

§ 1401. Private and family cemetery corporations.

(a) Private cemetery corporation. Seven or more persons may become a private cemetery corporation by setting off for a private cemetery enclosed real property, to the extent of not more than three acres, and by electing at a meeting of the owners of the property so set off, at which not less than seven shall be present, three of their number to be directors, to hold office for five years. The chairman and secretary of such meeting shall make, sign and acknowledge, and file in the office of the clerk of the county in which such real property is situated, a certificate containing the name of the corporation, a description of the lands so purchased or set apart, and the names of the directors. No such cemetery shall be located within one hundred rods of any dwelling-house without the written consent of the owner thereof. Additional lands not exceeding three acres may be acquired by a private cemetery corporation; but no additional lands so purchased or otherwise acquired shall be used for the purpose of burial within three hundred feet of any dwelling without the written consent of the owner thereof.

(b) Removal of remains from private cemeteries to other cemeteries. The supervisor of any town containing a private cemetery may remove any body interred in such cemetery to any other cemetery within the town, if the owners of such cemeteries and the next of kin of the deceased consent to such removal. The owners of a private cemetery may remove the bodies interred therein to any other cemetery within such town, or to any cemetery designated by the next of kin of the deceased. Notice of such removal shall be given within twenty days before such removal personally or by certified mail to the next of kin of the deceased if known and to the clerk and historian of the county in which such real property is situated and notice shall be given to the New York state department of state, division of cemeteries. If any of the deceased are known to be veterans, the owners shall also notify the department of veterans' services. In the absence of the next of kin, the county clerk, county historian or the department of veterans' services may act as a guardian to ensure proper reburial.

(c) Family cemetery corporations. Any person, by deed or devise, may dedicate land to be used exclusively for a family cemetery. The executors, administrators or trustees of a deceased person, with the written authority of all of his surviving heirs, next of kin, devisees

and legatees, executed in person or by an attorney, or if infants, by legal guardian, may dedicate lands of such deceased person exclusively for a family cemetery, or may purchase with the funds of the estate, suitable lands therefor. The land so dedicated shall not exceed three acres, not be located within one hundred rods of a dwelling-house, without the consent of the owner, unless such land, at the time of dedication, is in actual use for burial or cemetery purposes within the limits of a city. The instrument dedicating such land shall describe the same, may appoint directors to manage such cemetery, prescribe, or provide for making rules, directions or by-laws for such management, direct the manner of choosing successors to the directors, specify their qualifications, and grant to them and their successors money or personal property as a fund for maintaining, improving and embellishing the cemetery, in accordance with the deed or will, or the written authority of the heirs, next of kin, devisees and legatees. The instrument dedicating land for a family cemetery, together with the authority, if any, of the heirs, next of kin, devisees and legatees of the deceased person, shall be filed in the office of the county clerk of each county in which the cemetery is to be situated. The directors before entering on their duties, shall file in the office of the county clerk of each such county, a written acceptance of their appointment; and thereupon they and their successors shall constitute a corporation under the name designated in such instrument. A fund created by will for the purpose of maintaining, improving and embellishing such a cemetery shall not exceed ten per centum of the net value of the estate of the testator. Such corporation before receiving any property, money or funds for improving, maintaining and embellishing the cemetery, shall execute to the surrogate of the county in which such real property is situated, a bond with sureties, or the bond of a surety company, approved by him, in a penalty of twice the principal sum of the fund placed in charge of the corporation, conditioned for the faithful preservation and application thereof according to the rules, directions or by-laws prescribed in the instrument under which the appointment of such directors was made, and renew such bond or execute a new bond whenever required so to do by such surrogate. At least once in each year and oftener if required by the surrogate the corporation shall file with him a verified account of its receipts and expenditures on account of the funds in its hands, or under

its control, together with vouchers for all disbursements. Any person may bequeath or transfer to, and any such corporation may take, money or personal property by will, deed or other transfer, upon trust, to hold and apply to dispose of the same for the purpose of maintaining, improving and embellishing any lot, plot or portion of such cemetery, either according to the discretion of the directors, or for such time and upon such terms and conditions, if any, as to the application, investment and reinvestment of the principal and income and otherwise as shall be stated in the instrument creating the trust as agreed upon, but no such trust fund created by will shall exceed ten per centum of the net value of the estate of the testator. The corporation shall give security and account for such money or personal property as hereinbefore provided.

If security is furnished by a surety company bond, the reasonable expense thereof shall be a charge against the funds of the corporation.

(d) Type of corporation. A family or private cemetery corporation is a charitable corporation under this chapter.

(e) Private and family cemetery corporations; prohibitions. (1) No private or family cemetery corporation shall, directly or indirectly:

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

(ii) commingle its funds with a funeral entity;

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

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

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

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

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

(2) Only the provisions of subparagraphs (i) and (ii) of subdivision one of this paragraph shall apply to cemetery corporations with thirty acres or less of real property dedicated to cemetery purposes, and only to the extent the sale or lease is of real property dedicated to

cemetery purposes, and such cemeteries shall not engage in the sale of funeral home goods or services, except if such goods and services are otherwise permitted to be sold by cemeteries.

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