral Plan” and shall not be used for any other purpose.

Subsection 16A(3) added: O.I.C. 2008-120, N.S. Reg. 111/2008.

- (4) A purchase agreement for a pre-need cemetery plan shall be titled “Purchase Agreement for Pre-Need Cemetery Plan” and shall not be used for any other purpose.

Subsection 16A(4) added: O.I.C. 2008-120, N.S. Reg. 111/2008.

- (5) A seller shall ensure that a purchase agreement for a pre-need cemetery plan or pre-arranged funeral plan contains all of the following:

- (a) the name and address of the seller;
- (b) the name and address of the purchaser;
- (c) the name of the beneficiary of the plan if different from the purchaser;
- (d) a description or itemization of the services and items included in the purchase agreement and the price;
- (e) the amount of the payment received by the seller specifying whether the balance is paid in full or is to be paid by instalment and, if to be paid by instalment, the agreed-upon schedule of instalment payments;
- (f) the purchaser’s signature acknowledging receipt of a copy of the contract.

Subsection 16A(5) added: O.I.C. 2008-120, N.S. Reg. 111/2008.

- (6) A seller shall retain copies of all of the following for at least 5 years after the date the agreement is fulfilled or cancelled:

- (a) all fulfilled and cancelled purchase agreements for funeral and cemetery goods and services;
- (b) death certificates in the case of pre-arranged funeral plans and burial certificates in the case of pre-need cemetery plans;
- (c) cancellation and refund requests;
- (d) cancelled cheques issued to purchasers for refunds or cancellations.

Subsection 16A(3) renumbered (6): O.I.C. 2008-120, N.S. Reg. 111/2008.

Section 16A added: O.I.C. 2007-533, N.S. Reg. 401/2007.

Records of merchandise purchased under purchase agreement

16B A seller who purchases funeral or cemetery merchandise before it is used in accordance with a pre-arranged funeral plan or pre-need cemetery plan and removes funds from trust to purchase the

merchandise shall keep the following records for the merchandise:

- (a) an inventory of the merchandise purchased that
 - (i) assigns each item to the purchase agreement for which it was purchased, and
 - (ii) includes the following information for each item:
 - (A) the date of purchase,
 - (B) the names of all beneficiaries for whom the item is purchased,
 - (C) the purchase agreement number of the plan to which the item is assigned,
 - (D) a description of the item purchased sufficient to identify the item,
 - (E) the address where the item is stored;
- (b) in the file for the purchase agreement, all of the following:
 - (i) the purchase invoice for each item,
 - (ii) any request for release of funds from trust for an item.

Section 16B added: O.I.C. 2007-533, N.S. Reg. 401/2007; amended: O.I.C. 2008-120, N.S. Reg. 111/2008.

Report on records and accounts

16CThe report on records and accounts required by clause 4(a) shall confirm all of the following:

- (a) that money received for pre-arranged funeral plans and pre-need cemetery plans has been disbursed only in accordance with the Act and these regulations;
- (b) that the seller has maintained the required monthly trust ledgers in accordance with subsection 15(2);
- (c) that the seller has reconciled the trust ledger to the bank records on a monthly basis in accordance with subsection 15(4);
- (d) that the seller has retained the documents required under subsection 15(5);
- (e) that deposits of money received from the sale of pre-arranged funeral plans and pre-need cemetery plans have been made to the appropriate trust accounts no later than one week after the money was received in accordance with subsection 15(6);
- (f) that purchasers have been provided with proof of deposit to the trust account no later than 21 days after the seller received the money in accordance with subsection 15(7);
- (g) that purchasers who are paying by ~~instalment~~ [instalment] payments have been provided with their semi-annual statements in accordance with subsection 15(9);
- (h) if the seller is required to maintain an inventory of merchandise, that the seller has maintained records showing assignment of the merchandise to individual purchase

agreements in accordance with Section 16B;

- (i) the amount of money held in trust;
- (j) for a cemetery that made deposits to the care fund and made withdrawals from the income of the care fund, that it did so in accordance with Section 24 of the Act and Sections 28 to 33 of these regulations;
- (k) that the seller has retained the documents required under subsection 16A(3);
- (l) any information required by the Registrar about the seller's records and accounts.

Section 16C added: O.I.C. 2007-533, N.S. Reg. 401/2007.

