



Province of Alberta

## **CEMETERIES ACT**

Revised Statutes of Alberta 2000  
Chapter C-3

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Office Consolidation

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## Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

## Regulations

The following is a list of the regulations made under the *Cemeteries Act* that are filed as Alberta Regulations under the Regulations Act

	<b>Alta. Reg.</b>	<i>Amendments</i>
<b>Cemeteries Act</b>		
Cemeteries Exemption .....	236/98 .....	87/2001, 175/2001, 251/2001, 63/2003, 176/2005, 35/2007, 68/2008, 268/2009, 31/2012, 170/2012, 81/2013, 103/2013 172/2014
Commercial Cemeteries .....	247/98 .....	56/2000, 251/2001, 332/2003, 172/2013
Crematories Designation .....	11/2002 .....	162/2006, 172/2013
Crematory .....	248/98 .....	251/2001, 342/2003, 131/2011
General .....	249/98 .....	206/2001, 251/2001, 142/2003, 331/2003, 8/2005, 212/2005, 157/2006, 35/2007, 68/2008, 168/2010, 31/2012, 172/2013

# **CEMETERIES ACT**

## Chapter C-3

### *Table of Contents*

- 1 Definitions
- 2 Application of Act
- 3 New cemetery restrictions
- 4 New columbarium or mausoleum
- 5 Burial in approved cemetery
- 6 Alternatives to burial

### **Part 1 Cemeteries**

- 7 Maintenance of cemetery
- 8 Vaults
- 9 Mausoleum
- 10 Rules re burials
- 11 Disinterment
- 12 Plots for indigents
- 13 Plots for veterans
- 14 Burial sites exempt from seizure
- 15 Exempt from Land Titles Act
- 16 Conveyance of plot
- 17 Ownership of site
- 18 Recovery of interment space
- 19 Crypts or compartments
- 20 Winding-up, liquidation and dissolution of cemetery companies
- 21 Effect of grant
- 22 Sale of cemetery
- 23 Disposition of perpetual care funds
- 24 War graves
- 25 Resale of plot to owner of cemetery

**Part 2  
Crematories**

- 26 Location of crematory
- 27 Licence for crematory
- 28 Operation of crematory
- 29 Fees for cremation
- 30 Registration of deaths, etc.
- 31 Unclaimed remains

**Part 3  
Perpetual Care Funds**

- 32 Application of Part
- 33 Perpetual care funds
- 34 Minimum funds
- 35 Funds in trust
- 36 Investment
- 37 Remuneration for services
- 38 Reporting requirements
- 39 Required information
- 40 Application of general law
- 41 Annual returns

**Part 4  
Pre-need Sale of Cemetery Supplies and Services**

- 42 Application of Part
- 43 Licence to sell pre-need contract
- 44 Seller to hold money in trust
- 45 Transfer of trust money to authorized trustee
- 46 Payment out of pre-need assurance fund
- 47 Use of investment income
- 48 Reporting to Director

**Part 5  
Director**

- 49 Appointment of Director
- 50 Duties relating to approvals
- 51 Duties relating to licences
- 52 Appeal
- 53 Investigation and inquiry
- 54 Seizure of records
- 55 Powers in investigations
- 56 Act, regulations contravened

- 57 Enforcement of Director's orders
- 58 Director's ability to disclose information
- 59 Settlement

### **Part 6 Regulatory Board**

- 60 Establishment of regulatory board
- 61 Delegation to regulatory board
- 62 Payment for services of regulatory board
- 63 Establishment of claims fund
- 64 Confidentiality

### **Part 7 General**

- 65 Regulations
- 66 Appointment of administrator
- 67 Rescission of sales contract
- 68 Effect of cancellation of contract
- 69 Refund
- 70 Contracts entered into through direct contact
- 71 Unfair practices
- 72 Void contracts
- 73 Validity of sale
- 74 Consent to transfer of cemetery
- 75 Penalty for fouling water supply
- 76 Penalties for offences
- 77 Offence
- 78 Time limit for prosecution

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

#### **Definitions**

- 1 In this Act,
  - (a) "authorized trustee" means the Public Trustee or a trust corporation or a corporation designated in the regulations;
  - (b) "cemetery" means land that is set apart or used as a place for the burial of dead human bodies or other human remains or in which dead human bodies or other human remains are buried;

- (c) “cemetery services” means the supplying of any service to be rendered at a cemetery in respect of any lot or plot or grave stone, grave marker or monument;
- (d) “cemetery supplies” means burial vaults, grave stones, grave liners, grave markers, monuments or bases for use in a cemetery;
- (e) “columbarium” means a structure designed for storing the ashes of dead human bodies or other human remains that have been cremated;
- (f) “crematory” means a building fitted with proper appliances for the purpose of incineration or cremation of dead human bodies, and includes everything incidental or ancillary to it;
- (g) “Director” means the person appointed by the Minister under section 49 to act as the Director for the purposes of this Act and the regulations;
- (h) “income” means the interest or other money earned, including through compounding, by the investment of funds;
- (i) “licence” means a licence referred to in section 27 or 43, as the case may be;
- (j) “mausoleum” means a structure wholly or partly above the level of the ground and designed for the burial or storage of dead human bodies;
- (k) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (l) “municipality” means a city, town, village, municipal district or Metis settlement or, in the case of an improvement district, the Minister responsible for the *Municipal Government Act* or, in the case of a special area, the Minister responsible for the *Special Areas Act*;
- (m) “owner” means a person who owns, controls or manages a cemetery, crematory, columbarium or mausoleum, as the case may be;
- (n) “perpetual care” means the preservation, improvement, embellishment and maintenance, in perpetuity and in a proper manner, of grave stones, grave markers, monuments, lots, plots, compartments, crypts or other

space in a cemetery, or of compartments in a columbarium or mausoleum;

(o) “perpetual care fund” means funds and property received by an owner for the purpose of providing perpetual care generally of a cemetery, columbarium or mausoleum, or of any particular part of a cemetery, columbarium or mausoleum, whether received

(i) under this Act, or

(ii) under the terms of a contract, trust or gift or otherwise,

and includes money deducted and set aside under section 33 and deposits made by an owner referred to in section 34;

(p) “pre-need assurance fund” means money held in trust under section 44 or 45;

(q) “pre-need contract” means a contract for the provision of cemetery supplies or cemetery services, or both, under which all or part of the cost of the cemetery supplies and cemetery services to be provided is paid before the death of the person for whose benefit the contract is entered into;

(r) “regulatory board” means a board established under section 60(1)(a) and the regulations;

(s) “religious auxiliary” means a corporation, society, committee or other organization that is sponsored, organized, established or set up by a religious denomination and controlled or supervised by, and operated as an instrument or auxiliary of, and in close connection with, that religious denomination;

(t) “religious denomination” means an organized society, association or body of religious believers or worshippers professing to believe in the same religious doctrines, dogmas or creed and closely associated or organized for religious worship or discipline or both;

(u) “seller” means a person who contracts to sell cemetery supplies or cemetery services, or both, under a pre-need contract.

(v) repealed 2001 c28 s5.

RSA 2000 cC-3 s1;2001 c28 s5;2003 c19 s9

**Application of Act**

**2** Except as by this Act otherwise expressly provided, this Act applies to every cemetery, crematory, columbarium or mausoleum in Alberta whenever established, laid out or constructed.

RSA 1980 cC-2 s3

**New cemetery restrictions**

**3** No new cemetery may be established except by a religious auxiliary, religious denomination or municipality.

RSA 1980 cC-2 s4

**New columbarium or mausoleum**

**4** No new columbarium or mausoleum may be established except by a religious auxiliary, religious denomination or municipality.

RSA 1980 cC-2 s5

**Burial in approved cemetery**

**5** No person shall bury a dead human body in any place other than a cemetery in respect of which a final certificate of approval has been issued by the Director under this Act or the regulations.

1998 c10 s1(3)

**Alternatives to burial**

**6** As an alternative to burial, the disposition of a dead human body may be

- (a) by cremation in a crematory approved under this Act or the regulations,
- (b) by placing the body for permanent interment in a mausoleum approved under this Act or the regulations,
- (c) in accordance with the *Post-secondary Learning Act*, or
- (d) in accordance with the regulations.

