

**New York State Laws in Regard to:
Cemeteries, Burial Grounds & Native American Sites**

as of 12/9/11

State Finance Law § 97-R

§ 97-r. State cemetery vandalism restoration, monument repair or removal and administration fund.

1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the state cemetery vandalism restoration, monument repair or removal and administration fund.
2. Such fund shall consist of all revenues received from the assessment pursuant to paragraph (h) of section fifteen hundred seven of the not-for-profit corporation law and all other moneys credited or transferred thereto from any other fund or source pursuant to law.
3. Moneys of the fund may be expended for the purposes provided in subparagraph three of paragraph (h) of section fifteen hundred seven of the not-for-profit corporation law according to the requirements of such paragraph (h). Moneys shall be paid out of the fund on the audit and warrant of the state comptroller on vouchers certified or approved by the secretary of state.
4. The fund shall be held within the business and licensing services account as established in section ninety-seven-y of this article.

Environmental Conservation Law § 15-1729

§ 15-1729. Eminent domain.

Real property may be acquired pursuant to title 17 of this article under an exercise of the right of eminent domain in the following cases:

8. Real property, on the application of a corporation organized for the production of heat, light or power, which is necessary for the full development of a water power site or sites, developed or about to be developed, and is used or occupied as **burial place or cemetery**, and real property necessary to locate and reinter any human remains removed there from. Proceedings shall be had for the taking of such real property and removal of such remains in the manner provided by section 15-2117, in so far as the provisions thereof are applicable thereto, but such exercise of the right of eminent domain shall be subject to the sound discretion of the court.

Environmental Conservation Law § 15-2117

§ 15-2117. Cemeteries.

1. Whenever for the purposes of title 21 of this article it shall be necessary to use any portion of any lands or premises now occupied by graves, burial places, cemeteries, or other places of interment of human remains, the board may acquire the same in the same manner as other real estate may be acquired by it. Provided, however, that if lands or premises so occupied and sought to be acquired are not within a cemetery under the actual control and management of a then existing religious or cemetery corporation, and proceedings shall have been instituted by the board for their acquisition under the eminent domain procedure law, the court, if satisfied at any stage of the proceedings, that the public interests will be prejudiced by delay, may, by order, direct that the board may enter immediately on such lands and premises, and, after the provisions of subdivisions 4 through 8 of this section and sections 304 and 404 of the eminent domain procedure law have been complied with, may devote the same to the public use specified in the petition, upon deposit with the court of a sum to be fixed by the court; but no such order shall be made except upon notice of the application therefor served and posted as hereinafter provided.
2. Such notice shall be served as follows: If any of the owners or their places of residence are unknown, notice addressed, generally, to all owners of and persons interested in the lands used for graves, burial places, cemetery purposes or places of interment within a certain lot, tract or parcel of land, to be described with sufficient certainty to identify it, shall be published in the time and manner prescribed by subdivisions 4 through 8 with respect to the notice therein provided for. Owners, if any, whose names and places of residence are known and who reside within the state, shall be served with such notice personally or by leaving the notice at the abode of the owner to be served, with a person of suitable age and discretion residing therein. Owners, if any, whose names and places of residence are known and who reside without the state, shall be served with such notice by mail, the notice to be deposited in a post office in the state, addressed to the owner to be served, and inclosed in a securely sealed postpaid wrapper. The notice also shall be posted conspicuously in ten places in each town in which the lands are located, at least twenty days before the time of making the application. If the notice be published, the time for making the application shall be not less than eight days nor more than sixteen days after the last publication, and in any case personal service, if any, or service by leaving at the owner's abode, shall be made at least eight days, and service by mail, if any, at least thirty days, before the time of making the application. If, in the condemnation proceeding, an attorney has been appointed by the court to represent defendants served with the original notice otherwise than personally, under the eminent domain procedure law, the notice also shall be served on him, at least eight days before the time of making the application.
3. The notice shall specify the relief sought and the time and place of making the application. The papers or proofs submitted to the court on the application shall include due proofs of the service and posting of the notice and proof, by affidavit, that the persons, if any, served personally or by leaving at their abodes or by mail constitute all of the owners of and persons interested in the lands so occupied whose names and places of residence are known, or, if none were so served, that all of the owners are unknown, and if certain owners were known but not their places of residence, and therefore were not served, personally or by mail, that fact and the names of such owners shall be stated. Such affidavit also shall set forth the extent of the inquiry to ascertain the names and places of residence of the owners. The provisions of the eminent domain procedure law, as to matter subsequent to the deposit of such moneys shall apply hereto, except that the general fund of the district shall be applicable to the payment of any deficiency judgment rendered pursuant to such section.
4. The board having so acquired title, or the right of immediate entry, shall cause to be published in two newspapers in the county where such burial place or places or graves are situated, which shall in its judgment be best calculated to notify the persons or parties interested or entitled to such notice, which notice shall describe the location of such burial place, cemetery or grave in such manner as to sufficiently identify the same. Such publication shall be made once in each week in each of the newspapers for the space of four weeks, and such notice shall also contain a statement to the effect that any person or persons legally entitled to direct as to the disposition of any such remains may remove the

same to any other cemetery or burial place within sixty days after the last publication of such notice, if they so elect, but without expense to the board therefor. From and after the period of sixty days from the last date of publication, the board shall advertise in the state paper and a newspaper published in the county or counties in which the cemetery or cemeteries are situated for bids for the removal of such remains by contract, and their proper reinterment as hereinafter provided.

5. All removals and transportation of such human remains shall be done in accordance with the provisions of the Public Health Law and the local rules or ordinances of any town, city or village wherein such cemetery, burial ground or graves shall be located or wherein any of such remains may be reinterred. The board may acquire such other lands as it deems necessary within the county or in an adjoining county where such burial place or places or graves are now located for the purpose of properly reintering such removed remains, which lands shall be acquired in the same manner as provided by title 21 of this article for the acquisition of other lands, title to be taken in the name of the particular river regulating district, but lands shall not be acquired within the corporate limits of a village or city except within the bounds of an existing cemetery unless by consent of the board of trustees of the village or common council of the city or other authorities within such village or city occupying similar positions as trustees or aldermen respectively.
6. The lands so acquired shall be suitable and properly fenced or inclosed, and in such manner as to permit of proper ingress and egress thereto before the final completion and payment for such work, and the expense therefor shall be included within the estimate and contract for such removal. All the bodies removed by such contractor, or by order of the board shall, when distinguishable, be incased each in a separate box or coffin, and each monument, headstone, footstone, slab, board or other designation or distinguishing mark shall be properly removed and reset at the grave of each body at the time of such reinterment. Members of the same family shall be interred in contiguous graves.
7. Whenever any person or persons legally entitled to direct as to the disposition of any remains now interred in such cemeteries, burying place or graves shall request the board, in writing, to reinter such remains in any other cemetery or burial plot, within the same county where such cemetery, burial place or graves sought to be removed are located or in an adjoining county, the board shall cause such remains to be interred where requested within the same county or in an adjoining county, and shall carefully and properly remove such remains to such burial plot and properly reinter the same, but no payment shall be made for a grave or graves or burial plot for such reinterment other than that acquired by the board as hereinbefore provided. Whenever any person or persons legally entitled to direct as to the disposition of any human remains exhumed or to be exhumed from any cemetery, burial place or graves as herein provided, desire to remove the same for reinterment to any burial plot or cemetery not within the same county from which such remains were exhumed or in an adjoining county as herein provided, such person or persons so entitled to designate such other burial place or plot shall be permitted to remove such exhumed remains from such county, subject to the written consent of the board and the provisions of the Public Health Law, and the local rules or ordinances of any town, city or village wherein such cemetery, burial ground or graves shall be located, or wherein such human remains may be reinterred, but no portion of the expense of such transportation or burial in another county other than an adjoining county shall be borne by the board. The board shall pay all expenses connected with such removal, out of the general fund of the district in the same manner as other payments are made.
8. Whenever any lands acquired by the board for the purposes of reinterment of human remains as herein provided, and all the remains so interred have been exhumed from a cemetery, burial place or grave belonging to a corporation organized under the Religious Corporations Law, the Membership Corporations Law, the Not-For-Profit Corporation Law, or by special act, or belonging to a town or board of trustees elected pursuant to the provisions of the Town Law, or to a village or city, the board shall by a proper resolution, after completion and acceptance thereof and final payment for all work performed as provided in this section, execute and deliver in the name of the district, and without expense to the grantee therefor, to the trustees or other governing body of such corporation, by whatsoever name or title they may hold office, or to the board of trustees of a town burial ground, or to a duly incorporated cemetery association, and to their successors in office, a quitclaim deed covering the lands so acquired, together with all structures erected thereon; and where such lands were so acquired

for the purposes of reinterment of human remains exhumed from a public or private cemetery, burial place or grave which shall have been used by the inhabitants of any town in this state as a cemetery or burial ground for the space of fourteen years and not having a board of trustees pursuant to the provisions of the Town Law, the board shall by proper resolution as provided by title 21 of this article, after completion and acceptance thereof, and final payment for all work as by this section provided, execute and deliver in the name of the board, and without expense to the grantee therefor, a quitclaim deed or other proper release to such town wherein such lands so acquired as provided by this section may be situated, and such cemetery or burial place shall from and after the execution and delivery thereof be deemed to be vested in such town, and shall be subject in the same manner as other corporate property of towns, to the government and direction of the electors in town meeting, excepting, however, that where such lands so acquired for the purposes set forth in this section are situate within the corporate limits of a village or city, such quitclaim deed or release herein provided for shall be executed and delivered to such village or city and thereafter be and become the property of such village or city and subject to the laws governing such village or city, and further excepting, however, that the board, subject to the approval of the town board, or city or village authorities herein referred to, shall have the right to convey such lands so acquired, together with all structures erected thereon, to a duly incorporated cemetery association. From and after the date of the execution and delivery by the board, as by this section provided, of the quitclaim deed or release, the board shall be deemed to be divested of all right and title to such lands so quit-claimed or released and shall not thereafter be liable for the care, custody, maintenance and control thereof. This section does not limit any existing rights of burial, or removal of remains under other provisions of law applicable thereto.

