



**Division of
Cemeteries**

Towns and Regulated Cemeteries: Preventing Abandonment

A Division of New York Department of State

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What is the Division of Cemeteries?

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What is the Division of Cemeteries?

- Created in 1949 to combat multiple issues facing cemeteries
- Not for Profit Corporation Law Article 15 governs public, not-for-profit cemeteries
- NPCL Section 1501: “The people of this state have a vital interest in the establishment, maintenance and preservation of public burial grounds and the proper operation of the corporations which own and manage the same. This article is determined an exercise of the police powers of this state to protect the well-being of our citizens, to promote the public welfare and to prevent cemeteries from falling into disrepair and dilapidation and becoming a burden upon the community, and in furtherance of the public policy of this state that cemeteries shall be conducted on a non-profit basis for the mutual benefit of plot owners therein.”

What does the Division do for regulated cemeteries?

- The Division regulates approximately 1,700 public, not-for-profit cemeteries and crematories
- Regulated cemeteries are membership-type not-for-profit corporations. Purchasers of lots and their descendants are the members, and they elect directors
- Both accountants and investigators work with cemeteries to provide guidance
- Investigators conduct field inspections, while accountants audit financial records
- The Division also works with lot owners to try to resolve complaints

What does the Division mean by “abandoned?”

- Abandonment is a LAST RESORT for the Division...after all, part of our mission is to prevent it.
- Abandoned does not mean that no further burials or lot sales can occur, or that nobody maintains the cemetery

Why does my town have so many abandoned cemeteries?

- In 1847, the Legislature passed the Rural Cemetery Act, making it easy for people to start cemetery associations
- Like anything else, however, competition and changing demographics caused there to be more cemeteries than necessary

The Abandonment Process

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When is a cemetery in trouble?

- A cemetery association must have a minimum of three directors
- Cemeteries have a general fund for operating expenses, as well as a restricted Permanent Maintenance Fund

“We’re not interested anymore...we’re ready to give the cemetery to the State!”

- The State does NOT maintain cemeteries
- If a cemetery is indeed abandoned, it is the responsibility of the town exclusively, not the village, county, or state
- To reiterate, when we receive this call, we do not give up on the cemetery immediately

How Can Towns Prevent Abandonment?

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General Municipal Law Section 165-a

- General Municipal Law section 165-a came into effect in 2010
- § 165-a. Voluntary municipal assistance to public cemetery corporations: Any municipal corporation may appropriate and provide funding to a public cemetery corporation as defined in article fifteen of the not-for-profit corporation law. In lieu of or in addition to providing funding to a public cemetery corporation, any municipal corporation may provide goods and/or services to a public cemetery corporation as defined in article fifteen of the not-for-profit corporation law.
- Does NOT apply to religious or family cemeteries

General Municipal Law 165-a

- Most common request: money
- Under no circumstances may a cemetery invade the principal of its permanent maintenance fund
- Why can't cemeteries make enough money without help from the town?
 - Rate of cremation; lack of lot sales or interments; rising costs; lot prices that are too low
- The Division can assist in calculating the cemetery's shortfall to help the town determine what assistance is necessary

General Municipal Law 165-a

- Other requests include:
 - Assistance trimming or removing trees
 - Mowing
 - Equipment
 - Bookkeeping
 - Insurance

“Why should public taxpayers support a private cemetery?”

- Regulated cemeteries are open to the public and provide a public benefit
- It is less expensive and less of a hassle for the town to help support an existing cemetery association than bear sole responsibility for the cemetery (maintaining burial records, answering phone calls, mowing, etc.)

Special Lot Owners' Meetings

- If the cemetery lacks **three directors**, the Division tries to facilitate a special lot owners' meeting
- Before noticing this meeting, the Division will meet with cemetery officers and directors and local officials to explore alternative futures for the cemetery.
- The cemetery must advertise the special lot owners' meeting by publishing a legal notice once weekly for three weeks
- The cemetery should use alarming language in the notice – informing the public that without sufficient interest, the cemetery will become abandoned
- A Division staff member attends the meeting to explain what is required to run a cemetery and the process for abandonment is if a new board cannot be elected
- The Division and Town can work together to try to identify new board members

How the Division Can Help Your Town

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Abandonment

- If a successful special meeting cannot be held, the Division will draft a determination that the cemetery is abandoned. The New York State Cemetery Board must review the Division's findings. If it approves, the Cemetery is abandoned
- Once a cemetery is abandoned and the town assumes responsibility for maintenance, the Division no longer has jurisdiction over it and no longer serves in a regulatory role
- The Division can work with the town to provide a smooth transition from the cemetery association to the town, including recommending that the New York State Cemetery Board approve funds for a one-time cleanup
- Abandonment means that the cemetery lacks both a board (three directors) and sufficient unrestricted funds to operate

Abandonment Funds

- Regulated cemeteries pay into a trust fund for the repair of vandalism damage, which is also authorized for use to repair hazardous monuments and provide for the cleanup of abandoned cemeteries
- NPCL Section 1507(h)(4): “Authorization for payments by the fund for maintenance of an abandoned cemetery shall be made by the secretary of state only upon approval by the cemetery board of an application by a municipality or other solvent not-for-profit cemetery corporation for fair and reasonable expenses required to be made by the municipality or other solvent not-for-profit cemetery corporation for maintenance of an abandoned cemetery; provided, however, that the cemetery board shall not approve any such application unless the municipality or other solvent not-for-profit cemetery corporation acknowledges that the responsibility for restoration and future care, preservation, and maintenance of such cemetery has been assumed by the municipality or other solvent not-for-profit cemetery corporation”

What can funds be provided for?