RSA 2000 cC-3 s6;2003 cP-19.5 s134

## **Part 1 Cemeteries**

**Maintenance of cemetery**

**7** The owner of a cemetery shall keep the cemetery in the manner required by the regulations and in good order and repair.

RSA 1980 cC-2 s6



**Vaults**

**8(1)** The owner of a cemetery may erect, within the bounds of the cemetery, a chapel and vault or a vault alone for use as a repository for the dead during the winter months.

**(2)** The chapel and vault alone shall be of stone or brick or partly stone and partly brick, and all vault doors shall be of iron and wood encased in iron sheeting, and all vault windows shall be protected by iron-sheeted shutters.

**(3)** There shall be no open connections between the vault and the chapel except underneath the floor for the reception of the coffin.

**(4)** This section applies in respect only of vaults constructed after April 11, 1960.

RSA 1980 cC-2 s8

**Mausoleum**

**9** A mausoleum may be constructed and maintained in any cemetery.

RSA 1980 cC-2 s9

**Rules re burials**

**10(1)** The owner of a cemetery shall ensure that all burials within the cemetery are conducted in a decent manner, and for that purpose the owner may make rules for burials within the cemetery.

**(2)** In the case of a cemetery other than a cemetery owned by a religious denomination or a religious auxiliary, the owner shall permit the religious denomination to which the deceased belonged to perform the usual religious rites on the interment of the deceased.

RSA 1980 cC-2 s11

**Disinterment**

**11** Disinterment of a body shall not take place until a disinterment permit has been issued in accordance with section 42 of the *Vital Statistics Act*.

RSA 2000 cC-3 s11;2007 cV-4.1 s80

**Plots for indigents**

**12(1)** Unless subsection (2) applies, the owner of a cemetery shall make plots in the cemetery available for the burial of unclaimed bodies and bodies of destitute or indigent persons.

**(2)** If the owner referred to in subsection (1) is a religious auxiliary or religious denomination, the obligation under subsection (1)

applies only to the burial of deceased persons who were followers of the religious denomination.

(3) When a burial plot is made available under subsection (1), the owner of the cemetery may charge for the following:

- (a) to provide the plot, 50% of the amount that would ordinarily be charged;
- (b) for a grave liner if required by cemetery bylaws and for digging and backfilling the grave, the amount that would ordinarily be charged.

(4) When the owner of a cemetery differentiates in its charge for the provision of the same plot on the basis of the place of residence of the person to be buried, then the lowest charge made for the plot is to be the amount ordinarily charged for the plot for the purposes of subsection (3)(a).

RSA 1980 cC-2 s13;1998 c10 s1(5)

#### **Plots for veterans**

**13** An owner of a cemetery shall make plots in the cemetery available as provided in section 12(3) and (4) to veterans as defined in the *War Veterans Allowance Act* (Canada) and the regulations under that Act.

RSA 1980 cC-2 s13;1998 c10 s1(5)

#### **Burial sites exempt from seizure**

**14** The real property of the owner of a cemetery that is used as a cemetery and the lots or plots when conveyed by the owner to individual proprietors for burial sites are not liable to be seized or sold in execution or under judgment or attached or applied to the payment of debt or passed to the assignee under any bankruptcy or insolvency law.

RSA 1980 cC-2 s14

#### **Exempt from Land Titles Act**

**15** When a lot or plot has been sold by the owner of a cemetery for a burial site, the conveyance or transfer need not be registered for any purpose whatever and is not affected by the *Land Titles Act* nor does any judgment, mortgage or encumbrance subsist on a lot or plot so conveyed or transferred.

RSA 1980 cC-2 s15

**Conveyance of plot**

**16** The conveyance of a burial lot or plot may be in any form prescribed under the regulations.

RSA 1980 cC-2 s16

**Ownership of site**

**17** All lots or plots in a cemetery when numbered and conveyed or transferred by the owner of the cemetery as burial sites are indivisible, but may afterwards be held and owned in undivided shares.

RSA 1980 cC-2 s17

**Recovery of interment space**

**18(1)** In this section, “interment space” means a lot, plot, compartment, crypt or other space for the disposition of human remains in a cemetery, mausoleum or columbarium.

**(2)** If interment space is sold by an owner, the Director, on the application of the owner, may by order cancel the conveyance and revest the interment space in the owner when the Director is satisfied on evidence verified by affidavit or otherwise that

- (a) the interment space is not in use for interment,
- (b) the owner has not heard from the purchaser of the interment space, or from that purchaser’s personal representative, for a period of 20 years, and
- (c) the owner has made reasonable efforts to locate the purchaser of the interment space, or that purchaser’s personal representative, and has failed.

**(3)** An order under subsection (2) is subject to the condition that if the purchaser from whom the interment space is revested, or that purchaser’s personal representative, subsequently claims the interment space, the owner will

- (a) pay to that purchaser an amount equal to the current market value of the revested interment space, or
- (b) provide to that purchaser another interment space that is equal in value to the current market value of the revested interment space.

RSA 1980 cC-2 s18;RSA 1980 c3(Supp) ss4,5;1998 c10 s1(6)

**Crypts or compartments**

**19(1)** The owner of a cemetery in which is situated a mausoleum may sell or otherwise dispose of crypts or compartments in the mausoleum for the entombment of bodies.

**(2)** When a crypt or compartment is sold or disposed of for the purpose of entombment, the conveyance or transfer need not be registered for any purpose whatever and is not affected by the *Land Titles Act* nor does any judgment, mortgage or encumbrance subsist on a crypt or compartment so conveyed or transferred.

RSA 1980 cC-2 s19

**Winding-up, liquidation and dissolution of cemetery companies**

**20(1)** In this section and sections 21 to 23, “cemetery company” means a corporation that owns a cemetery and

- (a) is incorporated under the *Companies Act* or the *Cemetery Companies Act*, or
- (b) is incorporated or continued under the *Business Corporations Act*.

**(2)** A cemetery company owned by a corporation incorporated under the *Cemetery Companies Act* may be dissolved or liquidated and dissolved only in accordance with Part 17 of the *Business Corporations Act* and this section.

**(3)** A cemetery company owned by a corporation incorporated under the *Companies Act* may be wound up only in accordance with Division 4 of Part 10 of the *Companies Act* and this section.

**(4)** A cemetery company owned by a corporation incorporated or continued under the *Business Corporations Act* may be dissolved or liquidated and dissolved only in accordance with Part 17 of the *Business Corporations Act* and this section.

**(5)** Notwithstanding any Act, any interested person has the right to apply to have a cemetery company wound up, dissolved or liquidated and dissolved.

**(6)** Notwithstanding any Act, a court may not order that a cemetery company be wound up, dissolved or liquidated and dissolved unless, in addition to the requirements set out in any other Act,

- (a) the cemetery company is inactive or financially unable to provide perpetual care for the cemetery and either there are no perpetual care funds for the cemetery or its perpetual care funds are inadequate,

- (b) the cemetery company is not maintaining the cemetery properly,
- (c) the cemetery company is not meeting its financial obligations in the operation of the cemetery,
- (d) a shortage in the perpetual care funds required to be set aside by this Act is shown by an annual financial report or otherwise, or
- (e) the cemetery company has failed to establish and maintain a pre-need assurance fund as required in respect of pre-need contracts.

RSA 1980 cC-2 s20;1981 cB-15 s284(1);  
RSA 1980 c3(Supp) ss4,5;1983 c37 s9;1998 c10 s1(7)

#### **Effect of grant**

**21** If the application to wind up is granted by the Court, no further burials shall be made in any cemetery owned by the cemetery company and no person is entitled to compensation or the return of money paid for a lot, plot or other space in that cemetery unless the Court makes a direction in that regard pursuant to section 23(1)(b).

RSA 1980 cC-2 s21

#### **Sale of cemetery**

**22** Notwithstanding anything in the *Companies Act*, the *Business Corporations Act* or the *Cemetery Companies Act*,

- (a) the liquidator of a cemetery company shall not sell a cemetery owned by the company except to a religious auxiliary, religious denomination or municipality or to another cemetery company, and
- (b) the Court shall not grant an order for the release of the liquidator unless the Court is satisfied that all cemeteries owned by the company have been sold in accordance with clause (a).