Environmental Conservation Law § 23-1303

§ 23-1303. Authority to acquire property.

1. Any corporation empowered to produce, transport, distribute or store gas within this state for ultimate public use, which holds an underground storage permit from the department or which is otherwise lawfully operating an underground storage reservoir and its buffer zone, and which after reasonable effort is unable to obtain rights in real property and wells thereon necessary for activation, operation, or protection of the storage reservoir and its buffer zone shall, subject to the applicable provisions of the eminent domain procedure law, have the authority to acquire such rights as may be required adequately to examine, prepare, maintain, operate and protect, and for access to such underground storage reservoir and its buffer zone; provided that no right of acquisition under this section shall extend to any lands or interests therein which have been acquired, or, in the hands of the present holder, could have been acquired by acquisition; and, provided further, that any acquisition of cemetery lands or burial grounds shall be in the sound discretion of the court and with due provision for the relocation of human remains.

General Municipal Law

Article 8 – CEMETERIES

160 - Acquisition of lands for cemetery purposes.

161 - Title may be acquired by condemnation.

162 - Conveyance by unincorporated cemetery association to city, town or village.

163 - Lot owners' rights.

164 - Abandonment of cemeteries in cities of less than one million.

165 - Maintenance and cleanup of abandoned cemeteries.

165-A - Voluntary municipal assistance to public cemetery corporations.

166 - Cemetery and funeral home combinations.

§ 160. Acquisition of lands for cemetery purposes. It shall be lawful for the common council of any city, or the trustees of any incorporated village in this state, although such cemetery is disconnected from and out of the limits of any city or village, to acquire by deed, devise or otherwise, such land as it may require for burial purposes and the proper ornamentation in connection therewith, or land for such purposes, in addition to such land as it may already hold, or is authorized to hold; and to hold, use and possess the same in like manner with the like rights, privileges and authority, and subject to the like duties and liabilities as apply to the other lands so held by said city or village.

The provisions of this section shall not apply to the counties of New York, Kings, Queens and Westchester.

§ 161. Title may be acquired by condemnation. If the said common council or board of trustees shall be unable to agree with the owner of such lands for the purchase thereof, the said common council or board of trustees may proceed to acquire the title thereto in the manner prescribed by the condemnation law. The amount paid for such lands, by such common council or board of trustees as aforesaid, and all the expenses attending the same, with the expenses of fencing and improving the same, shall be assessed and collected by a general tax upon all the taxable property of such city or village, in the same manner as other city or village taxes are assessed and collected.

§ 162. Conveyance by unincorporated cemetery association to city, town or village. An unincorporated cemetery association may convey and transfer its real property held for burial purposes, together with its other assets, to a city having a population of less than one million inhabitants in which such real property is located, or to a village, provided such real property is located within such village or wholly within three miles of the boundaries thereof, or to a town, in which such real property is located, if all the directors and trustees of such association living and residing in the state unite in the conveyance and transfer. Such conveyance and transfer shall be subject to all agreements as to lots sold and all trusts, restrictions and conditions upon the title or use of such real property and assets. Lots previously sold and grants previously made for burial purposes shall not be affected by such conveyance, nor shall any grave, monument or other erection or any monuments be disturbed or removed except in accordance with law. No such conveyance shall be effective unless and until the legislative body of such city, town or village shall by ordinance or local law or resolution accept the same subject to the conditions and restrictions hereinabove imposed, which ordinance or local law or resolution said legislative body is hereby authorized and empowered to adopt by a majority vote of such body. Upon such conveyance and transfer such property shall be and become a municipal cemetery of such city, town or village and such property and assets so conveyed and transferred shall be administered as any other municipal cemetery of such city, town or village and the said cemetery association shall be dissolved by the recording of such conveyance and transfer.

§ 163. Lot owners' rights. Lots in such cemeteries shall be held indivisible, and upon the decease of a proprietor of such lot the title thereto shall descend to his or her heirs-at-law or devisees, subject, however to the following limitations and conditions: If survived by a spouse and children, they shall have in common the possession, care and control of such lot during the life of the surviving spouse. If survived by a spouse and no

children, he or she shall have the possession, care and control of such lot during his or her life. If survived by children and no spouse, they, or the survivor of them, shall in common have the possession, care and control of such lot during the life of the survivor of them. The parties having such possession, care and control of such lot during the term thereof, may erect a monument and make other permanent improvements thereon. The surviving spouse shall have the right of interment for his or her body in such lot, or in a tomb in such lot, and a right to have his or her body remain permanently interred or entombed therein, except that such body may be removed therefrom to some other family lot or tomb with the consent of the heirs. At any time when more than one person is entitled to the possession, care or control of such lot, the persons so entitled thereto shall designate in writing to the clerk of the corporation which of their number shall represent the lot, and on their failure to designate, the board of trustees or directors or commissioners of the corporation or commission shall enter of record which of said parties shall represent the lot, while such failure continues. The surviving spouse may at any time release his or her right in such lot, but no conveyance or device by any other person shall deprive the surviving spouse of such right.

§ 164. Abandonment of cemeteries in cities of less than one million.

Upon a verified petition presented to a judge of a court of record by the common council of any city of less than one million, the judge to whom said verified petition was presented shall make an order to show cause, returnable before him at a time and place within the county in not less than twenty days from the date of presentation of said petition, why the remains of any deceased person buried in potters field, or in any neglected or abandoned cemeteries in which no deceased person shall have been interred within twenty years, should not be removed to and reinterred in a properly kept incorporated cemetery in the same city or in a town or city adjoining the city in which the remains of each deceased person or persons are buried, or in lands owned by said city for cemetery purposes, and to fix the amount of expenses for such removal and reinterment and the order to show cause shall provide for its publication in a newspaper, to be designated in the order, which is published nearest to the cemetery from which the removal is to be made, once in each week for two successive weeks. The verified petition presented to the judge shall show that the petitioner is the common council of the city in which said cemetery is located and (1) the name of the deceased person or persons whose remains are sought to be removed, if known; (2) the name and location of the cemetery in which he is interred and from which removal is asked to be made; (3) the name and the location of the incorporated cemetery to which the remains are desired to be removed and reinterred; (4) the facts showing the reasons for such removal. Upon the return day of the order to show cause and at the time and place fixed in said order, upon filing proof of publication of the order to show cause with the judge, if no objection is made thereto, he shall make an order directing the removal of the remains of said deceased person or persons to the cemetery designated in the petition within the city or within a town or city adjoining said city in which the remains are then buried and shall specify in the order the amount of the expenses of such removal, which expenses of removal and reinterment, including the expense of the proceeding under this section, shall be a charge upon the city in which the cemetery is situated from which the removal is made and such expenses shall be a city charge and audited and paid in the same manner as other charges. On or after the removal and reinterment of the remains of any deceased person or persons, the expenses for annual care of the grave in the cemetery to which the removal is made shall be annually provided by the city in which the remains were originally buried at a rate not to exceed fifty cents per grave, and shall be paid annually to the incorporated cemetery association to which the remains of each deceased person may be removed or reinterred unless said remains have been removed to lands owned by said city for cemetery purposes, in which case such payment shall be made under the provisions of the city ordinance providing for the care and upkeep of said cemetery lands owned by said city. Any city owning a lot or lots in a cemetery maintained by an incorporated cemetery association in which the remains of the deceased persons have been or may be buried pursuant to this section, however, may pay such association an amount sufficient to provide perpetual care therefor. The petition and order shall be filed in the county clerk's office of the county in which the remains of the deceased person were originally interred, and the service of a certified copy of the final order upon the cemetery association shall be made prior to any removal. Any relatives of the deceased person or the officer of any cemetery association in which the remains of deceased person were originally interred may oppose the granting of said order and the judge shall summarily hear the statement of the parties and make such order as the justice and equity of the application shall require. Any headstone or monument which marks the grave of the deceased person shall be removed and reset at the grave in the cemetery to which the removal is permitted to be made and in each case the final order shall provide the amount of expenses of such removals and reinterment and resetting of the headstones or monument, including the expenses for the proceedings under this section; except that where provision is otherwise made for the purchase or erection of a new headstone, monument or marker at the grave in

the cemetery to which said removal is permitted, such old headstone or monument need not be so removed and reset in which case the final order shall not provide for the expense of resetting. The order shall designate the person or persons having charge of the removals or reinterments. Upon completion of the removal, reinterment or resetting the headstones or monuments, the person or persons having charge of same shall make a verified report of the removal, reinterment, and resetting of the headstone or monument and file the report in the clerk's office of the proper county.

After said bodies shall have been removed and reinterred in the manner prescribed by said order, said lands in which such deceased persons were originally interred shall be available for and subject to such uses for city purposes as the common council of such city may determine and may be conveyed or otherwise disposed of in the same manner as other city lands.