Cemeteries

- 17 (1)** The plan of a cemetery required to be filed by Section 21 of the Act shall be drawn to scale and shall show the location and dimensions of every lot, walk, fence, road, watercourse and building in the cemetery and the adjoining roads and compass bearings.
- (2)** Every plan of
- (a) a cemetery that contains three or more acres of land or of an extension to an existing cemetery that contains three or more acres of land; and
 - (b) a cemetery operated for gain or profit or an extension thereof,
- shall be prepared by and the land shall be surveyed and subdivided by a Nova Scotia land surveyor or a professional engineer.
- (3)** No lot in a cemetery, nor the right to use a lot in a cemetery shall be sold unless the lot being sold is shown on the plan and the plan has been accepted for filing by the Registrar.
- (4)** Subsection (3) shall not come into effect until June 1, 1984.
- 18** No operator shall charge an excessive amount for a disinterment.
- 19** An operator shall not refuse to install or refuse to permit the installation of any cemetery supplies if the material and erection comply with the regulations of the cemetery.
- 20** Every operator shall file with the Minister a list of all by-laws, rules and regulations made by him and any amendments thereof, and no by-law, rule or regulation shall have any force or effect unless approved by the Minister.
- 21** The Minister may revoke any approval given by him under Section 20.
- 22** Every operator shall keep a register in which shall be entered
- (a) the name and address of every owner of a lot; and
 - (b) every transfer of the ownership of a lot.
- 23** Every operator shall keep a separate register for public inspection in which shall be entered

- (a) the name of every deceased person whose body is interred in the cemetery;
 - (b) the location of every body interred in the cemetery, mausoleum or columbarium;
 - (c) the date of the burial of every such body; and
 - (d) the particulars of every disinterment or removal of a body.
- 24 (1)** Every transfer of the ownership of a lot after the original sale shall be made by the registered owner or his legal representative giving to the operator of the cemetery a written notice containing a description of the lot, the date of the sale and the name and address of the transferee.
- (2)** Upon receipt of the notice and payment of a fee not exceeding \$2, the operator shall forthwith enter in the register kept in accordance with Section 22, the date of the transfer and the name and address of the transferee.
- 25** No change in the ownership of a cemetery shall become effective until written notice thereof has been given to the Registrar and the change has been approved by the Minister.
- 26** Every operator shall at the request of the Registrar furnish such information as the Minister requires in respect of the cemetery and the care and management thereof.
- 27 (1)** Whenever it is desirable to discontinue the operation of a cemetery, in which human bodies or human remains have been buried, the operator shall take adequate steps to ensure that the cemetery will be maintained in a decent manner which will not create an offence or public health nuisance.
- (2)** In the case of a cemetery which was operated by an organization other than a municipality, the organization which operated the cemetery may enter into a contract or agreement with the municipality in which the cemetery is located or with a municipality served by the cemetery, such that the municipality contracts or agrees to provide adequate maintenance for the cemetery. In such case, the responsibility of the municipality will be the same as though the cemetery were municipally operated.
- 27A** If the circumstances described in subsection 27C(4) of the Act exist, requiring further arrangement for carrying on the operation of a cemetery, the Minister may re-appoint an administrator, or appoint a different administrator, for subsequent terms of up to 1 year.

Section 27A added: O.I.C. 2007-197, N.S. Reg. 206/2007.

Care fund

- 28** Every operator shall deduct from the money received from the sale of a cemetery lot or the right to use a lot in a cemetery, and set aside in the care fund at least fifteen percent of the money received, or fifty dollars, whichever is the larger amount.
- 29 (1)** The care fund shall be held and administered by a trustee approved by the Registrar in accordance with an irrevocable trust agreement approved by the Registrar.
- (2)** An operator shall submit to the Registrar for approval a copy of the trust agreement which the operator intends to use and the Registrar shall advise the operator within 30 days whether the trust agreement has been approved or not approved.

30 Every trustee shall

- (a) receive money deposited by the operator and invest funds in the trust in securities as directed by the terms of the trust agreement or, in default of a direction, in securities in which it may by law as a trustee invest trust money;
- (b) maintain a record of money received for deposit to the care fund, securities bought and sold, and income earned on the investments;
- (c) after deducting the amount allowed under Section 32 or 33, advise the operator of the net income for the year available for the care and maintenance of the cemetery; and
- (d) except as otherwise provided in Section 31, from the net income available pay the operator up to the amount he has spent for care and maintenance during that year, as evidenced by a certificate from the operator.

31 (1) Where the operator in any year

- (a) does not withdraw any or all of the income to which he is entitled; or
- (b) the income available is in excess of the amount covered by the certificate for the particular year,

the trustee shall hold and reinvest the balance which, together with the income it earns, shall be available to the operator under the same conditions as in ~~subsection~~ [clause] (d) of Section 30 for care and maintenance in future years when required.