RSA 1980 cC-2 s22;1981 cB-15 s284(1)

#### **Disposition of perpetual care funds**

**23(1)** On the application of the liquidator, the Court shall order that the trust in respect of the perpetual care funds, if any, of the cemetery company be dissolved and on dissolution the funds shall be disposed of

- (a) first, toward the payment of the costs of winding up, and
- (b) second, in accordance with the directions of the Court.

(2) If there are no perpetual care funds or the funds are insufficient, the costs or the balance of the costs, as the case may be, of disinterment and re-burial of the bodies shall be paid by the Government out of the General Revenue Fund.

RSA 1980 cC-2 s23;1998 c10 s1(37)

#### **War graves**

**24(1)** No owner of a cemetery, columbarium or mausoleum shall without the prior agreement of the Commonwealth War Graves Commission alter or move

- (a) the remains or marker of a Commonwealth war burial, or
- (b) any memorial erected by that Commission.

(2) An owner who seeks agreement under subsection (1) shall pay to the Commonwealth War Graves Commission any reasonable cost associated with reaching agreement.

1998 c10 s1(8)

#### **Resale of plot to owner of cemetery**

**25** If the owner of a cemetery sells a plot for a burial site and prohibits its resale on the open market and if the purchaser of the plot offers to sell the unused plot back to the owner of the cemetery, the owner of the cemetery shall

- (a) purchase the plot, and
- (b) pay a purchase price calculated in accordance with the regulations.

1998 c10 s1(8)

## **Part 2 Crematories**

#### **Location of crematory**

**26** Subject to the regulations made under this Act and to any zoning bylaw or other bylaw of a municipality applicable to it, a crematory may be constructed, maintained and operated in any municipality and at any place in it, either in a cemetery or elsewhere.

RSA 1980 cC-2 s25;1984 cP-27.1 s88

#### **Licence for crematory**

**27(1)** No human bodies shall be cremated in a crematory, and no crematory shall be maintained or operated, unless the owner of the crematory holds a licence for that purpose.

(2) A person who wishes to apply for a licence to maintain or operate a crematory or to have a licence renewed must apply to the Director in accordance with the regulations.

(3) A licence is valid for the period specified in the regulations or until it is suspended or cancelled by the Director pursuant to Part 5.

RSA 1980 cC-2 s26;1998 c10 s1(9)

#### **Operation of crematory**

**28** A crematory shall be maintained and operated in accordance with any regulations applicable to it made under this Act or any other Act of the Legislature, and in accordance with any municipal bylaws applicable to it.

RSA 1980 cC-2 s28;1984 cP-27.1 s88

#### **Fees for cremation**

**29(1)** A person licensed under this Part is entitled to demand and receive payment of charges or fees for the cremation of human bodies in the crematory for the maintenance and operation of which the person holds a licence, but, if a table of charges or fees is established by regulations, the charges or fees shall be in accordance with that table.

(2) Any charges or fees, and any expenses, properly incurred in or in connection with the cremation of the body of a deceased person are deemed to be part of the funeral expenses of the deceased.

RSA 1980 cC-2 s31

#### **Registration of deaths, etc.**

**30(1)** The statutes and regulations that govern registration of deaths and certificates of registration and any other provisions required to be observed before burial is permitted apply, with all necessary modifications, to cremation of human bodies.

(2) The statutes and regulations that govern registers of death and the admissibility of extracts from those registers as evidence in court or otherwise apply, with all necessary modifications, to a register of cremations kept as directed under the regulations.

RSA 1980 cC-2 s32;1998 c10 s1(11)

**Unclaimed remains**

**31** If the remains of a cremated body are not claimed within one year from the date of the cremation and if the owner of the crematory has been unable to arrange for disposal by a responsible relative of the deceased, the owner of the crematory may dispose of the remains at the owner's own discretion in such a manner as not to be offensive or to create a nuisance.

RSA 1980 cC-2 s33

### **Part 3 Perpetual Care Funds**

**Application of Part**

**32(1)** This Part does not apply to a cemetery, columbarium or mausoleum that is owned and operated by a religious denomination, religious auxiliary or municipality.

**(2)** If the Minister is satisfied that a religious denomination, religious auxiliary or municipality owning a cemetery, columbarium or mausoleum does not also solely operate that cemetery, columbarium or mausoleum insofar as the sale of lots, plots, compartments, crypts or other space is concerned, the Minister may by order declare that this Part and Part 4 apply to that owner in respect of that cemetery, columbarium or mausoleum.

**(3)** Except as expressly provided in this Part, this Part does not apply

- (a) to a sale, lease or rental, or agreement to sell, lease or rent, a lot, plot, crypt, compartment or other space in a cemetery, columbarium or mausoleum if the sale, lease, rental or agreement was made before July 18, 1960, or
- (b) to money paid or payable under any sale, lease, rental or agreement to which clause (a) applies.

RSA 1980 cC-2 s35;1983 c37 s9;1998 c10 s1(13)

**Perpetual care funds**

**33(1)** When the owner enters into a contract for

- (a) the sale, lease or rental of a lot, plot, compartment, crypt or other space in the owner's cemetery, columbarium or mausoleum, or
- (b) the sale by the owner of a grave stone, grave marker or monument,



the owner shall deduct and set aside for perpetual care such portion of the money paid as the consideration under the contract of sale, lease or rental as may be prescribed in the regulations.

(2) Every owner shall not less frequently than once in each month, pay over to an authorized trustee all money that the owner has deducted and set aside under subsection (1) since the last previous occasion on which the owner has paid over such money to an authorized trustee.

RSA 1980 cC-2 s38;1998 c10 s1(37)

#### Minimum funds

**34(1)** Subject to subsection (2), the owner of a cemetery, columbarium or mausoleum shall maintain for each cemetery, columbarium or mausoleum owned by that owner a perpetual care fund consisting of a minimum amount that is not less than

- (a) the initial amount prescribed by regulation to be set aside for each cemetery, columbarium or mausoleum owned by that owner, and
- (b) the percentage or flat rate of each sale prescribed by regulation to be set aside.

(2) Where an owner purchases an existing cemetery, the Director may increase, reduce or waive the owner's obligation under subsection (1) in regard to that cemetery, columbarium or mausoleum.

(3) Any deposit that is made by an owner with an authorized trustee or that before April 15, 1964 has been so made pursuant to the regulations in order to have the perpetual care funds in the minimum amount referred to in subsection (1) is part of the perpetual care funds.

(4) A deposit referred to in subsection (3) may be in the form of cash or of bonds of the Government of Canada or of any province or territory or bonds guaranteed by the Government of Alberta, but the income derived from the bonds belongs to the owner.

(5) Notwithstanding anything in section 33 or 35, when a deposit is made under subsection (3), the owner may recover the deposit when the perpetual care funds are in the amount of at least \$30 000 either

- (a) by requesting the return of the deposit when the perpetual care funds reach an amount at least equal to the sum of \$30 000 plus the deposit, or

- (b) by thereafter retaining money that would otherwise be required to be paid to an authorized trustee under section 33 until and to the extent that the money retained is equal to the sum of the deposit.

RSA 1980 cC-2 s39;1998 c10 s1(16)

#### **Funds in trust**

**35** Perpetual care funds paid over to an authorized trustee under section 33 shall not be returned to the owner, but shall form a trust in the hands of the authorized trustee for the purposes mentioned in this Act.

RSA 1980 cC-2 s40;1998 c10 s1(37)

#### **Investment**

**36(1)** Subject to section 37 and the regulations, the authorized trustee shall invest, on behalf of the owner, all perpetual care funds received by the trustee from an owner only in accordance with the regulations.

**(2)** The authorized trustee shall, as may be prescribed by the regulations, pay to the owner the income derived from the investment of the owner's perpetual care funds, less the amount of the remuneration for the services of the authorized trustee that the authorized trustee is authorized to deduct and retain for that purpose.

**(3)** Pending the investment of perpetual care funds, an authorized trustee may deposit them during such period as is reasonable in the circumstances in a bank or treasury branch.

**(4)** The authorized trustee shall, for the purpose of its financial records, keep the money received under each perpetual care fund separate from any other money but may, for the purpose of investing in accordance with subsection (1), combine the money received under all perpetual care funds of the same owner.