§ 165. Maintenance and cleanup of abandoned cemeteries.

1. Any municipal corporation is hereby authorized and empowered to establish volunteer cemetery maintenance and cleanup programs to maintain and cleanup abandoned cemeteries wholly contained within such municipal corporation for which such municipal corporation has the primary responsibility to provide care.
2. The cemetery division of the department of state is hereby authorized and directed to assist any municipal corporation in the organization, implementation and administration of a volunteer cemetery maintenance and cleanup program at the request of such municipal corporation. The department of state is hereby authorized and directed to promulgate rules and regulations setting forth the manner and form of such assistance and request.
3. No municipal corporation which establishes a volunteer cemetery maintenance and cleanup program shall be liable for any damages sustained by any person participating and no cause of action for such damages shall be adjudicated by any court in this state which would otherwise have jurisdiction to adjudicate such claim.
4. Any municipal corporation which establishes a volunteer cemetery maintenance and cleanup program shall provide written notice of the provisions of subdivision three of this section to each person participating in such program.

§ 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.

§ 166. Cemetery and funeral home combinations.

1. No municipal corporation shall, directly or indirectly:
 - (a) sell, or have, enter into or perform a lease of any of its real property dedicated to cemetery purposes or adjacent thereto to a funeral entity, or use any of its property for location of a funeral entity;
 - (b) commingle funds used for cemetery purposes with a funeral entity;
 - (c) direct or carry on its cemetery related business or affairs with a funeral entity;
 - (d) authorize control of its cemetery related business or affairs by a funeral entity;
 - (e) engage in any sale or cross-marketing of goods or services with a funeral entity;
 - (f) have, enter into or perform a management or service contract for cemetery operations with a funeral entity; or
 - (g) have, enter into or perform a management contract with any entity other than a not-for-profit or religious corporation, or governmental entity.

2. Only the provisions of paragraphs (a) and (b) of subdivision one of this section shall apply to municipal 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 section, "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 any officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

TOWN LAW

Town Law § 291

§ 291. Burial grounds.

1. The title to every lot or piece of land which shall have been used by the inhabitants of any town in this state as a cemetery or burial ground for the space of fourteen years shall be deemed to be vested in such town, and shall be subject in the same manner as other corporate property of towns, to the government and direction of the town board. In any town the town board may adopt regulations for the proper care of any such cemetery and burial ground and regulating the burial of the dead therein. It shall be the duty of the town board to remove the grass and weeds from any such cemetery or burial ground in any such town at least three times in each year, and to erect and maintain suitable fences around such cemetery or burial ground. The town board of any town must also provide for the removal of grass and weeds at least twice in each year from any cemetery or burial ground, by whomsoever owned, in such town, where such control is not vested by other provisions of law in the town or in trustees or other corporate body, and provide for the preservation, care and fencing of any such cemetery and the town board of any town must also provide for the removal of grass and weeds from all cemeteries, other than private burial grounds, which are abandoned or not controlled by any existing board or body and for the care of which there exists no special fund or endowment and such duties shall be performed under the supervision of the town board, or a person whom the town board may designate; provided, however, that such duties shall not be exercised in respect to any private ground or particular lot or lots therein after the true owner or owners thereof file written objections thereto with the town clerk. The cost and expenses of any officer or person in performing any duties under or pursuant to the provisions of this section shall be a town charge, and the town board shall appropriate and provide annually the moneys necessary for carrying out the provisions of this section, and make the same available for the proper officer or persons by whom the moneys are required to be expended. The town board may also receive and execute any trust for the care of any cemetery which the town is required to care for pursuant to the provisions of this section and to receive and execute any trust for the care of lots in any such cemetery.
2. Burial grounds and cemeteries of which the title is vested in or the care or control is charged upon any town, by virtue of this section, shall not be taxed or assessed for any local improvement or other purpose whatsoever by any village, and no action shall be maintained against any town to recover the cost of any local improvement or municipal charge, based on town ownership or care of such burial grounds, the provisions of any special, local or general statute whatsoever to the contrary notwithstanding.
3. Upon the adoption of a resolution therefor, the town board may construct and maintain permanent improvements in any one or more of the classes of cemeteries described herein and may acquire, by purchase or condemnation, additional lands for cemetery or burial ground purposes, whenever in the judgment of the town board it is necessary or advisable that such improvements be made or additional lands be acquired. If the expenditure for such improvements or acquisition is in excess of one thousand five hundred dollars and is to be paid by taxes levied for the fiscal year in which such expenditure is to be made, or paid from the proceeds of town obligations, the adoption of any such resolution or resolutions shall be subject to a permissive referendum. The improvements so made or the lands so acquired shall be used only for the purposes authorized by this article but such cemeteries or burial grounds so improved or enlarged shall not be subject to conveyance or transfer pursuant to section two hundred ninety-two of this article. The expense of such improvements and/or the acquiring of such lands may be financed in the manner provided in article fifteen of this chapter for the financing of general improvements.
4. Notwithstanding any other provision of law, upon the adoption of a resolution therefor, the town board of the town of Southampton may transfer title to the cemetery vested in such town, located at the corner of Madison street and Latham street and bearing Suffolk county tax map identification number 473609-3-4-27, to the village of Sag Harbor, provided, however, that such transfer shall be made only upon the adoption of a resolution by the board of trustees of the village of Sag Harbor, requesting the town of Southampton to make such transfer.

Town Law § 292

§ 292. Transfer of burial grounds to cemetery corporation. Any town may convey and transfer its right, title and interest in any burial grounds within the limits of and belonging to the town, or belonging to the town and individual lot owners, to a cemetery corporation authorized to hold and maintain property within the town for cemetery purposes, organized or to be organized under the membership corporations law. The deed of conveyance shall be executed by the supervisor, after the town board shall have authorized such conveyance.

Town Law § 296

§ 296. Abandonment of cemeteries. Upon a verified petition presented to a judge of a court of record by any supervisor of any town in this state, the judge to whom said verified petition is presented shall make an order to show cause, returnable before him at a time and place within the county in not less than twenty days from the date of presentation of said petition, why the remains of any deceased person buried in potter's field, or in any neglected or abandoned cemeteries in which no deceased person shall have been interred within twenty years, should not be removed to and reinterred in a properly kept incorporated cemetery in the same town or in a town or city adjoining the town in which the remains of each deceased person or persons are buried, and to fix the amount of expenses for such removal and reinterment, and the order to show cause shall provide for its publication in a newspaper, to be designated in the order, which is published nearest to the cemetery from which the removal is to be made, once in each week for two successive weeks. The verified petition presented to the judge shall show that the petitioner is a supervisor of the town in which said cemetery is located and (1) the name of the deceased person or persons whose remains are sought to be removed, if known; (2) the name and location of the cemetery in which he is interred and from which removal is asked to be made; (3) the name and location of the incorporated cemetery to which the remains are desired to be removed and reinterred; (4) the facts showing the reasons for such removal. Upon the return day of the order to show cause and at the time and place fixed in said order, upon filing proof of publication of the order to show cause with the judge, if no objection is made thereto, he shall make an order directing the removal of the remains of said deceased person or persons to the cemetery designated in the petition within the town or city or within a town adjoining the town or city in which the remains are then buried and shall specify in the order the amount of the expenses of such removal, which expenses of removal and reinterment, including the expense of the proceeding under this section, shall be a charge upon the town in which the cemetery is situated from which the removal is made and such expenses shall be a town charge and audited by the town board and paid in the same manner as other town charges. On and after the removal and reinterment of the remains of any deceased person or persons, the expenses for annual care of the grave in the cemetery to which the removal is made shall be annually provided by the town in which the remains were originally buried at a rate not to exceed twenty dollars per grave, and shall be paid annually to the incorporated cemetery association to which the remains of each deceased person may be removed or reinterred. Any town owning a lot or lots in a cemetery maintained by an incorporated cemetery association in which the remains of deceased persons have been or may be buried pursuant to this section, however, may pay such association an amount sufficient to provide perpetual care therefor. The petition and order shall be filed in the county clerk's office of the county in which the remains of the deceased person were originally interred, and the service of a certified copy of the final order upon the cemetery association shall be made prior to any removal. Any relative of the deceased person or the officer of any cemetery association in which the remains of the deceased person were originally interred may oppose the granting of said order and the judge shall summarily hear the statement of the parties and make such order as the justice and equity of the application shall require. Any headstone or monument which marks the grave of the deceased person shall be removed and reset at the grave in the cemetery in which the removal is permitted to be made and in each case the final order shall provide the amount of the expenses of such removals and reinterment and resetting of the headstone or monument, including the expenses of the proceedings under this section; except that where provision is otherwise made for the purchase or erection of a new headstone, monument or marker at the grave in the cemetery to which such removal is permitted, such old headstone or monument need not be so removed and reset, in which case such final order shall not provide for the expense of resetting. The order shall designate the person or persons having charge of the removals and reinterments. Upon completion of the removal, reinterment and resetting of the headstones or monuments, the person or persons having charge of the same shall make a verified report of the

removal, reinterment and resetting of the headstone or monument and file the report in the clerk's office of the proper county.

After said bodies shall have been removed and reinterred in the manner prescribed by said order, said lands in which such deceased persons were originally interred shall be available for and subject to such uses for town purposes as the town board of such town may determine and may be conveyed or otherwise disposed of in the same manner as other town lands.