- (2) Nothing shall prevent the operator from depositing all or part of the balance and the income earned to the principal of the care fund.
- (3) The trustee shall not be held liable for any payments to the operator from the income of the care fund in compliance with a certificate for care and maintenance performed.
- (4) Any amendment to the trust agreement, including a change in the trustee of the care fund, shall not take effect until the amendment is filed with and approved by the Registrar.

32 Subject to Section 33, an authorized trustee may, as remuneration for his services, in each year deduct and retain, from the income received, other than capital income, in that year on behalf of an owner, a portion thereof not exceeding an amount equal to five percent of that income of the fund.

33 Notwithstanding Section 32, in any year that the remuneration to which an authorized trustee is entitled under a contract with an owner in force on the coming into force of ~~this~~ [these] regulation[s], is less than the remuneration that that authorized trustee may deduct under Section 32, the authorized trustee shall deduct only the amount to which he is entitled under the contract.

Advertising

34 No seller or salesperson shall

- (a) include inaccurate or deceptive claims or statements, either direct or implied, with respect to price, worth, value or availability of funeral merchandise or services or cemetery goods or services in any advertisement;

- (b) advertise in a format which has the appearance of a public service advertisement with the effect of concealing its commercial intent;
- (c) advertise in such a manner as to exploit human misery or to play upon fears which would encourage the consumer to purchase funeral merchandise or services or cemetery goods or services;
- (d) advertise in a tasteless manner; or
- (e) make reference to price in an advertisement unless the advertisement includes a detailed description of the funeral merchandise or services or the cemetery goods or services.

35 (1) The operator of any cemetery not formed for the purpose of gain or profit and containing less than 1500 lots shall be exempt from the provisions of the Act.

- (2) The operator of any cemetery not formed for the purpose of gain or profit and containing 1500 lots or more shall be exempt from the provisions of Sections 7 and 8 of the Act and subsection (1) of Section 21 of the Act.

Section 35 added: O.I.C. 86-158, N.S. Reg. 26/86.

36 No seller or salesperson shall

- (a) solicit the purchase of a prearranged funeral plan, a pre-need cemetery plan or a cemetery lot or the right to use a lot in a cemetery by means of a telephone; and
- (b) solicit the purchase of a prearranged funeral plan, a pre-need cemetery plan or a cemetery lot or the right to use a lot in a cemetery by means of selling or offering for sale goods or services from door to door.

Section 36 added: O.I.C. 90-176, N.S. Reg. 44/90.

Last updated: 16-06-2016



Cemetery and Funeral Services Act

CHAPTER 62

OF THE

REVISED STATUTES, 1989

amended 2004, c. 1

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An Act Respecting Cemetery and Funeral Services

Short title

1 This Act may be cited as the *Cemetery and Funeral Services Act*. R.S., c. 62, s. 1.

Interpretation

2 In this Act,

- (a) "burial" means the burial of human remains and includes the permanent placement of human remains in a building or structure;
- (b) "care fund" means an irrevocable trust fund required to be established by an operator in accordance with this Act for the specified care and maintenance of graves in a cemetery;
- (c) "cemetery" means any land which is set apart or used as a place for burial and includes a building or structure for the permanent placement of human remains;
- (d) "cemetery goods or services" means
 - (i) the goods supplied or to be supplied at and by the cemetery or crematorium in conjunction with the burial or cremation of human remains including grave liners, vaults, urns, memorials and other supplies incidental to the identification or embellishment of a lot, or

(ii) the services performed or to be performed by the cemetery or crematorium relative to the installation or provision of any of the goods referred to in subclause (i), including cremation, opening and closing of lots, and installation of memorials,

but does not include the sale of lots or any interest therein;

(e) "funeral home" means a facility or establishment, by whatever name called, offering or providing funeral merchandise or services to the public;

(f) "funeral merchandise or services" means

(i) the services offered or performed by a funeral director or embalmer incidental to the arrangements, care and preparation of human remains for burial, cremation or other disposition, or

(ii) the merchandise, articles or supplies used, offered for sale or sold directly to the public by the funeral director, in conjunction with the related services,

but does not include the sale of lots or any interest therein;

(g) "grave" includes a place within a building or structure for the permanent placement of human remains;

(h) "human remains" includes cremated human remains;

(i) "licence" means a licence issued pursuant to this Act;

(j) "lot" means a lot of land containing or which may contain one or more graves and includes a space within a building or structure which contains or may contain one or more places for the permanent placement of human remains;