RSA 2000 cC-3 s36;2001 c28 s5;2006 c9 s6

#### **Remuneration for services**

**37** An authorized trustee may, as remuneration for services rendered, deduct and retain in each year a reasonable administration fee from the income received in that year from money invested on behalf of an owner as provided in this Part.

RSA 1980 cC-2 s42;1983 c37 s9;1998 c10 s1(18)

#### **Reporting requirements**

**38** Each owner of a cemetery, columbarium or mausoleum shall provide to the Director in the form set by the Director information

relating to each perpetual care fund maintained by that owner, including a statement from the authorized trustee in the form set by the Director.

RSA 1980 cC-2 s43;RSA 1980 c3(Supp) s4;1998 c10 s1(19)

#### **Required information**

**39** An owner shall from time to time furnish to the authorized trustee any information with respect to perpetual care funds that the authorized trustee may require.

RSA 1980 cC-2 s45;1998 c10 s1(37)

#### **Application of general law**

**40** In addition to the powers, rights and obligations created by this Act, the provisions of the general law, either statutory or otherwise, apply to an owner or authorized trustee with respect to perpetual care funds in the owner's or authorized trustee's hands to the same extent as they are applicable to a trustee having funds or property in the trustee's hands for charitable purposes.

RSA 1980 cC-2 s46;1998 c10 s1(37)

#### **Annual returns**

**41** An owner of a cemetery, columbarium or mausoleum shall, if required by the Director,

- (a) supply the Director with full and complete information on any matter pertaining to the ownership, financial affairs or operation of the cemetery, columbarium or mausoleum of the owner, and
- (b) keep and maintain at its principal place of business in Alberta the books and records pertaining to the cemetery, columbarium or mausoleum that the Director requires.

RSA 1980 cC-2 s47;RSA 1980 c3(Supp) ss4,5;1998 c10 s1(20)

## **Part 4 Pre-need Sale of Cemetery Supplies and Services**

#### **Application of Part**

**42** This Part does not apply when the owner of a cemetery is a religious denomination, religious auxiliary or municipality.

1998 c10 s1(21)

#### **Licence to sell pre-need contract**

**43(1)** In this section, "cemetery supplies" includes the sale, lease or rental of a lot, plot, compartment, crypt or other space in a

cemetery, columbarium or mausoleum or in a proposed cemetery, columbarium or mausoleum.

**(2)** No person shall, unless that person holds a pre-need contract sales licence, solicit to enter or enter a pre-need contract

- (a) under which that person promises to provide, or to arrange for the provision of, cemetery supplies or cemetery services, or both, or
- (b) as an agent for another person who holds a pre-need contract sales licence.

**(3)** A person who wishes to apply for a pre-need contract sales licence or to have a licence renewed must apply to the Director in accordance with the regulations.

**(4)** A licence is valid for the period specified in the regulations or until it is suspended or cancelled by the Director pursuant to Part 5.

1998 c10 s1(21)

#### **Seller to hold money in trust**

**44** A seller who enters into a pre-need contract holds all money paid under the contract in trust for the purposes for which it has been paid until

- (a) the cemetery supplies and cemetery services listed in the contract have been provided in accordance with the contract, or
- (b) the money, or any unused portion of the money, and all income earned as a result of the investment of that money has been refunded to
  - (i) the person who made the payment or payments under the contract, or
  - (ii) the person for whose benefit the contract was entered into or that person's personal representative.

1998 c10 s1(21)

#### **Transfer of trust money to authorized trustee**

**45(1)** Subject to subsection (2), money held in trust by a seller pursuant to section 44 must be transferred to an authorized trustee within the period set out in the regulations.

**(2)** Subsection (1) does not apply to money paid

- (a) for the cost of any grave stone, grave marker or monument that is manufactured or inscribed within the period set out in the regulations, or
  - (b) to purchase interment space that exists for use at the time the contract is entered into.
- (3)** A seller may deduct an administration fee in accordance with section 46 from the money to be transferred under subsection (1) to an authorized trustee.
- (4)** The authorized trustee
- (a) shall deposit money received under subsection (1) in a pre-need assurance fund, and
  - (b) may, subject to the regulations, invest the money only in accordance with the regulations.
- (5)** The authorized trustee shall, for the purpose of its financial records, keep the money received under each pre-need contract separate from any other money but may, for the purpose of investing in accordance with subsection (4), combine the money received under all pre-need contracts of the same seller.
- (6)** The financial records required under subsection (5) must show
- (a) the amount of principal and income held in the pre-need assurance fund to the credit of each pre-need contract, and
  - (b) the name of the person for whose benefit the pre-need contract was entered into.
- (7)** Money that is held in a pre-need assurance fund is not, while in the fund or being transferred to or from the fund, liable to demand, seizure or detention under any legal process.

RSA 2000 cC-3 s45;2001 c28 s5;2006 c9 s6

#### **Payment out of pre-need assurance fund**

- 46(1)** Money held in a pre-need assurance fund and any income earned as a result of the investment of that money must not be paid out of the fund by the authorized trustee except in accordance with this section and the regulations.
- (2)** When the cemetery supplies and cemetery services listed in a pre-need contract have been provided, all money and income held in a pre-need assurance fund to the credit of that pre-need contract shall be paid to the seller, on production by the seller of proof
- (a) of the death of the person for whose benefit the contract was entered into, and

(b) that the cemetery supplies and cemetery services have been provided.

(3) A seller who has received money under a pre-need contract and has transferred the money to an authorized trustee under section 45(1) may charge an administration fee not exceeding the amount set out in the regulations on the date when

(a) the cancellation period under section 67 expires, or

(b) the pre-need contract is cancelled after the expiry of the cancellation period under section 67.

(4) A seller who charges an administration fee shall elect as set out in the regulations whether every administration fee on every pre-need contract that the seller enters into will be charged in accordance with subsection (3)(a) or in accordance with subsection (3)(b).

(5) If no administration fee has been deducted under section 45(3), an authorized trustee shall pay from the money and income held in a pre-need assurance fund any administration fee owing to a seller.

1998 c10 s1(21)

#### **Use of investment income**

**47(1)** Notwithstanding any agreement to the contrary, a seller who, in the period commencing on May 1, 1962 and ending on November 30, 1998, entered into a pre-need contract that specifically permits the seller to retain income earned by the investment of the funds received under the contract shall not withdraw any of that income from trust until

(a) the contract is cancelled, or

(b) the cemetery supplies and cemetery services listed in the contract have been provided in accordance with the contract.

(2) A seller who enters into a pre-need contract after November 30, 1998 must hold the income earned by the investment of funds received under the contract in trust in accordance with section 44.

1998 c10 s1(21)

#### **Reporting to Director**

**48** Each seller must provide to the Director in the form set by the Director information relating to each pre-need assurance fund maintained by that seller, including a statement from the authorized trustee in the form set by the Director.

1998 c10 s1(21)

## Part 5 Director

### Appointment of Director

**49(1)** The Minister may appoint a person to act as the Director for the purposes of this Act and the regulations.

**(2)** The Director may delegate in writing to any person under the Minister's administration any power, duty or function conferred or imposed on the Director by this Act or the regulations.

**(3)** The Director may, when delegating a matter, authorize the further delegation of the matter.

**(4)** A delegation may be made subject to any terms and conditions that the Director considers appropriate.

1998 c10 s1(21)

### Duties relating to approvals

**50(1)** The Director is authorized to receive applications for

- (a) provisional approval of
  - (i) the operation or establishment of a cemetery, or
  - (ii) any alteration in the size of an existing cemetery,
- (b) a final certificate of approval for
  - (i) the operation or establishment of a cemetery, or
  - (ii) any alteration in the size of an existing cemetery,
- (c) approval of any plan or site for a mausoleum or columbarium, and
- (d) permission to alter an approved plan for a mausoleum or columbarium.

**(2)** The Director may grant any approval or permission applied for under subsection (1) if the applicant meets all of the requirements for that approval or permission set out in the regulations.