- Repair of hazardous monuments and correction of other dangerous conditions that might exist
- Fencing
- Equipment to be used solely maintenance of the cemetery
- Repair of main roads
- Funds cannot be used for ongoing cemetery maintenance or improvements

How can we access abandonment funds?

- Contact the regional investigator with the Division
- Abandonment funds are for a “one-time cleanup,” so only one application is allowed per cemetery
- Application must be received within 5 years of abandonment

For more information call the Department of State, Division of Cemeteries

518-474-6226

What Do Abandoned Cemeteries Look Like?

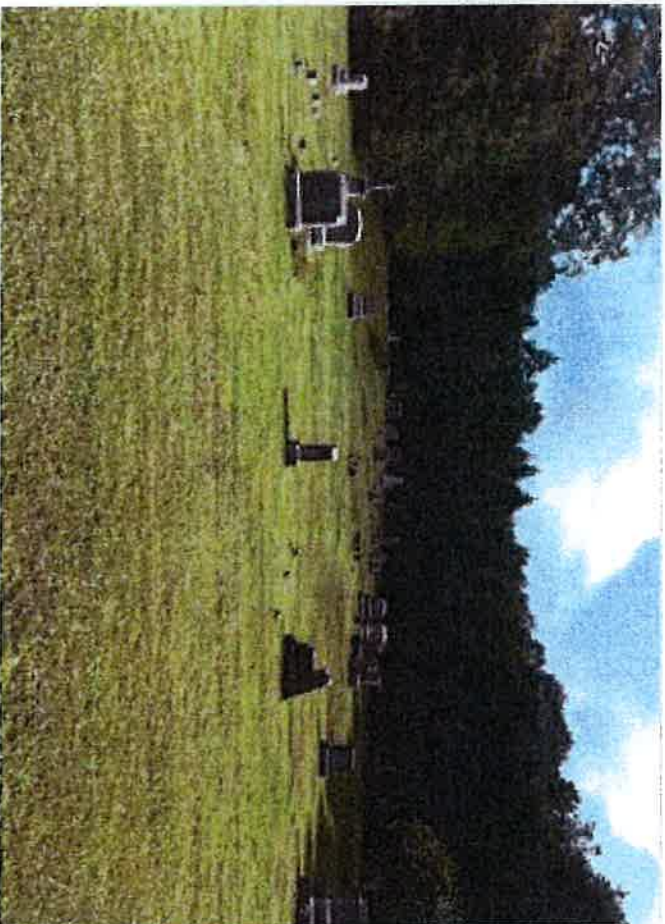
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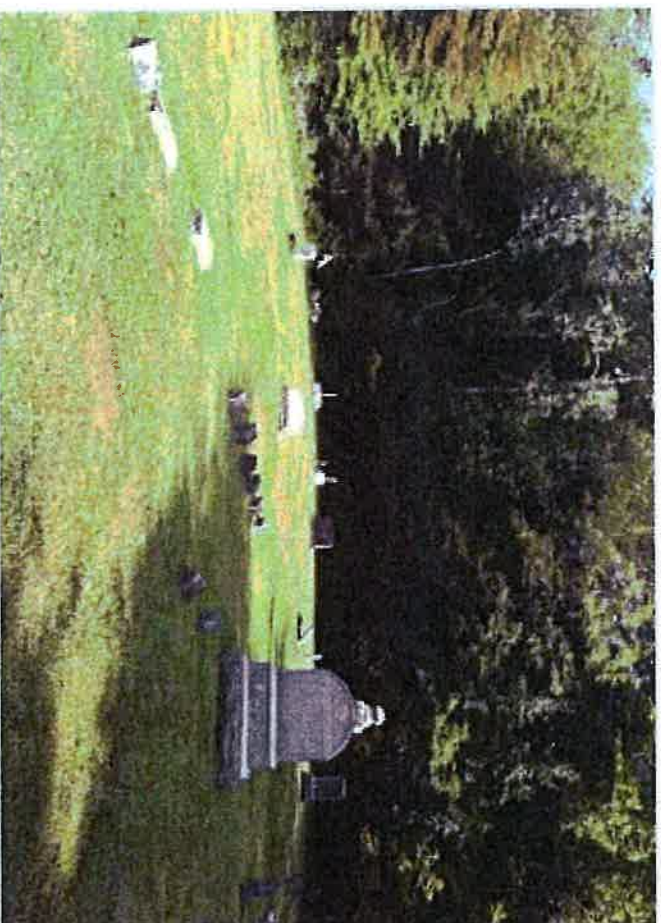
Cemetery A, Delaware County

(Abandoned 2016)



Cemetery A, Delaware County

(Abandoned 2016)



Cemetery B, Broome County

(Abandoned circa 1995)



Cemetery B, Broome County

(Abandoned circa 1995)



Cemetery B, Broome County

(Abandoned circa 1995)



Cemetery C, Broome County

(Abandoned 2006)



Cemetery C, Broome County

(Abandoned 2006)



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