(k) "memorial" means a memorial, marker, monument, headstone, footstone, tombstone, plaque, tablet or plate marking a grave and includes an inscription of lettering or ornamentation, or both, on or on the front of a space within a building or structure for the permanent placement of human remains;

(l) "Minister" means the Minister of Consumer Affairs;

(m) "operator" means a person owning, controlling or managing a cemetery or crematorium and includes an individual, an association of individuals, a partnership or a corporation, or an employee or agent thereof;

(n) "pre-arranged funeral plan" means an agreement where, in consideration of payment in advance by lump sum or instalments, a person contracts to provide funeral merchandise or services when required for one or more individuals alive at the time the agreement is entered into;

(o) "pre-need cemetery plan" means an agreement where, in consideration of payment in advance by a lump sum or instalments, a cemetery or crematorium contracts to provide cemetery goods or services when required for one or more individuals alive at the time the agreement is entered into;

(p) "purchase agreement" means an agreement for the purchase of a pre-arranged funeral plan, a pre-need cemetery plan or a cemetery lot for use at a future date or the right to use such a lot;

(q) "purchaser" includes the heirs, successors and assigns and the personal representative of the purchaser and the agent of any of them;

(r) "Registrar" means the Registrar of Cemetery and Funeral Services;

(s) "regulations" means regulations made by the Governor in Council pursuant to this Act;

(t) "trustee" means a person who is a trustee in respect of a trust fund or a trust agreement under this Act. *R.S., c. 62, s. 2.*

Application of Act

3 (1) Notwithstanding any special or general Act, this Act applies to a cemetery company incorporated by or pursuant to a special or general Act, but does not include a cemetery exempted from this Act by the regulations upon the application of any person or community.

(2) Notwithstanding subsection (1), this Act, except Sections 22 and 23, does not apply to

(a) a city, incorporated town or municipality of a county or district or agency thereof in respect of its cemeteries and those cemeteries; or

(b) a church in respect of its burial ground and the burial ground,

unless otherwise provided by the regulations. *R.S., c. 62, s. 3.*

Supervision of Act

4 The Minister has the general supervision and management of this Act. *R.S., c. 62, s. 4.*

Registrar and Deputy Registrar

5 (1) The Director of Consumer Services under the Consumer Services Act is the Registrar of Cemetery and Funeral Services.

(2) The Registrar has the functions and duties set out in this Act and the regulations and such other functions and duties as the Minister may determine.

(3) The Minister may appoint a person in the public service to be the Deputy Registrar of Cemetery and Funeral Services who, in the absence or incapacity of the Registrar or when the office of the Registrar is vacant, shall perform the functions and duties and may exercise the powers of the Registrar. *R.S., c. 62, s. 5.*

Personnel

6 (1) Such inspectors, auditors and other persons as are required for the administration of this Act and the regulations shall be appointed in accordance with the Civil Service Act.

(2) Notwithstanding subsection (1), the Minister may engage upon such terms and conditions as the Minister deems fit the services of such persons as the Minister deems necessary for the efficient carrying out of the intent and purpose of this Act and the regulations. *R.S., c. 62, s. 6.*

Restrictions on solicitations

7 (1) No person shall solicit another person to enter into an agreement respecting or offer for sale to or sell to another person

(a) a pre-arranged funeral plan;

(b) a pre-need cemetery plan; or

(c) a cemetery lot or the right to use a lot in a cemetery,

unless he is licensed pursuant to this Act and the regulations.

(2) No person shall solicit another person to enter into an agreement respecting or offer for sale to or sell to another person

(a) any funeral merchandise or services under a pre-arranged funeral plan; or

(b) any cemetery goods or services under a pre-need cemetery plan,

unless the pre-arranged funeral plan or pre-need cemetery plan essentially conforms to a plan which has first been submitted to the Registrar. *R.S., c. 62, s. 7.*

Issue of licences

8 (1) The Registrar shall issue a licence to sell

(a) pre-arranged funeral plans;

(b) pre-need cemetery plans;

(c) cemetery lots or the right to use a lot in a cemetery,

to a person who meets the requirements for licensing set out by the regulations and who pays the annual fee.

(2) The Registrar may require an applicant for a licence to provide a bond in the form and amount set out in the regulations.