1998 c10 s1(21)

### Duties relating to licences

**51(1)** The Director is authorized to receive applications for the issuance or renewal of licences.

- (2) The Director may issue a licence if the applicant meets all of the requirements for that licence set out in the regulations and may issue the licence subject to conditions.
- (3) The Director may renew a licence if the applicant meets all of the requirements for renewal of that licence set out in the regulations and may renew the licence subject to conditions.
- (4) The Director may refuse to issue or renew a licence
- (a) for any of the reasons set out in the regulations, or
  - (b) if, in the Director's opinion, it is not in the public interest to issue or renew the licence.
- (5) The Director may suspend or cancel a licence
- (a) if the licensee contravenes this Act or the regulations,
  - (b) for any of the reasons set out in the regulations, or
  - (c) if, in the Director's opinion, it is in the public interest to suspend or cancel the licence.
- (6) When the Director refuses to renew a licence or makes a decision to suspend or cancel a licence, the Director may also, by written order, do any or all of the following:
- (a) assign to another licensee any pre-need contracts entered into by the licensee;
  - (b) prohibit the licensee from continuing to carry out the activities authorized by the licence, subject to any terms and conditions set out in the order;
  - (c) direct any person to cease any act or omission that contravenes this Act or the regulations;
  - (d) prohibit the licensee who committed the act or omission that resulted in the suspension or cancellation or who directed, authorized, assented to, acquiesced in or participated in the act or omission from so acting, subject to any terms and conditions set out in the order.
- (7) Where the Director issues or renews a licence subject to conditions or refuses to issue or renew a licence, the Director must notify the applicant in writing of the decision and the reasons for the decision.



**(8)** Where the Director suspends or cancels a licence, the Director must notify the licensee in writing of the decision and the reasons for the decision.

1998 c10 s1(21)

### **Appeal**

**52(1)** A person

- (a) who has been refused a licence or renewal of a licence,
- (b) whose licence is made subject to conditions,
- (c) whose licence has been suspended or cancelled,
- (d) to whom an order under section 51(6) has been issued, or
- (e) to whom an order under section 56 has been issued,

may appeal the decision by serving the Minister with a notice of appeal within 30 days after being notified of the Director's decision.

**(2)** The Minister shall, within 30 days after being served with a notice of appeal under subsection (1), appoint an appeal board to hear the appeal.

**(3)** An appeal board shall consist of the following members:

- (a) a person designated by the Minister as chair of the appeal board, and
- (b) not fewer than 2 and not more than 4 other persons.

**(4)** The following persons shall not be members of an appeal board:

- (a) the Director;
- (b) a delegate, agent or employee of the Director;
- (c) a member of a regulatory board.

**(5)** Notwithstanding subsection (3), the Minister may designate a board or commission established by or under an Act of the Legislature to act as an appeal board under this section, and in that case, references in this section to an appeal board are deemed to be references to that board or commission.

**(6)** The Minister may set the time within which an appeal board is to hear an appeal and make a decision, and may extend that time.

- (7) An appeal board that hears an appeal under this section may, by order, do any one or more of the following:
- (a) confirm or quash the decision;
  - (b) direct that the licence be issued or that the licence be renewed;
  - (c) reinstate a suspended or cancelled licence;
  - (d) substitute a suspension for a cancellation or a cancellation for a suspension;
  - (e) add, vary or delete conditions on a licence;
  - (f) add, vary or delete any measure that may be ordered under section 56;
  - (g) order the appellant to pay all or part of the investigation costs;

and may make the order subject to any terms and conditions it considers appropriate.

(8) An appeal board may order that the costs of the appeal are to be paid by the appellant.

(9) Fees and reasonable living and travelling expenses may be paid to the members of an appeal board in accordance with the regulations.

(10) The Director or a person who appeals to an appeal board under subsection (1) may appeal the decision of the appeal board by filing an application with the Court of Queen's Bench within 30 days after being notified in writing of the decision of the appeal board, and the Court may make any order that an appeal board may make under subsection (7).

(11) Where a licence is refused, suspended or cancelled or an order under section 51(6) is issued by a regulatory board instead of the Director, the regulatory board has the right of appeal under subsection (10) as if it were the Director.

RSA 2000 cC-3 s52;2009 c53 s31

#### **Investigation and inquiry**

**53(1)** The Director, or a person authorized in writing by the Director, may on complaint of a person interested or, when the Director considers it necessary, without complaint, investigate and inquire into any matter the investigation of which the Director considers expedient for the due administration of this Act.

(2) The person making the investigation may at all reasonable times demand the production of and inspect all or any of the books, documents, papers, correspondence and records relating to the operation of the cemetery, and any person who has the custody, possession or control of any of those books, documents, papers, correspondence or records shall produce them and permit the inspection of them by the person making the investigation.

RSA 1980 cC-2 s48;RSA 1980 c3(Supp) ss4,5;1996 c29 s2

#### **Seizure of records**

**54(1)** The person making the investigation may seize and take possession of any books, documents, papers, correspondence or records of the person in respect of whom the investigation is being made.

(2) If within 30 days after the date of a seizure under subsection (1) no prosecution is instituted against the person whose affairs are being investigated, the thing seized shall forthwith be returned to the person.

RSA 1980 cC-2 s49;1996 c29 s2

#### **Powers in investigations**

**55** In addition to the powers conferred by sections 53 and 54, the person making the investigation has, for the purpose of the investigation, all the powers of a commissioner under the *Public Inquiries Act*.

RSA 1980 cC-2 s50;1996 c29 s2

#### **Act, regulations contravened**

**56** If, in the opinion of the Director, an owner or salesperson is contravening or has contravened this Act or the regulations, or any form, form of agreement or form of letter is misleading or contains a term that misrepresents or contravenes this Act or the regulations, the Director may issue an order directing that owner or salesperson

- (a) to stop engaging in any practice that is described in the order, and
- (b) to take any measures specified in the order, within the time specified in the order, that, in the opinion of the Director, are necessary to ensure that this Act or the regulations are complied with.

1998 c10 s1(23)

#### **Enforcement of Director's orders**

**57(1)** Whether or not a person is prosecuted under this Act, if the Director is of the opinion that that person is not complying or has

not complied with an order of the Director under section 51(6) or 56, the Director may apply to the Court of Queen's Bench for an order directing that person to comply with the order.

(2) Repealed 2009 c53 s31.

(3) On the filing of an application with the clerk of the Court, the Court may, if it considers it necessary in the circumstances, make an interim order granting the relief that the Court considers appropriate pending the determination of the application.

(4) An interim order under subsection (3) may be made ex parte if the Court considers it appropriate in the circumstances.

(5) On hearing an application the Court may, if it is of the opinion that the person is not complying or has not complied with the order, grant an order, subject to any terms and conditions that the Court considers appropriate in the circumstances, doing one or more of the following:

- (a) directing the person to comply with the order of the Director;
- (b) giving directions that the Court considers necessary in order to ensure that the order of the Director will be complied with;
- (c) awarding costs in respect of the matter.

RSA 2000 cC-3 s57;2009 c53 s31

#### **Director's ability to disclose information**

**58(1)** The Director may disclose any information relating to

- (a) the refusal, cancellation or suspension of a licence issued under this Act, or
- (b) a disciplinary action taken under this Act.

(2) If there is an inconsistency or conflict between subsection (1) and a provision of the *Freedom of Information and Protection of Privacy Act*, subsection (1) prevails.

1998 c10 s1(23)

#### **Settlement**

**59** If in the course of an investigation or inquiry under this Act the Director discovers that a person has contravened this Act or the regulations, the Director may enter into a settlement of the matter with the person where in the Director's opinion it is in the public interest to do so, subject to any terms and conditions that the

Director considers appropriate, including payment of all or part of the investigation costs by the person.

1998 c10 s1(23)

## Part 6 Regulatory Board

### Establishment of regulatory board

**60(1)** The Minister may make regulations

- (a) providing for the establishment of a regulatory board to exercise the powers and perform the duties and functions delegated to it under section 61(1);
- (b) providing for the appointment and removal of the members of a regulatory board including, without limitation, the number of members, the method of appointment of members, the terms of office of members and the filling of vacancies.

**(2)** Notwithstanding subsection (1), the Minister may by regulation designate any board established under any Act of the Legislature to be a regulatory board for the purposes of this Act.