COUNTY LAW

Article 5 - GENERAL POWERS OF BOARD OF SUPERVISORS

County Law § 222

§ 222. Cemeteries.

1. The board of supervisors may acquire by condemnation, purchase, gift or devise burial plots outside a city or village within the county, for the burial of indigent persons. Such burial plots shall be under the general care and supervision of the county commissioner of public welfare.
2. a. The board of supervisors or county legislature may, by the affirmative vote of two-thirds of the total membership of the board, acquire by condemnation, purchase, gift or devise lands outside a city or village within the county and establish and maintain a county cemetery for the burial of members of the armed forces of the United States. Remains of the members of the armed forces of the United States, heretofore or hereafter dying may be interred in such county cemetery or may be removed from other cemeteries or burial plots and be interred in such county cemetery as authorized by law. The county cemetery shall be under the general care and supervision of such officer or employee of the county or other person as the board of supervisors may direct.

b. Any member of the armed forces of the United States, who was a resident of Rockland county at the time of his induction into the armed forces of the United States, killed in action may be buried in such county cemetery, entirely at county expense, at the option of the next of kin. The board of supervisors or county legislature may adopt rules or regulations governing the cost, procedure for interment and rights of the next of kin.
3. Any such county cemetery or burial plot may be designated by name and adequate maintenance, perpetual care, ornamentation and markers provided. The board of supervisors may adopt rules governing interments and the rights of distributees, not inconsistent with law.
4. A portion or block of lots may be purchased in an existing incorporated cemetery association within the county for such purposes and title shall be taken in the name of the county. Subject to such conditions and restrictions as may be imposed by the incorporated cemetery association, adequate maintenance, perpetual care, ornamentation and markers may be provided.
5. Burial plots for the indigent shall be kept separate and apart from plots for the burial of members of the armed forces of the United States; and no member of the armed forces shall be interred in the same part of the cemetery as indigents.
- 5-a. The board of supervisors of any county may, by the affirmative vote of two-thirds of the total membership of the board, provide for the perpetual care, upkeep and maintenance of any cemetery located within the county if such cemetery is abandoned or not controlled by an existing board or body and for the care of which there exists no special fund or endowment and the expense thereof may be appropriated from funds in the county treasury not otherwise appropriated. The board of supervisors may also provide that any such cemetery shall be under the general care and supervision of such officer or employee of the county as the board of supervisors may direct.
6. Nothing herein shall be deemed to affect, impair or supersede any other general or special law authorizing a county to establish and maintain cemeteries.
7. (a) No county shall, directly or indirectly:
 - (i) sell, or have, enter into or perform a lease of any of its real property dedicated to cemetery purposes or adjacent thereto to a funeral entity, or use any of its property for location of a funeral entity;

- (ii) commingle funds used for cemetery purposes with a funeral entity;
 - (iii) direct or carry on its cemetery related business or affairs with a funeral entity;
 - (iv) authorize control of its cemetery related 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 or religious corporation, or governmental entity.
- (b) Only the provisions of subparagraphs (i) and (ii) of paragraph (a) of this subdivision shall apply to counties 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.
- (c) For the purposes of this subdivision, "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 any officer, director or stockholder having a ten per centum or greater proprietary, beneficial, equitable or credit interest in a funeral home.

Article 13 - COUNTY TREASURER

§ 553. Trustee of cemetery lots. Any person, persons or corporation owning or interested in a lot or lots in any cemetery in this state may create a trust in perpetuity for the maintenance of such cemetery lot or lots, the preservation of a building, structure, fence or walk in such cemetery, the renewal or preservation of a tomb, monument, stone, fence, railing or other erection or structure on or around any of such lots, or the planting or cultivation of trees, shrubs, flowers or plants in or about the same, or for any of such purposes, by transferring, conveying, devising or bequeathing to the county treasurer of the county in which such cemetery is located, real or personal property, and designating such county treasurer as trustee in the instrument creating such trust. Such instrument may direct that the income derived from such property shall be applied to one or more of the purposes specified in this section. A county treasurer designated as trustee pursuant to this section must accept the property so transferred and, within five days after the receipt thereof, shall give notice by registered mail to the cemetery association or cemetery corporation or other entity owning the cemetery that such property has been received pursuant to this section for the purposes provided for in the instrument creating the trust and such treasurer shall cause the same to be invested in accordance with the terms of the trust, if any are prescribed, and otherwise shall invest and re-invest such property in securities in which savings banks are authorized to invest. The income derived from such property shall be collected by the county treasurer who shall be entitled to receive and deduct five per centum of such income for administering the trust. The balance of such income shall be paid by the county treasurer to the cemetery association or cemetery corporation or other entity owning the cemetery, and such cemetery association or cemetery corporation or other entity shall accept the same and apply the money so received, so far as the same may be applicable, in furtherance of the purpose for which such trust was created. In case the cemetery association or cemetery corporation should become extinct, then it shall be the duty of the supervisor of the town in which the cemetery is located, or the mayor of the village or city, if it is located in a village or city, respectively, to receive the income from such trust and expend it for the purposes provided for in the instrument creating the trust.

Village Law

Village Law § 15-1508

§ 15-1508 Abandonment of cemeteries.

- a. Petition for removal of remains. The mayor of any village may submit a verified petition to a judge of a court of record seeking an order directing the removal of the remains of any deceased person or persons buried in a potter's field or any neglected or abandoned cemetery owned by the village in which no deceased person shall have been interred within twenty years, and directing their reinterment in a properly kept cemetery in the same county.
- b. Contents of petition. The verified petition shall contain the following:
 - (1) Name of petitioner and a statement that petitioner is the mayor of the village in which the cemetery is located;
 - (2) Name of deceased person or persons whose remains are sought to be removed, if known;
 - (3) Name and location of cemetery in which interred and from which removal is asked to be made;
 - (4) Name and location of cemetery to which remains are desired to be removed and reinterred; and
 - (5) Facts showing reasons for such removal.
- c. Order to show cause. The judge to whom such a petition is presented shall make an order to show cause, returnable before such judge at a time and place within the county not less than twenty days from the date of presentation, why the remains should not be removed and reinterred as provided in the petition.
- d. Publication. The order to show cause shall provide for its publication in each week for two successive weeks in a newspaper, to be designated in the order, which is published nearest to the cemetery from which removal is to be made. Proof of publication shall be filed with the court.
- e. Hearing. Any relative of the deceased person or persons or the officer of any cemetery in which the remains of the deceased person or persons were originally interred may oppose the granting of such an order.
- f. Order.
 - (1) If no objection is made, and upon the filing of proof of publication of the order to show cause, the judge shall make an order directing at village expense the removal of the remains of the deceased person or persons to the cemetery designated in the petition in which the remains are to be buried.
 - (2) If an objection is made, the judge shall make such order as the justice and equity of the application shall require.
 - (3) The petition and order shall be filed in the office of the clerk of the county in which the remains of the deceased were originally interred, and a certified copy of the final order shall be served upon the cemetery to which the remains are to be removed prior to any removal.
- g. Removal and resetting of headstone or monument. Any headstone or monument which marks the grave of the deceased person or persons shall be removed and reset at the grave in the cemetery in which the removal is permitted to be made. Such headstone or monument need not be so removed and reset where the order provides for the purchase or erection of a new headstone or monument.
- h. Expenses. The order shall provide the amount of expense of all removals and reinterment and resetting of the headstone or monument, including the expenses of proceedings under this section. All expenses shall be paid by the village whose mayor made the petition.
- i. Care of reinterred remains. The expense for annual care of the grave in the cemetery to which the removal is made shall be annually provided by the village whose mayor made the petition and shall be paid annually to

the cemetery to which the remains were reinterred. Alternatively, the village may pay the cemetery to which the remains were removed an amount sufficient to provide perpetual care.

j. Report. Upon completion of the removal, reinterment and resetting of the headstone or monuments, the person or persons designated in the order as having charge of the removals and reinterments shall file a report in the office of the county clerk.

k. Use of lands. After remains have been removed and reinterred pursuant to this section, the lands where originally interred may be used for any village purposes and may be conveyed or disposed of in the same manner as other village lands.

INDIAN LAW

Article 2 - General Provisions

§ 12-a. Indian cemetery or burial grounds. The office of parks and recreation shall have the power to designate any Indian cemetery or burial ground as a place of historic interest pursuant to subdivision one of section 3.09 of the parks and recreation law provided, however, that such cemetery or burial ground is not located upon any Indian reservation located wholly or partly within the state. No person shall destroy, alter, convert, or in any way impair any such cemetery or burial ground which has been so designated as a place of historic interest or any artifact or other object thereon which is or may be of relevance to the historic interest thereof without the prior express written permission of the office of parks and recreation.

The attorney general, at the request of the office of parks and recreation, is hereby authorized to institute an action in supreme court in the judicial district wherein such cemetery or burial ground is located to enjoin violations or threatened violations of this section.

Religious Corporations Law § 9

§ 9. Removal of human remains from one cemetery of a religious corporation to another cemetery owned by it.