(3) A licence is subject to the terms and conditions prescribed by the regulations. *R.S., c. 62, s. 8.*

Suspension or cancellation of licence

9 The Registrar may suspend or, with the approval of the Minister, cancel a licence where the Registrar is satisfied that the licensee has

(a) violated any provision of this Act or the regulations or has failed to comply with any of the terms, conditions or restrictions to which his licence is subject;

(b) made a material mis-statement in the application for his licence or in any of the information or material submitted by him to the Registrar;

(c) been guilty of misrepresentation, fraud or dishonesty; or

(d) demonstrated his incompetency or untrustworthiness to sell pre-arranged funeral plans, pre-need cemetery plans or cemetery lots or the right to use a lot. *R.S., c. 62, s. 9.*

Requirements of purchase agreement

10 The purchase of

(a) a pre-arranged funeral plan;

(b) a pre-need cemetery plan; or

(c) a cemetery lot for use at a future date or the right to use such a lot,

shall be by agreement in writing, signed by both parties and a copy shall be given to the purchaser at the time of signing or within ten days therefrom or mailed to the purchaser within ten days therefrom. *R.S., c. 62, s. 10.*

Cancellation of purchase agreement

11 (1) Any purchase agreement entered into in a place other than a funeral home or a place other than the seller's business premises may be cancelled without penalty by the purchaser by notice in writing sent by registered mail or delivered in person to the seller of the plan or lot within ten days from the date of agreement or within ten days of the receipt of the agreement as determined by subsection (2).

(2) Where the copy of the purchase agreement is not given to the purchaser at the time of signing but mailed to him, the ten day period for cancellation by the purchaser without penalty begins when the purchaser receives his copy of the agreement and shall be presumed to be on the third day after the seller has mailed the copy.

(3) The purchase agreement shall contain, at the top of page one of each copy of the agreement in type not less than ten point in size, the following words:

If this agreement is entered into in a place other than a funeral home or a seller's business premises, you may, without penalty or obligation, cancel this transaction by notice in writing sent by registered mail to (name and address of seller to be inserted here) or by delivering it there yourself within ten days after you have received the agreement.

(4) Where a copy of the purchase agreement is not

(a) given to the purchaser at the time of signing; or

(b) mailed to the purchaser within ten days of the signing,

the purchase agreement is voidable at the option of the purchaser at any time.

(5) Where a notice of cancellation is given pursuant to subsection (1) or the purchase agreement is voided pursuant to subsection (4), all money paid under the purchase agreement shall be returned to the purchaser within thirty days after written demand for the same has been given by the purchaser to the seller. *R.S., c. 62, s. 11.*

Payment by personal representative

12 (1) Every pre-arranged funeral plan or pre-need cemetery plan shall contain a provision that, where a purchaser who is not in default under the plan dies before making all the payments, his personal representative may pay to the seller any unpaid balances.

(2) Every pre-arranged funeral plan or pre-need cemetery plan shall provide for cancellation if the personal representative does not pay the unpaid balance as referred to in subsection (1) and upon the cancellation subsection (2) of Section 13 shall apply to the pre-arranged funeral plan or pre-need cemetery plan. *R.S., c. 62, s. 12.*

Cancellation of plan

13 (1) Every pre-arranged funeral plan or pre-need cemetery plan shall provide for cancellation

(a) by the purchaser at any time prior to his death; or

(b) by his personal representative after his death but only when, because of great distance or of some extraordinary circumstance, it is not reasonably feasible to provide or use the goods, merchandise or services contracted for by the purchaser under the purchase agreement.

(2) When a plan is cancelled, terminated or discontinued pursuant to subsection (1), the seller may retain the income that has accrued on the principal pertaining to the plan that has been cancelled, terminated or discontinued and the principal less any amount expended in accordance with the plan shall be paid and any funeral merchandise, cemetery goods or other things acquired by the seller on behalf of the purchaser shall be delivered to the purchaser or his personal representative within thirty days after written demand for the same has been given to the seller.

(3) Nothing in subsection (2) authorizes a seller to expend money for cemetery goods or services, prior to the death of the purchaser, pursuant to a pre-arranged funeral plan or the pre-need cemetery plan unless it specifically authorizes the expenditure. *R.S., c. 62, s. 13.*

Resolution of disputes by Registrar

14 (1) Any dispute or disagreement between a purchaser and a seller regarding a pre-arranged funeral plan or a pre-need cemetery plan that cannot be resolved to their mutual satisfaction may be resolved by the Registrar by order.

(2) The Registrar, with the approval of the Minister, may order the payment of money to the person entitled to receive it from a pre-arranged funeral plan or a pre-need cemetery plan.

(3) Where a seller has been requested in writing, by a person having authority to make the demand to be reimbursed under Section 11, 12 or 13 and fails to do so within thirty days of receipt of the demand, the purchaser may apply to the Registrar for an order directing the release of the funds. *R.S., c. 62, s. 14.*

Funds in trust

15 (1) Subject to subsection (2), all money received by a seller under a pre-arranged funeral plan or pre-need cemetery plan, together with any income earned thereon, shall be held in trust in accordance with the regulations until

(a) the funeral merchandise or services or the cemetery goods or services mentioned in the plan have been purchased or provided in accordance with the plan; or

(b) the money held in trust, or any unused balance thereof, has been refunded to the purchaser or his personal representative,

and shall not be subject to seizure or detention under any legal process.