**(3)** A regulatory board may make bylaws

- (a) respecting the conduct of the business and affairs of the board;
- (b) respecting the calling of meetings of the board and the conduct of business at those meetings;
- (c) respecting the appointment, removal, powers, duties, functions, remuneration and benefits of members, officers and employees of the board;
- (d) delegating to the officers of the board or any committee of it any powers of the board required to manage the business and affairs of the board, except the power to make bylaws;
- (e) respecting the establishment, membership, duties and functions of special, standing and other committees.

**(4)** A bylaw made by a regulatory board is not effective until it is approved by the Director.

**(5)** The *Regulations Act* does not apply to a bylaw of a regulatory board.

1998 c10 s1(23)

**Delegation to regulatory board**

- 61(1)** The Director may by notice in writing to a regulatory board
- (a) delegate to the regulatory board any or all of the Director's powers, duties or functions under this Act and the regulations, and
  - (b) impose any conditions on the regulatory board's exercise of the delegated powers and performance of the delegated duties or functions that the Director considers appropriate.
- (2)** The Director may, when delegating a matter under subsection (1), authorize the further delegation of the matter.
- (3)** The Director may amend or revoke a notice referred to in subsection (1).
- (4)** Where the Director makes a delegation under subsection (1), a reference in this Act or the regulations to the Director with respect to the delegated power, duty or function is to be read as if it were a reference to the regulatory board to which the delegation was made.

1998 c10 s1(23)

**Payment for services of regulatory board**

- 62(1)** The Minister may make regulations respecting
- (a) the collection of fees by a regulatory board on the Government's behalf and their remittance to the Minister, and
  - (b) the payment of a commission to a regulatory board for its services under this subsection.
- (2)** Notwithstanding subsection (1)(b), a regulatory board may, in accordance with the regulations, levy an assessment on licensees and owners of cemeteries for the purpose of enabling the board to carry out the powers, duties and functions delegated to it under section 61(1).

RSA 2000 cC-3 s62;2006 c23 s17

**Establishment of claims fund**

- 63(1)** A regulatory board may create a fund to be used for the following purposes:
- (a) to pay claims of persons who have suffered loss or damage arising out of the operation by a licensee of a business to which this Act applies or of a cemetery;

(b) any other purpose authorized by the regulations.

**(2)** Subject to the regulations, the regulatory board may levy an assessment on licensees and owners of cemeteries for the purposes of the fund.

**(3)** A regulatory board is deemed to hold all money collected under subsection (2) in trust and shall immediately deposit that money in a trust account in a bank, treasury branch, trust corporation, loan corporation or credit union in Alberta or in a corporation designated in the regulations, separate and apart from any other money of the regulatory board.

**(4)** Notwithstanding subsection (3), a regulatory board may pay the administrative costs associated with the fund out of the income earned as a result of the investment of the money in the fund.

**(5)** If the income earned as a result of the investment of the money in the fund is insufficient to pay the administrative costs associated with the fund, the regulatory board may levy an assessment on licensees and owners of cemeteries in accordance with the regulations.

**(6)** The Minister may make regulations

- (a) respecting purposes for which the money in a fund established under this section may be used in addition to the purpose referred to in subsection (1)(a);
- (b) respecting the levying of assessments for the purposes of subsections (2) and (5);
- (c) respecting the investment of money in a fund that is not currently required for disposition;
- (d) respecting the protection, by insurance or other means, of the money in a fund against claims or losses;
- (e) respecting the administration of a fund;
- (f) requiring a regulatory board to provide a report to the Minister and respecting the nature and contents of that report and the times at which it must be provided;
- (g) respecting the kinds of claims that may be paid from a fund and the conditions to be met before any claim is paid from a fund;
- (h) respecting the limits of liability of a fund;
- (i) respecting the time within which claims against a fund must be made;

- (j) providing for the recovery by the regulatory board from a licensee of any amount paid from the fund to a claimant in respect of a claim against that licensee for loss or damage arising out of the operation by the licensee of a business to which this Act applies;
- (k) respecting the winding-up of a fund.

RSA 2000 cC-3 s63;2001 c28 s5

**Confidentiality**

**64** No person shall, without the written consent of the Director, disclose any information obtained in the course of exercising a delegated authority under this Act.

1998 c10 s1(23)

## **Part 7 General**

**Regulations**

**65(1)** The Minister may make regulations

- (a) respecting the cremation of bodies of deceased human beings, and the location, construction, maintenance and operation of crematories and columbaria, and the disposal of unclaimed ashes;
- (b) respecting the plans, surveys, arrangements, condition, care, sale and conveyance of lots, plots, mausolea and other cemetery grounds and property;
- (c) respecting the location, construction, maintenance and operation of cemeteries and the approval of the location of proposed cemeteries;
- (d) respecting the erection, arrangement and removal of tombs, vaults, monuments, grave stones, markers, copings, fences, hedges, shrubs, plants and trees in cemeteries;
- (e) respecting the depth to which graves must be dug;
- (f) requiring persons selling cemetery lots or plots or selling space in a columbarium or mausoleum to be bonded or insured and fixing the amount and type of bond or insurance that is to be furnished or carried by any of those persons, and prescribing to whom the bond is to be furnished or the proof of insurance that is to be furnished and to whom it is to be furnished;



- (g) requiring owners of cemeteries to permit the planting, installation and erection of cemetery supplies by owners of lots and any other persons and on any conditions as may be prescribed by the regulations;
- (h) defining cemetery supplies and cemetery and crematory services for the purposes of the regulations;
- (i) governing and regulating the charges for the sale and care of lots and plots and for cemetery supplies and cemetery and crematory services;
- (j) regulating or restricting or prohibiting the sale or offering for sale of cemetery lots or plots or space in a mausoleum or columbarium in accordance with the intent of this Act, and prescribing the method, manner and conditions under which lots and plots in cemeteries and space in a mausoleum or columbarium may be sold or offered for sale;
- (k) governing the calculation of a resale price under section 25;
- (l) respecting the collection, amounts to be collected and investment of funds for perpetual care and maintenance of cemeteries, columbaria or mausolea, where not provided for or insufficiently provided for in this Act;
- (m) requiring the filing or registration of plans of cemeteries with the Minister and prescribing the contents and details of the plans and requiring that burials be made in accordance with the plans;
- (n) requiring that the bylaws, rules or regulations made by the owners of cemeteries, columbaria and mausolea be approved by the Minister;
- (o) requiring cemetery, columbarium and mausoleum owners to supply financial and other information prescribed by the regulations to owners of lots and plots in the cemetery and to purchasers of space in columbaria and mausolea and to any other persons that the regulations prescribe;
- (p) respecting the initial amount of a perpetual care fund that must be set aside for a cemetery, columbarium or mausoleum;
- (p.1) respecting the investment of
  - (i) perpetual care funds for the purpose of section 36(1), and

- (ii) trust money for the purpose of section 45(4)(b);
- (q) specifying the flat rate or percentage of money received on the sale of a lot or plot in a cemetery or space in a columbarium or mausoleum that is to be set aside in the perpetual care fund by the owner;
- (r) requiring and prescribing financial information in connection with perpetual care funds, governing the times at which the financial information is to be submitted to the Director and prescribing any other statements and certificates that are to accompany the information;
- (s) requiring and prescribing records in connection with the establishment, maintenance and operation of cemeteries, columbaria and mausolea to be kept by the owners and prescribing the times at which the records are to be submitted to the Minister and the information that is to accompany the records;
- (t) respecting disclosure requirements governing pre-need contracts, including cancellation and refund policies, listing of goods and services to be provided and the description of other goods or services that may be required;
- (u) governing the period within which a seller must transfer to an authorized trustee money held in trust under a pre-need contract;
- (v) governing the period within which any grave stone, grave marker or monument must be manufactured or inscribed for the purposes of the exemption under section 45(2)(a);
- (w) respecting the requirements and procedures governing payment out by an authorized trustee of money held in a pre-need assurance fund under section 45 and any income earned as a result of the investment of that money;
- (x) governing the calculation of an administration fee under section 46(3) and setting a maximum administration fee that may be charged;
- (y) specifying the form and manner in which an election under section 46(4) is to be made, including to whom notice of an election must be given, the form of the notice and whether and how an election may be changed;
- (z) respecting the requirements and procedures governing refunding by a seller of money held in trust under section