A religious corporation, notwithstanding the restrictions contained in any conveyance or devise to it, may remove the human remains buried in a cemetery owned by it, or when such church corporation is situated within or outside of a city in the grounds surrounding the church belonging to such corporation, to another cemetery owned by it, or to a plot or lot acquired by it in any other cemetery located in the same county, or in any town adjoining the town or city in which the cemetery wherein such human remains are buried is located, if the trustees thereof so determine, and if either three-fourths of the members of such corporation, qualified to vote at its corporate meetings, sign and acknowledge and cause to be recorded in the office of the clerk of the county in which such cemetery or a part thereof is situated, a written consent thereto, or if approval thereof be given by the vote of three-fourths of those members of such corporation qualified to vote, who shall be present and vote thereon, at a corporate meeting of such corporation, specially called for that purpose, a quorum of at least eight qualified voters being present. Provided, however, that in lieu of such removal by such religious corporation it shall be lawful for the surviving spouse or any heir of any decedent, upon obtaining permission of the county court of the county, or of the supreme court in the district, where the cemetery from which the removal is proposed, is situated, at his own expense to cause the removal of such remains and tombstones, monuments or other erections and the reinterment of such remains and the replacement of such tombstones, monuments or other erections in some other cemetery selected by the applicant, the notice of which application for permission to be given in the manner and to those designated by the court. But if such corporation be a church, previous notice of the object of such meeting shall be published once each week for at least four successive weeks in a newspaper of the town, village or city in which the cemetery from which the removal is proposed, is situated, or if no newspaper is published therein, then in a newspaper designated by the county judge of such county. Such removal shall be made in an appropriate manner and in accordance with such directions as to the manner thereof, as may be given by the board of health of the town, village or city in which the cemetery from which the removal is made, is situated. All tombstones, monuments or other erections at or upon any grave from which any remains are removed, shall be properly replaced or raised at the grave where the remains are reinterred. Such religious corporation may, in its discretion, erect one or more tombstones, monuments or other suitable markers appropriately inscribed as a memorial for all those decedents whose remains shall not be found for removal or reinterment, but the said religious corporation shall make a certificate setting forth an exact copy of all inscriptions on each tombstone, monument, or other erection which shall not be replaced or raised because of failure to find remains for removal and reinterment, and shall file the same in the cemetery office or in the office of the town or city clerk of the town or city in which the cemetery from which removal is proposed, is situated; all tombstones, monuments or other erections not so replaced or raised shall be disposed of by such religious corporation as it shall determine and such certificate, in addition to such inscriptions, shall state the disposition so made.

Religious Corporations Law § 12

§ 12. Sale, mortgage and lease of real property of religious corporations.

1. A religious corporation shall not sell, mortgage or lease for a term exceeding five years any of its real property without applying for and obtaining leave of the court therefor pursuant to section five hundred eleven of the not-for-profit corporation law as that section is modified by paragraph (d-1) of subsection one of section two-b of this chapter, except that a religious corporation may execute a purchase money mortgage or a purchase money security agreement creating a security interest in personal property purchased by it without obtaining leave of the court therefor.
2. The trustees of an incorporated Protestant Episcopal church shall not vote upon any resolution or proposition for the sale, mortgage or lease of its real property, unless the rector of such church, if it then has a rector, shall be present, and shall not make application to the court for leave to sell or mortgage any of its real property without the consent of the bishop and standing committee of the diocese to which such church belongs, or execute and deliver a lease of any of its real property for a term exceeding five years without similar consent of the bishop and standing committee of the diocese to which such church belongs; but in case the see be vacant, or the

bishop be absent or unable to act, the consent of the standing committee with their certificate of the vacancy of the see or of the absence or disability of the bishop shall suffice.

3. The trustees of an incorporated Roman Catholic church shall not make application to the court for leave to mortgage, lease or sell any of its real property without the consent of the archbishop or bishop of the diocese to which such church belongs or in case of their absence or inability to act, without the consent of the vicar-general or administrator of such diocese.

4. The trustees of an incorporated Ruthenian Catholic church of the Greek rite shall not make application to the court for leave to mortgage, lease or sell any of its real property without the consent in writing of the Ruthenian Greek Catholic bishop of the diocese to which such church belongs, or, in case of his absence or inability to act, without the consent of the vicar-general of such bishop or of the administrator of such diocese.

5. The trustees of an incorporated African Methodist Episcopal Zion church shall not make application to the court for leave to mortgage, lease or sell any of its real property without the consent of the bishop of the diocese to which said church belongs, or in case of his absence or inability to act, without the consent of the annual conference having jurisdiction over such church.

5-a. The trustees of an incorporated Presbyterian church in connection with the General Assembly of the Presbyterian Church (U.S.A.) shall not make application to the court for leave to mortgage, lease or sell any of its real property without the consent in writing of the particular Presbytery with which said church is connected.

5-b. The trustees of an incorporated United Methodist church shall not make application to the court for leave to mortgage, lease, or sell any of its real property without the written consents of the district superintendent and the preacher in charge and the authorization of the charge conference by a majority of those present and voting at a meeting of the charge conference, provided that not less than ten days' notice of such meeting and proposed action shall have been given from the pulpit of the charge, or, if no regular services are held, by mail to the members of the charge conference.

5-c. The trustees of an incorporated Reformed Church in connection with the General Synod of the Reformed Church in America, shall not make application to the court for leave to mortgage, lease or sell any of its real property without the consent in writing of the trustees of the Classis with which said church is connected.

6. The petition of the trustees of an incorporated Protestant Episcopal church or Roman Catholic church shall, in addition to the matters required by article five of the not-for-profit corporation law to be set forth therein, set forth that this section has also been complied with. The petition of the trustees of an incorporated African Methodist Episcopal Zion church shall in addition to the matters required by article five of the not-for-profit corporation law to be set forth therein, set forth that this section has also been complied with. The petition of the trustees of an incorporated Presbyterian church in connection with the General Assembly of the Presbyterian Church (U.S.A.), shall, in addition to the matters required by article five of the not-for-profit corporation law to be set forth therein, set forth that this section has also been complied with. The petition of the trustees of an incorporated United Methodist church shall, in addition to the matters required by article five of the not-for-profit corporation law to be set forth therein, set forth that this section has also been complied with.

7. Lots, plots or burial permits in a cemetery owned by a religious corporation may, however, be sold, also all or part of such cemetery may be conveyed to a cemetery corporation, without applying for or obtaining leave of the court. No cemetery lands of a religious corporation shall be mortgaged while used for cemetery purposes.

8. Except as otherwise provided in this chapter in respect to a religious corporation of a specified denomination, any solvent religious corporation may, by order of the court, obtained as above provided in proceedings to sell, mortgage or lease real property, convey the whole or any part of its real property to another religious corporation, or to a membership, educational, municipal or other non-profit corporation, for a consideration of one dollar or other nominal consideration, and for the purpose of applying the provisions of article five of the general corporation law, a proposed conveyance for such consideration shall be treated as a sale, but it shall not be necessary to show, in the petition or otherwise, nor for the court to find that the pecuniary or proprietary interest

of the grantor corporation will be promoted thereby; and the interests of such grantor shall be deemed to be promoted if it appears that religious or charitable objects generally are conserved by such conveyance, provided, however, that such an order shall not be made if tending to impair the claim or remedy of any creditor.

9. If a sale, mortgage or lease for a term exceeding five years of any real property of any such religious corporation has been heretofore or shall be hereafter made and a conveyance or mortgage executed and delivered without the authority of a court of competent jurisdiction, obtained as required by law, or not in accordance with its directions, the court may, thereafter, upon the application of the corporation, or of the grantee or mortgagee in any such conveyance or mortgage or of any person claiming through or under any such grantee or mortgagee upon such notice to such corporation, or its successor, and such other person or persons as may be interested in such property, as the court may prescribe, confirm said previously executed conveyance or mortgage, and order and direct the execution and delivery of a confirmatory deed or mortgage, or the recording of such confirmatory order in the office where deeds and mortgages are recorded in the county in which the property is located; and upon compliance with the said order such original conveyance or mortgage shall be as valid and of the same force and effect as if it had been executed and delivered after due proceedings had in accordance with the statute and the direction of the court. But no confirmatory order may be granted unless the consents required in the first part of this section for a Protestant Episcopal, Roman Catholic, Presbyterian church or an incorporated African Methodist Episcopal Zion church or an incorporated United Methodist church have first been given by the prescribed authority thereof, either upon the original application or upon the application for the confirmatory order.

10. The provisions of this section shall not apply to real property heretofore or hereafter acquired on a sale in an action or proceeding for the foreclosure of a mortgage owned by a religious corporation or held by a trustee for or in behalf of a religious corporation or to real property heretofore or hereafter acquired by a religious corporation or held by a trustee for or in behalf of a religious corporation by deed in lieu of the foreclosure of a mortgage owned, either in whole or in part, whether in certificate form or otherwise, by a religious corporation.

Not-For-Profit Corporation Law

Article 14

§ 1401

§ 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 division of veterans' affairs. In the absence of the next of kin, the county clerk, county historian or the division of veterans' affairs 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 type B 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.

Not-For-Profit Corporation Law

Article 15 - PUBLIC CEMETERY CORPORATIONS

1501 - Declaration of policy.

1502 - Definitions.

1503 - Application.

1504 - Cemetery board and general administration.

1505 - Special requirements of incorporation.

1505-A - Additional requirements for incorporation of crematories.

1506 - Cemetery lands.

1506-A - Cemetery corporations; restrictions.

1506-B - Transfer of lands of Valley View Rural Cemetery.

1506-C - Abandoned cemetery maintenance by cemetery corporations.

1507 - Trust funds.

1507-A - State cemetery board citizens advisory council.

1508 - Reports by cemeteries.

1509 - Cemetery rules and regulations; charges and lot tax assessments.

1510 - Cemetery duties.

1510-A - Repair or removal of monuments.

1510-B - Availability for interment on six-day basis.