(2) The seller of a pre-arranged funeral plan or pre-need cemetery plan may, if the plan so provides, retain not more than the percentage, as determined by the regulations, of money payable under the plan on account of administrative expenses. *R.S., c. 62, s. 15.*

Money paid under existing plan

16 Money standing to the credit of a purchaser under a pre-arranged funeral plan or a pre-need cemetery plan entered into prior to the first day of October, 1983, shall be held in trust in accordance with Section 15 and the regulations. *R.S., c. 62, s. 16.*

Statement of cost of lot

17 (1) Where a pre-arranged funeral plan or a pre-need cemetery plan is combined with the sale of a lot or the right to use a lot, the cost of the lot shall be clearly set forth in any documents pertaining thereto.

(2) Sections 15 and 16 do not apply to the money paid for the lot and the agreement shall clearly set out that Sections 15 and 16 do not apply.

(3) Section 24 applies to the money paid for the lot. *R.S., c. 62, s. 17.*

Prohibition of solicitation in certain places

18 No person shall solicit a person in any hospital, home for special care, nursing home or senior citizens home to

(a) enter into a pre-arranged funeral plan or a pre-need cemetery plan with him or with any other person who would provide the cemetery goods or services or the funeral merchandise or services under any such plan; or

(b) purchase a lot in a cemetery or the right to use a lot in a cemetery. *R.S., c. 62, s. 18.*

Solicitation by telephone and harassment

19 (1) Solicitation of sales by telephone shall not be made between the hours of nine o'clock in the afternoon and nine o'clock in the forenoon.

(2) No solicitation shall be conducted in a manner that may harass or appear to harass an individual.

(3) An individual who has declined to enter into a purchase agreement and who is solicited again within one year by the same person who originally solicited that individual shall be prima facie deemed to be harassed. *R.S., c. 62, s. 19.*

Display of merchandise

20 Where a funeral home has a room or other area in which funeral merchandise is displayed for examination by the public, it shall display in the same place its lowest priced funeral merchandise of that type. *R.S., c. 62, s. 20.*

Cemetery plan

21 (1) No person shall sell a lot in a cemetery or any right to use a lot in a cemetery unless a plan of the cemetery in accordance with the regulations has been filed with the Registrar and the lot being sold is shown on the plan.

(2) The Registrar shall not accept for filing a plan that is not in accordance with the regulations.

(3) Every plan filed with the Registrar may be inspected by any person during the regular office hours of the Registrar.

(4) The Planning Act [Part IX of the Municipal Government Act] does not apply to the subdivision of a cemetery into lots.

(5) The Registry Act and the Land Titles Act [Land Registration Act] do not apply to an instrument to the extent that it affects a lot in a cemetery sold for burial or the right to use a lot in a cemetery for burial or in respect of which a purchase agreement for burial has been executed. *R.S., c. 62, s. 21.*

Rights of purchaser of cemetery lot

22 (1) The sale of a lot in a cemetery or of the right to use a lot in a cemetery

(a) subject to subsection (2), vests in the purchaser the right of reasonable access to the lot;

(b) vests in the purchaser the right to use the lot for burial;

(c) vests in the purchaser the right to erect a memorial on the lot subject to any specifications provided for by the purchase agreement; and

(d) subject to subsections (2) and (3), vests in the public a right to reasonable access for visitation to any grave in the lot which has been used for burial.

(2) The operator may vary the access to a lot in a cemetery at any time so long as reasonable access is maintained.

(3) Where all of the lots in a building, structure or enclosure in a cemetery are owned by one family, there is no public right of access to the building, structure or enclosure. *R.S., c. 62, s. 22.*

Exemption from taxation and sale of lot

23 (1) A lot in a cemetery or a right to use a lot in a cemetery which has been conveyed to a purchaser or is subject to a purchase agreement is exempt from taxation of any kind and is not liable to be seized or sold on execution for taxes or otherwise unless the purchaser holds it for resale.

(2) The sale of a cemetery, on execution or otherwise, does not affect a right acquired by a purchaser pursuant to Section 22. *R.S., c. 62, s. 23.*

Care fund

24 (1) In this Section, "operator" means the operator of a cemetery.