- 44 and all income earned as a result of investment of that money;
- (aa) requiring and prescribing financial information in connection with pre-need assurance funds, governing the times at which the financial information is to be submitted to the Director and prescribing any other statements and certificates that are to accompany the information;
  - (bb) requiring and prescribing the submission to the Registrar of Vital Statistics, by persons in charge of cemeteries, mausolea and crematories, of periodic returns, covering burials or interments or cremations;
  - (cc) providing for the issuance and renewal of licences, including the form of the application and the setting of fees for the issuance and renewal of licences, and specifying the requirements to be met by applicants for licences or for renewal of licences;
  - (dd) respecting the reasons for which the Director may suspend or cancel a licence or refuse to issue or renew a licence;
  - (ee) governing the duration of licences;
  - (ff) providing for any matter not provided for in this Act and relating to the filing and approval of forms of contracts for the sale of lots, plots, compartments, crypts or space in a cemetery, columbarium or mausoleum;
  - (gg) respecting the payment of fees and reasonable living and travelling expenses to members of an appeal board appointed under section 52;
  - (hh) respecting settlements under section 59, including the kind of settlement undertakings that may be entered into, records of undertakings, the procedure to vary or cancel an undertaking, and the effect of variation or cancellation of an undertaking;
  - (ii) governing the accounting by an administrator of the administrator's administration pursuant to section 66(7);
  - (jj) respecting any matter in connection with any proceedings referred to in sections 20 to 23;
  - (kk) providing for any matter arising out of a declaration made by the Minister under section 32(2);
  - (ll) respecting the licensing of cemeteries, crematories, columbaria and mausolea, and setting the licence fees;

- (mm) classifying cemeteries, crematories, columbaria and mausolea;
- (nn) respecting the burial or other disposition and cost of burial or other disposition of the bodies of destitute or indigent persons;
- (oo) respecting the disposal of fetuses and the bodies of newborn infants who have died, subject in each case to the parents' or guardians' request, and defining newborn infant for the purposes of the regulations;
- (pp) prescribing the location, construction, maintenance and operation of public mausolea or of any specified public mausoleum, the prohibition of the construction of any building, erection or structure intended to be used as a mausoleum and the prohibition of the future reception of corpses into any mausoleum;
- (qq) prescribing forms for the purposes of this Act;
- (rr) designating a corporation for the purposes of section 1(a) and 63(3);
- (ss) to resolve disputes about the disposition of human remains or cremated human remains;
- (tt) to resolve disputes about eligibility for plots under section 12;
- (uu) respecting the procedure to be used to resolve a dispute between the Commonwealth War Graves Commission and the owner of a cemetery, columbarium or mausoleum;
- (vv) respecting the delegation of all or part of the Director's powers, duties or functions under this Act or regulations to a regulatory board;
- (ww) governing assessments levied by regulatory boards under section 63(2);
- (xx) respecting the disposition of pre-need contracts where it is clear that alternative arrangements have been made for provision of the cemetery supplies or cemetery services or both;
- (yy) specifying the period within which a notice of cancellation must be given under section 67(2);
- (zz) respecting any other matters and things not provided for in this Act or insufficiently provided for as is considered advisable to carry out the intent of this Act.

(2) The Lieutenant Governor in Council may exempt any cemetery, crematory, columbarium or mausoleum or its owner from the operation of all or any provisions of this Act or the regulations and may prescribe conditions for the exemption.

(3) If regulations under the *Alberta Public Agencies Governance Act* apply in respect of the payment of fees and expenses to members of an appeal board, those regulations prevail, to the extent of any conflict or inconsistency, over any regulations made under subsection (1)(gg).

RSA 2000 cC-3 s65;2001 c28 s5;2007 cV-4.1 s80;2009 cA-31.5 s31

#### **Appointment of administrator**

**66(1)** This section applies only in cases where the owner of a cemetery, mausoleum or columbarium is a company incorporated under the *Companies Act* or the *Cemetery Companies Act* or is incorporated or continued under the *Business Corporations Act*.

(2) If

- (a) the owner for any reason is not maintaining a cemetery, mausoleum or columbarium owned by the owner properly or as required by a contract under which the owner undertook to provide perpetual care,
- (b) the owner is not meeting the owner's financial obligations in the operation of the cemetery, mausoleum or columbarium,
- (c) there is found, on review of financial information provided by an owner or otherwise, a shortage in the perpetual care funds required to be set aside under this Act for perpetual care of a cemetery, mausoleum or columbarium, or
- (d) the owner of a cemetery has contravened any of the provisions of Part 4,

the Minister may appoint a qualified person as administrator of the cemetery, mausoleum or columbarium, as the case may be, and prescribe the administrator's powers and duties.

(3) During the term of the appointment of an administrator under this section

- (a) the administrator shall operate and maintain the cemetery, mausoleum or columbarium;
- (b) the administrator is deemed to be the owner of the cemetery, mausoleum or columbarium for the purposes of

this Act, with power to give a discharge to the authorized trustee for any part of the perpetual care funds that may be required to maintain it, but has no power to sell the cemetery, mausoleum or columbarium;

- (c) the administrator shall take possession of the cemetery, mausoleum or columbarium and all records and accounts of the owner pertaining to it and to the perpetual care funds and any pre-need assurance fund;
- (d) the owner shall cease to operate the cemetery, mausoleum or columbarium, and shall, on demand, deliver to the administrator the records and accounts referred to in clause (c) and shall provide any other assistance to the administrator that the administrator reasonably requires;
- (e) the persons employed by the owner to operate and maintain the cemetery, mausoleum or columbarium become employees of the administrator;
- (f) the administrator may
  - (i) sell, lease or rent or agree to sell, lease or rent lots, plots, crypts, compartments or other space in the cemetery, mausoleum or columbarium, other than on a pre-need basis,
  - (ii) keep, maintain and use any money received pursuant to subclause (i) and not required to be paid to an authorized trustee, for purposes incidental to or in connection with the operation and maintenance of the cemetery, mausoleum or columbarium and to pay the administrator's remuneration and expenses, and
  - (iii) make the administrator's own banking arrangements in respect of accounts for that money.

**(4)** The Minister shall prescribe the remuneration to be paid to the administrator.

**(5)** If the money received by the administrator pursuant to subsection (3)(f) is insufficient to pay the costs incurred in the operation and maintenance of the cemetery, mausoleum or columbarium and for the administrator's remuneration and expenses, the President of Treasury Board and Minister of Finance shall, on the requisition of the Minister from time to time advance money to the administrator for the purposes of enabling the administrator to meet obligations as they become due, in such amounts as the Minister directs but on such terms as to repayment and interest as the President of Treasury Board and Minister of Finance may direct.

- (6) Money advanced to the administrator pursuant to subsection (5)
- (a) may be paid from the General Revenue Fund in the event that no money or insufficient money was voted by the Legislature for that purpose, and
  - (b) constitutes a debt owing by the cemetery company to the Crown in right of Alberta.
- (7) When the appointment of an administrator is terminated,
- (a) the administrator shall give up to the owner the possession of the cemetery, mausoleum or columbarium and the records and accounts pertaining to it and to the perpetual care funds and any pre-need assurance fund;
  - (b) the administrator shall make an accounting of the administrator's administration to the Minister and to the owner in accordance with the regulations.

RSA 2000 cC-3 s66;2006 c23 s17;2013 c10 s32

#### **Rescission of sales contract**

**67(1)** A person may without any reason cancel

- (a) a pre-need contract that the person has entered into for the purpose of purchasing cemetery supplies or cemetery services, or both, or
- (b) a contract that the person has entered into for the purpose of purchasing or leasing a lot, plot, compartment, crypt or other space in an existing or proposed cemetery, columbarium or mausoleum for future use by any person,

by giving a notice of cancellation in accordance with this section within the period specified in the regulations.

(2) A notice of cancellation under this section is sufficient if, however expressed, it indicates the intention to cancel, terminate or withdraw from the contract.

(3) A notice of cancellation under this section may be given by delivering it or sending it by mail

- (a) to the owner of the cemetery, columbarium or mausoleum or seller at the address shown in the contract, or
- (b) if no address is shown in the contract,
  - (i) to any salesperson acting on behalf of the owner of the cemetery, columbarium or mausoleum or seller,

- (ii) to any address of the owner of the cemetery, columbarium or mausoleum or seller known to the purchaser or lessee, or
- (iii) to the Minister at Edmonton.