1511 - Cemetery indebtedness.

1512 - Rights of lot owners.

1513 - Sale of burial rights.

1513-A - Reacquisition of a lot, plot or part thereof by a cemetery corporation.

1514 - Misdemeanor; general penalty.

1515 - Actions affecting cemetery corporations.

1516 - Sale of monuments.

1517 - Crematory operations.

§ 1501. Declaration of policy.

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.

§ 1502. Definitions. As used in this article:

(a) The term "cemetery corporation" means any corporation formed under a general or special law for the disposal or burial of deceased human beings, by cremation or in a grave, mausoleum, vault, columbarium or other receptacle but does not include a family cemetery corporation or a private cemetery corporation.

(b) The term "lot owner" or "owner of a lot" means any person having a lawful title to the use of a niche, crypt, lot, plot or part thereof, in a cemetery, mausoleum or columbarium.

(c) The term "cemetery board" means the cemetery board in the division of cemeteries in the department of state.

(d) A public mausoleum, crematory or columbarium shall be included within the term "cemetery".

(e) The sale of a lot, plot or part thereof, grave, niche or crypt shall mean the sale of the right of use thereof for burial purposes.

(f) The term "monuments" means a memorial erected in a cemetery on a lot, plot or part thereof, except private mausoleums.

(g) The term "interment" means the permanent disposition of human remains by inurnment, entombment or ground burial.

(h) The term "cremation" means the technical process, using heat and flame, that reduces human remains to ashes and other residue. "Cremation" shall include the processing, and may include the pulverization, of such ashes and other residue.

(i) The term "cremains" means ashes and other residue recovered after the completion of cremation, which may include residue of foreign matter that may have been cremated with the human remains.

(j) The term "alternative container" or "external wrappings" means a nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of cardboard, pressed wood, composite materials (with or without an outside covering), or pouches of canvas or other material.

(k) The term "casket" means a rigid container that is designed for the encasement of human remains and customarily ornamented and lined with fabric.

(l) The term "crematory" means a facility or portion of a building in which the remains of deceased human beings are processed by cremation.

(m) The term "holding facility" or "temporary storage facility" means an area that (i) is designated for the retention of human remains prior to cremation; (ii) complies with all applicable public health laws, (iii) preserves the health and safety of the crematory personnel; and (iv) is secure from access by anyone other than authorized persons. The interior of such facility shall not be visible from any area accessible to the general public.

(n) The term "cremation permit" means the burial and removal permit required pursuant to section forty-one hundred forty-five of the public health law that is annotated for disposition of the remains of a deceased human being by cremation.

(o) The term "cremation authorization" means the crematory form authorizing a cremation which is signed by the next of kin or authorizing agent. This crematory form must be a separate document and cannot be a part of another form or document.

(p) The term "authorizing agent" shall mean the person with the right to control the disposition of the decedent pursuant to section forty-two hundred one of the public health law.

§ 1503. Application.

(a) Except as otherwise provided in paragraph (b) of this section, paragraph (c) of section fifteen hundred seven, and paragraph (m) of section fifteen hundred ten, this article does not apply to (1) a religious corporation, (2) a municipal corporation, (3) a cemetery corporation owning a cemetery operated, supervised or controlled by or in connection with a religious corporation or (4) a cemetery belonging to a religious or a municipal corporation, or operated, supervised or controlled by or in connection with a religious corporation unless any officer, member or employee of any such corporation shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, other than reasonable compensation for services in effecting one or more of the purposes of such corporation or as proper beneficiaries of its strictly charitable purposes or unless the organization of any such corporation for any of its avowed purposes be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation, or for any of its officers, members or employees, and unless any such corporation is not, in good faith, organized or conducted exclusively for one or more of its stated purposes.

(b) All crematories shall be subject to inspection by the division of cemeteries. Upon inspection, the crematory may be asked to produce any and all records for the operation and maintenance of the crematory. These records may include but not be limited to cremation authorizations, rules and regulations of the crematory, procedures as set forth in section fifteen hundred seventeen of this article, and the written procedure of the identification of remains.

§ 1504. Cemetery board and general administration.

(a) A cemetery board is hereby created within the division of cemeteries in the department of state, subject to the following requirements: (1) The members of such board shall be the secretary of state, the attorney general and the commissioner of health, who shall serve without additional compensation. (2) The secretary of state, attorney general and commissioner of health may each, by official order filed in the office of his respective department and in the office of the board, designate a deputy or other representative in his department to perform any or all of the duties under this section of the department head making such designation, as may be provided in such order. Such designation shall be deemed temporary only and shall not affect the civil service or retirement rights of any person so designated. Such designees shall serve without additional compensation. (3) The secretary of state shall be chairman of such board, provided that in his absence at any meeting of the board the attorney general or the commissioner of health, in such order, if either or both be present, shall act as chairman. When designees of such officers, in the absence of all such officers, are present at any meeting of the board, the designee of the secretary of state, if present, and in his absence one of the other designees present, in the same order of preference as provided for the officer appointing him, shall act as chairman. (4) Technical, legal or other services shall be performed in so far as practicable by personnel of the departments of state, law and health without additional compensation but the board may employ and compensate within appropriations available therefor such assistants and employees as may be necessary to carry out the provisions of this section and may prescribe their powers and duties. (5) Two members of the board shall constitute a quorum to transact the business of the board at both regular and special meetings. (6) The board shall meet at least once a month, shall keep a record of all its proceedings and shall determine the rules of its own proceedings. (7) Special meetings may be called by the chairman upon his initiative, and must be called by him upon receipt of a written request therefor signed by another member of the board. Written notice of the time and place of such special meeting shall be delivered to the office of each member of the board. (8) The board shall have the duty of administering the provisions of this chapter which deal with cemetery corporations other than the cemeteries and cemetery corporations enumerated in section fifteen hundred three and shall have all the powers herein provided and such other powers and duties as may be otherwise prescribed by law.

(b) Director of the division of cemeteries. The cemetery board shall appoint a director of the division of cemeteries who shall hold his office for a term of six years. He shall receive an annual salary to be fixed by the board within the appropriations available to the board. Subject to the supervision, direction and control of the board, the director of the division of cemeteries shall be responsible for the administration of this article and he shall exercise and perform such duties and functions of the board as it may assign or delegate to him from time to time.

(c) Powers and duties of the cemetery board. With respect to any cemetery or cemetery corporation, the cemetery board shall have the following duties and powers: (1) To adopt such reasonable rules and regulations as the cemetery board shall deem necessary for the proper administration of this article. (2) To order any cemetery corporation to do such acts as may be necessary to comply with the provisions of this article or any rule or regulation adopted by the cemetery board or to refrain from doing any act in violation thereof. (2-a) To adopt reasonable rules and regulations to exempt those cemetery corporations from the provisions of paragraph (h) of section fifteen hundred ten of this chapter which because of a limited number of paid employees or appropriate resources are unable to carry out such provisions. (2-b) To adopt reasonable rules and regulations to extend the time period mandated by the provisions of paragraph (h) of section fifteen hundred ten of this chapter when necessary because compliance by a cemetery corporation within such time period is impossible. (3) To enforce its orders by mandamus or injunction in a summary proceeding or otherwise. In connection with such action or proceeding, the attorney general is authorized to take proof, issue subpoenas and administer oaths in the manner provided in the civil practice law and rules. (4) To impose a civil penalty upon a cemetery corporation not exceeding one thousand dollars, after conducting an adjudicatory hearing pursuant to the provisions of

the state administrative procedure act, for a violation of or a failure to comply with any provisions contained in this article or any regulation, directive or order of the board, and without the need to maintain a civil action pursuant to subdivision five of this paragraph. (5) To maintain a civil action in the name of the people of the state to recover a judgment for a money penalty imposed under the provisions of this article.

(d) Judicial review. Any order or determination of the cemetery board made pursuant to this article shall be subject to review by the supreme court in the manner provided by article seventy-eight of the civil practice law and rules; provided, however, that an application for review of such order or determination must be made within one hundred twenty days from the date of the filing of such order or determination, and provided further that no stay shall be granted pending the determination of the matter except on notice to the cemetery board and for a period not exceeding thirty days. Proceedings to review such order shall be entitled to a preference.

§ 1506. Cemetery lands.

(a) Purchase of land; notice to board and court approval. No cemetery corporation, in purchasing real property hereafter, shall pay or agree to pay more than the fair and reasonable market value thereof. The terms of the purchase, including the price to be paid and the method of payment, shall be subject, upon notice to the cemetery board, to approval by the supreme court in a district where any portion of the land is located. In determining the fair and reasonable market value, the court may take into consideration the method by which the purchase price is to be paid.

(b) Consent of local authorities. (1) No cemetery shall hereafter be located in any city or village without the consent of the local legislative body of such city, or the board of trustees of such village. (2) No cemetery shall hereafter be located in any town, outside of an incorporated village in Suffolk county, without the consent of the town board of such town.