(2) Except as provided in subsection (3), every operator shall maintain in force at all times an irrevocable trust fund, separate and distinct from all other funds, to be known as the care fund of the particular cemetery to be used for the care and maintenance of graves in the cemetery.

(3) From all money received on the sale of a lot, the operator shall deduct and set aside in the care fund, a portion of the money in the manner and in the amount prescribed by the regulations.

(4) The care fund shall be held and administered by a trustee approved by the Registrar in accordance with an irrevocable trust agreement approved by the Registrar.

(5) The Registrar shall keep a copy of every trust agreement approved by him.

(6) Every trust agreement submitted to the Registrar and approved by him may be inspected by any person during the regular office hours of the Registrar.

(7) A trustee shall not pay out of a care fund any money except in accordance with the trust agreement.

(8) The care fund and any money held for deposit to the care fund shall not be subject to seizure or detention under any legal process.

(9) An operator may deposit to the care fund money from sources other than from the sale of lots and in such case the money forms part of the care fund. *R.S., c. 62, s. 24.*

Maintenance of cemetery

25 An operator shall maintain a cemetery or crematorium in good order at all times. *R.S., c. 62, s. 25.*

Inspections

26 The Registrar or an inspector appointed pursuant to this Act may enter and inspect a cemetery, crematorium or a funeral home at any time. *R.S., c. 62, s. 26.*

Access to records

27 The Registrar or an auditor appointed or engaged pursuant to this Act shall have access at any time to the records of

- (a) a seller of a pre-arranged funeral plan;
- (b) a seller of a pre-need cemetery plan;
- (c) a seller of a lot in a cemetery or of a right to use a lot in a cemetery;
- (d) an operator; and
- (e) a trustee in respect of a trust fund or a trust agreement under this Act. *R.S., c. 62, s. 27.*

Act of default

27A Where any person of a class referred to in clauses (a) to (d) of Section 27

(a) carries out any act of bankruptcy or makes a general assignment for the benefit of that person's creditors or other acknowledgement of insolvency or makes any application pursuant to the Bankruptcy and Insolvency Act (Canada) or the Companies Creditors Arrangement Act (Canada) or any similar legislation;

(b) fails to fulfil any contractual, fiduciary or statutory duties to

- (i) a purchaser or the person for whom a pre-arranged funeral plan or pre-need cemetery plan was purchased, or
- (ii) the personal representative of a purchaser or the person for whom the plan was purchased, after the death of the purchaser or that person, or

(c) is unwilling or unable to comply with this Act or the regulations,

or where any circumstances prescribed by regulation exist, an act of default is deemed to have occurred for the purpose of Sections 27B to 27D. *2004, c. 1, s. 1.*

Powers of Registrar upon act of default

27B (1) Where an act of default has occurred, the Registrar may take any steps the Registrar considers necessary or advisable to remedy the default or mitigate the default and, without limiting the generality of the foregoing, may

- (a) take control over and administer, assign or dispose of any trust fund relating to a pre-arranged funeral plan or pre-need cemetery plan or a care fund;
- (b) refund to the purchaser or the purchaser's personal representative the principal paid under any pre-arranged funeral plan or pre-need cemetery plan, together with any income earned thereon to the extent funds are available to do so;
- (c) order an operator to perform any function relating to the operation of a cemetery;
- (d) allocate or specify the use of any income earned on a care fund.

(2) An order made under clause (c) of subsection (1) may be appealed to the Supreme Court of Nova Scotia within thirty days. *2004, c. 1, s. 1.*

Administrator

27C (1) Where an act of default by an operator has occurred, the Minister may appoint an administrator to perform the duties and functions of the operator with respect to a cemetery until

- (a) another operator becomes responsible for the operation of the cemetery;
- (b) an operational arrangement for the on-going care and maintenance of the cemetery is established; or
- (c) three years have passed since the appointment of the administrator,

whichever occurs first.

(2) An administrator appointed under subsection (1)

(a) has control and management of the cemetery and any assets or property of the operator used in the operation of the cemetery;

(b) may act in the stead of the operator upon such terms and conditions as are prescribed by the Minister; and

(c) has access to and may expend any money that an operator would be entitled to spend pursuant to this Act.

(3) An administrator appointed under subsection (1) shall attempt to

(a) find another operator for the cemetery; or

(b) make an operational arrangement for the on-going care and maintenance of the cemetery.