**(4)** For the purposes of this section, a notice of cancellation sent by mail is deemed to be given at the time it is mailed.

RSA 1980 cC-2 s63;1983 c37 s9;1996 c29 s2;1998 c10 s1(28);  
1999 c26 s2

#### **Effect of cancellation of contract**

**68(1)** A notice of cancellation given in accordance with section 67 operates to cancel the contract as if the contract never existed.

**(2)** A notice of cancellation given in accordance with section 67 also operates to cancel

- (a) any related transaction,
- (b) any guarantee given in respect of money payable under the contract, and
- (c) any security given by the cancelling party or guarantor in respect of money paid under the contract, as if the contract never existed.

RSA 1980 cC-2 s64

#### **Refund**

**69** The owner of the cemetery, columbarium or mausoleum or seller shall, within 15 days after the giving of the notice of cancellation in accordance with section 67, refund to the party cancelling the contract all money paid under the contract and any related transaction.

RSA 1980 cC-2 s65;1998 c10 s1(29)

#### **Contracts entered into through direct contact**

**70(1)** In this section and in section 71, “cemetery supplies” includes the sale, lease or rental of a lot, plot, compartment, crypt or other space in a cemetery, columbarium or mausoleum or in a proposed cemetery, columbarium or mausoleum.

**(2)** No person shall, by telephoning or appearing in person at the home of an individual,

- (a) enter into a contract with that individual for the provision of cemetery services or cemetery supplies or both,



- (b) offer to enter into a contract with that individual for the provision of cemetery services or cemetery supplies or both,
- (c) offer to make an appointment for the purpose of entering into a contract with that individual for the provision of cemetery services or cemetery supplies, or both, or
- (d) solicit in any other way the entering into of a contract with that individual for the provision of cemetery services or cemetery supplies or both.

**(3)** Subsection (2) does not apply to any presentation relating to the provision of cemetery services or cemetery supplies, or both, made at an individual's home where the individual has requested the presentation.

**(4)** A person may solicit an individual to enter into a contract for the provision of cemetery services or cemetery supplies, or both, by any means not prohibited by subsection (2), including solicitation by mail, advertising in the media or Internet communication.

**(5)** This section applies to any person who represents or advertises for the purpose of selling a contract of life insurance under the *Insurance Act* that the proceeds of that insurance

- (a) will pay in whole or in part for specified cemetery services or cemetery supplies, or both, or
- (b) will be paid by assignment to a seller or an owner of a cemetery, columbarium or mausoleum as beneficiary.

**(6)** This section does not apply to any person who is licensed under the *Fair Trading Act* to sell grave stones, grave markers, monuments or bases except when the person sells them under a pre-need contract.

1998 c10 s1(30)

#### **Unfair practices**

**71(1)** It is an unfair practice for any person before, after or while dealing with an individual in relation to a contract for the provision of cemetery services or cemetery supplies or both,

- (a) to exert undue pressure or influence on the individual to enter into the contract,
- (b) to take advantage of the individual as a result of the individual's inability to understand the character, nature, language or effect of the contract or any matter related to the contract,

- (c) to enter into the contract if the salesperson knows or ought to know that there is no reasonable probability that the individual is able to pay the full price for the cemetery services or cemetery supplies, or both, listed in the contract,
- (d) to represent that the cemetery services or cemetery supplies, or both, provided for in the contract are required by law or under the bylaws of a cemetery, mausoleum, columbarium or crematorium when that is not the case, or
- (e) to carry out any activity that is designated in the regulations as an unfair practice.

(2) No person shall commit an unfair practice.

(3) An unfair practice may occur even if no contract for the provision of cemetery services or cemetery supplies is entered into or concluded.

1998 c10 s1(30)

#### **Void contracts**

**72** Any term of a contract entered into on or after June 1, 1996 for the sale, lease or rent of an existing or proposed lot, plot, compartment, crypt or other space in a cemetery, columbarium or mausoleum that

- (a) misrepresents the obligations or liabilities of the parties to the contract,
- (b) is misleading as to its true nature or purpose, or
- (c) contravenes this Act or the regulations

is void and severable from the contract.

1998 c10 s1(30)

#### **Validity of sale**

**73** A contract under this Act is void unless

- (a) it is signed by the purchaser or lessee,
- (b) it states the name of the salesperson and the name of any owner for whom the salesperson is acting,
- (c) it contains a notice in the prescribed form and the notice is at least as prominent as the contents of the contract, and

- (d) a copy of the contract is received by the purchaser or lessee, by personal delivery or by mail, within 7 days after the day the contract was signed by the purchaser or lessee.  
RSA 1980 cC-2 s66;1998 c10 s1(31)

**Consent to transfer of cemetery**

**74(1)** Land used for a cemetery, columbarium or mausoleum shall not be sold, transferred, mortgaged, pledged, hypothecated, charged or encumbered by the owner or any person having an interest in it, except with the consent of the Director and in accordance with any conditions imposed by the Director.

**(2)** A sale, transfer, mortgage, pledge, hypothecation, charge or encumbrance made in contravention of subsection (1) and after April 15, 1974 is void.

RSA 1980 cC-2 s67;RSA 1980 c3(Supp) s4;1998 c10 s1(32)

**Penalty for fouling water supply**

**75(1)** The owner of a cemetery who at any time causes or suffers to be brought to, or to flow into, any river, spring, well, stream, canal, reservoir, aqueduct, lake, pond or watering place, any offensive matter from the cemetery whereby the river, spring, well, stream, canal, reservoir, aqueduct, lake, pond or watering place is fouled is guilty of an offence.

**(2)** In addition to the penalty provided by this Act and in addition to any other remedy existing by law, a person having the right to use the water may sue the owner of the cemetery for any damage specially sustained by the person by reason of the water being fouled.

**(3)** If in the action no special damage is alleged or proved, the Court shall award a sum not exceeding \$250 for every day during which the fouling has continued after the expiration of 24 hours from the time when a notice of the fouling was served, by the person mentioned in subsection (2), on the owner of the cemetery.

RSA 1980 cC-2 s68;1998 c10 s1(34)

**Penalties for offences**

**76** A person who

- (a) wilfully destroys, mutilates, defaces, injures or removes a tomb, monument, grave stone or other structure placed in a cemetery, or a fence, railing or other work for protection or ornament of a cemetery or of a tomb, monument, grave stone or other structure or a cemetery lot within a cemetery,

- (b) wilfully destroys, cuts, breaks or injures any tree, shrub or plant in a cemetery,
- (c) discharges firearms in a cemetery, except at a military funeral,
- (d) wilfully and unlawfully disturbs persons assembled for the purpose of burying a body in a cemetery, or
- (e) commits a nuisance in a cemetery,

is guilty of an offence.

RSA 1980 cC-2 s69;1998 c10 s1(35)

### Offence

**77(1)** A person who contravenes a provision of this Act for which no express penalty is provided or a provision of a regulation made under this Act is guilty of an offence and liable to a fine of not less than \$500 and not more than

- (a) \$100 000, or
- (b) an amount equal to 3 times the amount obtained by the person as a result of the offence,

whichever is greater, or to imprisonment for not more than 2 years or to both a fine and imprisonment.

**(2)** Each day that a contravention continues constitutes a separate offence, but the total term of imprisonment that may be imposed on a person in respect of a continuing offence may not exceed 2 years.

**(3)** When a corporation commits an offence under this Act or the regulations, every principal, director, manager, employee or agent of the corporation who authorized the act or omission that constitutes the offence or assented to or acquiesced or participated in the act or omission that constitutes the offence is guilty of the offence whether or not the corporation has been prosecuted for the offence.

**(4)** If a partner in a partnership is convicted of an offence under this Act or the regulations, each partner in that partnership who authorized the act or omission that constitutes the offence or assented to or acquiesced or participated in the act or omission that constitutes the offence is guilty of the offence.

RSA 1980 cC-2 s70;1998 c10 s1(36)

**Time limit for prosecution**

**78** A prosecution of an offence under this Act or the regulations may not be commenced more than 3 years after the commission of the offence.

1998 c10 s1(36)







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