(c) Cemeteries in Kings, Queens, Rockland, Westchester, Nassau, Suffolk, Putnam and Erie counties. A cemetery corporation shall not take by deed, devise or otherwise any land in the counties of Kings, Queens, Rockland, Westchester, Nassau, Suffolk, Putnam or Erie for cemetery purposes, or set apart any ground therefor in any of such counties, unless the consent of the board of supervisors or legislative body thereof, or of the city council of the city of New York, in respect to Kings or Queens county, be first obtained. Such consent may be granted upon such conditions and under such regulations and restrictions as the public health and welfare may require. Notice of application for such consent shall be published, once a week for six weeks, in the newspapers designated to publish the session laws and in such other newspapers published in the county as such board or body may direct, stating the time when the application will be made, a brief description of the lands proposed to be acquired, their location and the area thereof. Any person interested therein may be heard on such presentation. If such consent is granted the corporation may take and hold the lands designated therein. The consent shall not authorize any one corporation to take or hold more than two hundred and fifty acres of land. Nothing contained in this subdivision shall prevent any religious corporation in existence on April fifteenth, eighteen hundred fifty-four, in any of said counties from using as heretofore any burial ground then belonging to it within such county. Such board or body, from time to time, may make such regulation as to burials in any cemetery in the county as the public health may require.

(d) Limitation on the acquisition of land by rural cemetery corporations. It shall not be lawful for any rural cemetery corporation hereafter to acquire or take by deed, devise or otherwise, any land in any county within the state of New York, having a population of between one hundred and seventy-five thousand and two hundred thousand, according to the federal census of nineteen hundred, or set apart any ground for cemetery purposes therein, where there has already been set apart in any such county, five hundred acres of land for rural cemetery purposes, and the consent of the board of supervisors of any such county shall not be granted where there has already been granted five hundred acres of land, or upwards, within such county, to rural cemetery corporations. But nothing herein contained shall affect any lawful consent or grant hitherto made by the board of supervisors of any such county.

(e) Limitations on the acquisition of land for cemetery purposes in certain counties. (1) It shall not be lawful for any corporation, association or person hereafter to set aside or use for cemetery purposes any

lands in any county within the state erected on and after January first, eighteen hundred ninety, adjoining a city of the first class and having a population of between eighty thousand and eighty-five thousand according to the federal census of nineteen hundred ten; but nothing herein contained shall prevent cemetery corporations formed prior to January first, nineteen hundred seventeen, which own in such county a cemetery in which burials have been made prior to such date, from setting apart and using for burial purposes lands lying contiguous or adjacent to such cemetery which lands have been heretofore acquired by a recorded deed of conveyance made to such a cemetery corporation either for burial purposes, or for the purposes of the convenient transaction of its general business, which lands shall have been acquired with the consent of the board of supervisors; nor to prohibit the dedication or use of land within such county for a family cemetery as provided in subdivision (c) of section fourteen hundred one of this chapter. (2) The provisions of this subdivision shall not operate to prevent any such cemetery corporation located in Nassau county from using for burial purposes contiguous or adjacent land acquired by it prior to January first, nineteen hundred forty-eight provided that such acquisition shall have consisted of less than five acres, and provided further that such use shall be consented to by the board of supervisors.

(f) Conveyance by religious corporations or by trustees. A cemetery corporation may accept a conveyance of real property held by a religious corporation for burial purposes, or by trustees for such purposes if all such trustees living and residing in this state unite in the conveyance, subject to all trusts, restrictions and conditions upon the title or use. Lots previously sold and grants for burial purposes shall not be affected by any such conveyance; nor shall any grave, monument or other erection, or any remains, be disturbed or removed without the consent of the lot owner, or if there be no such owner, without the consent of the heirs of the persons whose remains are buried in such grave.

(g) Certain conveyances to cemetery corporations authorized. Upon approval of the cemetery board first having been obtained, a cemetery corporation which maintains and operates a cemetery may accept a conveyance of title to the fee of or to burial rights in lands within the confines of said cemetery and it shall be lawful for any cemetery or business corporation to make such conveyances. Lots previously sold and grants previously made for burial purposes shall not be affected by such conveyance. The cemetery corporation, in consideration of the conveyance to it of burial rights in lands within the confines of said cemetery, may, with the approval of the cemetery board, issue participating certificates of the kind and nature provided for in paragraph three of subdivision (e) of section fifteen hundred eleven of this article. In making its determination the cemetery board shall consider and may condition its approval on the purposes of this section.

(h) Acquisition of property by condemnation. If the certificate of incorporation or by-laws of a cemetery corporation do not exclude any person, on equal terms with other persons, from the privilege of purchasing a lot or of burial in its cemetery, such corporation may, from time to time, acquire by condemnation, exclusively for the purposes of a cemetery, not more than two hundred acres of land in the aggregate, forming one continuous tract, wholly or partly within the county in which its certificate of incorporation is filed or recorded, except as in this section otherwise provided as to the counties of Erie, Nassau, Suffolk, Putnam, Kings, Queens, Rockland and Westchester. A cemetery corporation may acquire by condemnation, exclusively for the purposes of a cemetery, any real property or any interest therein necessary to supply water for the uses of such cemetery, and the right to lay, relay, repair and maintain conduits and water pipes with connections and fixtures, in, through or over the lands of others and the right to intercept and divert the flow of waters from the lands of riparian owners, and from persons owning or interested in any waters. But no such cemetery corporation shall have power to take or use water from any of the canals of this state, or any canal reservoirs as feeders, or any streams which have been taken by the state for the purpose of supplying the canals with water. A cemetery corporation may acquire, otherwise than by condemnation, real property as aforesaid and additional real property, not exceeding in value two hundred thousand dollars, for the purposes of the convenient transactions of its business, no portion of which shall be used for the purposes of a cemetery.

(i) Sale or disposition of cemetery lands. (1) No cemetery corporation may sell or dispose of the fee of all or any part of its lands dedicated to cemetery use, unless it shall prove to the satisfaction of the supreme court in the district where any portion of the cemetery lands is located, either: (A) that all bodies have been removed from each and every part of the cemetery, that all the lots in the entire cemetery have been reconveyed to the corporation and are not used for burial purposes, and that it has no debts and liabilities, or (B) that the land to be sold or disposed of is not used or is not physically adaptable for burial purposes and that the sale or disposition

will benefit the cemetery corporation and the owners of plots and graves in the cemetery, and (C) that the sale or disposition is not to a funeral entity as defined in paragraph (c) of section fifteen hundred six-a of this article. (2) If the sale or disposition is made pursuant to subparagraph (A) of subdivision one of this paragraph, the cemetery shall satisfy the court that it is in the public interest to dispose of such cemetery land in the manner proposed; that the subject land is not suitable for cemetery purposes or is no longer needed by the community for such cemetery uses or purposes; and that the subject land is being sold for its current market value. (3) If the sale or disposition of the land is made pursuant to subparagraph (B) of subdivision one of this paragraph, the court shall order that the consideration received by the cemetery corporation, less the necessary expenses incurred, shall be deposited into the permanent maintenance fund established by the cemetery corporation pursuant to paragraph (a) of section fifteen hundred seven of this article. (4) Notice of any application hereunder shall be given to the cemetery board, to the holders of certificates of indebtedness and land shares of the cemetery corporation, and to any person interested in the proceeding pursuant to section five hundred eleven of this chapter (Petition for leave of court).

(j) Conveyance by cemetery corporation to city or village. A cemetery corporation may convey and transfer its real property held for burial purposes, together with its other assets, to a city having a population of less than one million inhabitants in which such real property is located, or to a village, provided such real property is located within such village or wholly within three miles of the boundaries thereof, or to a town, in which such real property is located, if all the directors and trustees of such cemetery corporation living and residing in the state of New York unite in the conveyance and transfer. Such conveyance and transfer shall be subject to all agreements as to lots sold and all trusts, restrictions and conditions upon the title or use of such real property and assets. Lots previously sold and grants previously made for burial purposes shall not be affected by such conveyance, nor shall any grave, monument or other erection be disturbed or removed except in accordance with law. No such conveyance shall be effective unless and until the legislative body of such city, town or village shall by ordinance or resolution accept the same subject to the conditions and restrictions hereinabove imposed, which ordinance or resolution said legislative body is hereby authorized and empowered to adopt by a majority vote of such body. Upon such conveyance and transfer such property shall be and become a municipal cemetery of such city, town or village and such property and assets so conveyed and transferred shall be administered as any other municipal cemetery of such city, town or village and the said cemetery corporation shall be dissolved by the recording of such conveyance and transfer.

(k) Streets or highways not to be laid out through certain cemetery lands. So long as the lands of a rural cemetery corporation organized under the act entitled "An act authorizing the incorporation of rural cemetery associations," constituting chapter one hundred thirty-three of the laws of eighteen hundred forty-seven, and the acts amendatory thereof, shall remain dedicated to the purpose of a cemetery, no street, road, avenue or public thoroughfare shall be laid out through such cemetery, or any part of the lands held by such association for the purposes aforesaid, without the consent of the trustees of such association and the cemetery board.

(l) Exclusive right of cemetery corporation to provide annual care services. Notwithstanding any provision of this article to the contrary, it shall be the right of each cemetery corporation, at its option, to exclusively provide all annual care services to be performed for consideration on all or any part of its lands at rates to be reviewed by the cemetery board. In the event that the cemetery board determines that an excessive, unauthorized or improper charge has been made for such services or that the services have not been properly performed, he or she may direct the cemetery corporation to pay to the person from whom such charge was collected a sum equivalent to three times the excess as determined by the cemetery board, or in the case of work not properly performed, it may direct the cemetery corporation to perform the work properly. Every cemetery corporation that chooses to provide, on an exclusive basis, such annual care services shall include in any contract for the sale of any part of its lands the following notice, in at least ten point bold type:

Notice

The(name of cemetery corporation), pursuant to state law, provides annual care services on an exclusive basis. Therefore, the purchaser of the plot or lot being transferred by this agreement may not contract with any outside party for such annual care services. For purposes of this paragraph, the term "annual care" shall mean the maintenance of a lot, plot or part thereof, and may include care of lawns, trees, shrubs, monuments and markers within the plot. The provisions of this paragraph shall not be

construed to prohibit a lot owner from placing, or arranging to place, floral or similar arrangements on such cemetery lots or plots.