(4) Where three years have passed from the date of appointment of an administrator under subsection (1) and the administrator has not been able to find another operator for the cemetery or make an operational arrangement for the on-going care and maintenance of the cemetery, the operation of the cemetery shall be

(a) carried on in accordance with the regulations; or

(b) terminated in accordance with the regulations. *2004, c. 1, s. 1.*

Expropriation and conveyance

27D Where an act of default by an operator has occurred and the Minister considers it necessary to vest the cemetery in another operator, the Minister may designate the cemetery as land required for a public purpose within the meaning of the Expropriation Act and the land may be expropriated in accordance with that Act and conveyed to the other operator. *2004, c. 1, s. 1.*

No action or liability

27E Notwithstanding anything contained in this Act,

(a) no action for damages may be commenced or maintained and no cause of action lies against the Minister, an administrator appointed by the Minister or an employee or agent acting under the direction of the Minister or an administrator, if the action arises out of any act or omission of that person that occurs while that person is carrying out duties or exercising powers pursuant to this Act in good faith; and

(b) nothing in this Act makes an administrator, the Minister or Her Majesty in right of the Province liable for any debt or obligation of the operator of a cemetery. *2004, c. 1, s. 1.*

Costs

27F Any costs incurred by an administrator that exceed the revenue generated by the operation of a cemetery are a debt due and owing to Her Majesty in right of the Province by the operator of the cemetery. *2004, c. 1, s. 1.*

Regulations

28 (1) The Governor in Council may make regulations

- (a) respecting the application of this Act;
- (b) prescribing functions and duties of the Registrar and inspectors, auditors and other persons appointed or engaged pursuant to this Act;
- (c) regulating, limiting or prohibiting the solicitation of pre-arranged funeral plans, pre-need cemetery plans and the sale of cemetery lots or the right to use a cemetery lot;
- (d) respecting the bonding of persons referred to in Section 27;
- (e) prescribing the requirements for trust agreements required by this Act;
- (f) governing the manner in which trust funds shall be kept and accounted for;
- (g) prescribing the requirements for care funds;
- (h) prescribing the requirements for licensing and the renewal of licences;
- (i) prescribing the terms and conditions subject to which licences are issued;
- (j) prescribing the requirements for cemetery plans to be filed with the Registrar;
- (k) respecting the requirements for the operation and maintenance of cemeteries and crematoria;
- (l) prescribing the classes of trustees who may be approved by the Registrar;
- (m) prescribing the records to be kept by persons referred to in Section 27;
- (n) respecting the inspection of cemeteries and crematoria;
- (o) respecting the examination of records required to be kept by this Act or the regulations;
- (p) requiring reports to be filed annually or on some other periodic basis or at the request of the Registrar by persons referred to in Section 27;
- (q) prescribing the form and content of reports required to be filed pursuant to this Act;
- (r) requiring the carrying of liability insurance by persons referred to in Section 27;
- (s) prescribing the maximum fees which may be charged for services by operators;
- (t) prescribing the minimum fee which shall be charged for maintenance of a lot, grave or memorial;
- (u) prescribing the maximum percentage of money payable under a pre-arranged funeral plan or pre-need cemetery plan on account of administrative expenses;
- (v) prescribing fees for the purposes of this Act and the regulations;

- (w) respecting the requirements for burial;
 - (wa) prescribing circumstances that constitute acts of default under Section 27A;
 - (wb) respecting circumstances in which the principal from a care fund may be disbursed and any conditions attaching to money disbursed;
 - (wc) respecting the performance by the Registrar of any duties or functions of an operator after an act of default has occurred under Section 27A;
 - (wd) respecting the power of the Registrar to address issues arising from acts of default;
 - (we) respecting the terms and conditions of the appointment of administrators appointed under Section 27C;
 - (wf) respecting the powers, duties and functions of administrators appointed under Section 27C;
 - (wg) respecting the operation of cemeteries or the termination of operation of cemeteries in circumstances referred to in subsection (4) of Section 27C;
 - (x) prescribing forms and providing for their use;
 - (y) exempting any person or class of persons from this Act or the regulations or any provision of either of them;
 - (z) defining any word or expression used in this Act and not expressly defined herein;
 - (aa) respecting any matter necessary or advisable to carry out the intent and purpose of this Act.
- (2) The exercise of the authority contained in subsection (1) shall be regulations within the meaning of the Regulations Act. *R.S., c. 62, s. 28; 2004, c. 1, s. 2.*

Offence and penalty

29 (1) Any person who

- (a) fails to comply with this Act or the regulations; or
- (b) fails to comply with any direction made pursuant to this Act or the regulations by the Registrar,

is guilty of an offence and liable on summary conviction to a fine of not more than two thousand dollars.

(2) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is twenty-five thousand dollars and not as provided therein. *R.S., c. 62, s. 29.*