§ 1506-a. Cemetery corporations; restrictions.

(a) No cemetery corporation shall, directly or indirectly:

- (1) 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;
- (2) commingle its funds with a funeral entity;
- (3) direct or carry on its business or affairs with a funeral entity;
- (4) authorize control of its business or affairs by a funeral entity;
- (5) engage in any sale or cross-marketing of goods or services with a funeral entity;
- (6) have or enter into or perform a management or service contract for cemetery operations with a funeral entity; or
- (7) have, enter into or perform a management contract with any entity other than a not-for-profit cemetery corporation.

(b) Only the provisions of subdivisions one and two of paragraph (a) of this section 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, nor shall a majority of the members of the board of directors or trustees of such cemeteries be made up of the representatives of a funeral entity.

(c) For the purposes of this section, "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.

§ 1506-c. Abandoned cemetery maintenance by cemetery corporations.

(a) Upon application and approval by the cemetery board, a cemetery corporation may assume management and maintenance of an abandoned cemetery. For the purposes of this section, abandoned cemetery means a cemetery which was previously owned by a cemetery corporation organized pursuant to this chapter or existing by virtue of the membership corporation law, for which there no longer exists any corporate board or body to maintain it, and for which there is no sufficient trust fund or endowment to provide ordinary and necessary care and maintenance. Provided, however, that in no event shall the cemetery board approve the assumption of the management and maintenance of an abandoned cemetery under this section if the abandoned cemetery was affiliated with any religious denomination or tradition or if the majority of the persons whose bodies were interred in such cemetery were affiliated with any religious denomination or tradition unless the cemetery assuming the management and maintenance of such abandoned cemetery follows the customs and practices of the same religious denomination or tradition.

(b) A cemetery corporation assuming management and maintenance of an abandoned cemetery shall make application for funds pursuant to paragraph (h) of section fifteen hundred seven of this article and section ninety-seven-r of the state finance law for maintenance of abandoned cemeteries. Within sixty days of submission of a completed application, the cemetery board shall approve or deny such application.

(c) Monies disbursed under such assumption shall be used exclusively for the purpose of the management and maintenance of an abandoned cemetery such as the ordinary and necessary care of a cemetery, including the removal of grass and weeds, the refilling of graves, and the preservation, care, and fencing of a cemetery, and also including the care of crypts, niches, grave sites, monuments, and memorials paid for by means of the

general fund or special fund or the income applied from the permanent maintenance fund, perpetual care fund, monument maintenance fund, general fund, or a special fund of the abandoned cemetery.

(d) Any residual funds disbursed to a cemetery corporation after the maintenance of an abandoned cemetery has been performed must be returned to the cemetery board for redeposit into the state cemetery vandalism restoration, monument repair or removal and administration fund established by section ninety-seven-r of the state finance law.

(e) Within ninety days of its receipt of disbursements, the cemetery corporation shall make a report to the cemetery board setting forth details of the maintenance and clean-up undertaken and the amount of funds, if any, to be redeposited into the fund. If the maintenance and clean-up have not been completed, or necessary equipment has not been purchased, the reasons therefor shall be set forth, and the anticipated date for a subsequent, final report shall be disclosed.

§ 1507. Trust funds.

(a) Maintenance and preservation; permanent maintenance fund; current maintenance fund. Subject to rules and regulations of the cemetery board: (1) Every cemetery corporation shall maintain and preserve the cemetery, including all lots, plots and parts thereof. For the sole purpose of such maintenance and preservation, every cemetery corporation shall establish and maintain (A) a permanent maintenance fund, and (B) a current maintenance fund. At the time of making the sale of a lot, plot or part thereof, the cemetery corporation shall deposit not less than ten per centum of the gross proceeds of the sale into the permanent maintenance fund. An additional fifteen per centum of the gross proceeds of the sale shall be deposited in the current maintenance fund. In addition to the foregoing, at the time the cemetery corporation receives payment for the performance of an interment or inurnment, the cemetery corporation shall collect and deposit into the permanent maintenance fund the sum of thirty-five dollars. (2) The permanent maintenance fund is hereby declared to be and shall be held by the corporation as a trust fund, for the purpose of maintaining and preserving the cemetery, including all lots, crypts, niches, plots, and parts thereof. The principal of such fund shall be invested in such securities as are permitted for the investment of trust funds by section 11-2.3 of the estates, powers and trusts law. The income in the form of interest and ordinary dividends therefrom shall be used solely for the maintenance and preservation of the cemetery grounds. In addition, the governing board of the corporation may appropriate for expenditure solely for the maintenance and preservation of the cemetery grounds a portion of the net appreciation, realized (with respect to all assets) and unrealized (with respect only to readily marketable assets), in the fair market value of the principal of the trust in excess of its adjusted historic dollar value, as defined in this subparagraph, as is prudent under the standard established by section seven hundred seventeen of this chapter (duty of directors and officers) and as limited by the maximum annual appropriation defined in this subparagraph. For the purposes of this subparagraph, the adjusted historic dollar value of the trust principal shall be the market value of the principal three full calendar years prior to the effective date of the amendments made to this subparagraph, plus all subsequent additions thereto, minus all allowable deductions therefrom, adjusted by the rate of inflation as measured by the applicable consumer price index. The maximum annual appropriation shall be sixty percent of the average of the net appreciation in the fund for the immediately preceding three years, but only to the extent that it exceeds the adjusted historical dollar value of the fund in the current year. Cemetery corporations shall keep complete records of the adjusted historic dollar value of the permanent maintenance fund. In the event that a cemetery corporation seeks to appropriate any percentage of its net appreciation in its permanent maintenance fund in accordance with this subparagraph, the cemetery corporation shall send a notice of such proposed appropriation by certified mail to the cemetery board, setting forth the amount of funds to be appropriated for such expenditure and its effect on the permanent maintenance fund, and certifying that such amount does not exceed the maximum annual appropriation defined in this subparagraph. Such proposed appropriation shall become effective sixty days after receipt of such notice, unless the cemetery board within such sixty-day period notifies the cemetery corporation that the board objects to the proposed appropriation. Notwithstanding the foregoing provisions of this subparagraph, all principal of the permanent maintenance fund shall remain inviolate, except that, upon application to the supreme court in a district where a portion of the cemetery grounds is located, the court may make an order permitting the principal or a part thereof to be used for the purpose of current maintenance and preservation of the cemetery or otherwise. Such application may be made by the cemetery board on notice to the corporation or by the corporation on notice to the cemetery board. Unless the

cemetery can clearly demonstrate that it lacks sufficient future revenue to make repayment, any such allowance from the permanent maintenance fund shall be in the form of a loan, and the court shall determine the method for repayment of such a loan by the cemetery to the fund. Any loan from the permanent maintenance fund shall be ignored for the purpose of computing the adjusted dollar value of the fund. In the event that the court determines that an outright grant of principal from the permanent maintenance fund is necessary, the amount of such grant shall be deducted from the adjusted historic dollar value of the trust principal for the purposes of this subparagraph.

(b) Perpetual care of lots. (1) Upon the application of a prospective purchaser of any lot, plot or part thereof and upon payment of the purchase price and the amount fixed as a reasonable charge for the perpetual care of any lot, plot or part thereof, every cemetery corporation shall include with the deed of conveyance an agreement perpetually to care for such lot, plot, or part thereof, to the extent that the income derived by the corporation from such amount will permit. (2) Such corporation also, upon the application of an owner or of the executor or administrator of a deceased owner of any lot and upon the payment of the amount fixed as a reasonable charge for the perpetual care of such lot, shall, and upon the application of any other person and the payment of such amount, may enter into a like agreement with him. Such agreement shall be executed and may be recorded in the same manner as a deed. (3) Any corporation organized under or subject to the provisions of this section may enter into an agreement in writing with any executor or executors, trustee or trustees, under a last will and testament to whom there has heretofore been, or may hereafter be, bequeathed a sum for the perpetual care of any lot, plot or part thereof in any such cemetery or with any administrator or administrators with the will annexed under any such will perpetually to care for such lot, plot or part thereof under the provisions of the terms of such last will and testament, and subject in all cases to the approval of the surrogate's court having jurisdiction over such trust estate. Such approval may be evidenced by the written endorsement of the surrogate on a duplicate original of such agreement filed in the surrogate's court. In case the surrogate shall approve such agreement any such executor, trustee or administrator with the will annexed thereupon shall pay over to the treasurer of such perpetual care fund of such cemetery corporation any moneys remaining or being in his hands belonging to such trust, and upon making such payment and accounting therefore to the surrogate's court may be discharged from said trust as such executor, trustee or administrator with the will annexed.

(c) Perpetual care fund.

- (1) Every cemetery corporation and every religious corporation having charge and control of a cemetery which heretofore has been or which hereafter may be used for burials, shall keep separate and apart from its other funds, all moneys and property received by it, whether by contract, in trust or otherwise, for the perpetual care and maintenance of any lot, plot or part thereof in its cemetery, and all such moneys or property so received by any such corporation are hereby declared to be, and shall be held by the corporation as trust funds. Any moneys and property so received, unless otherwise provided in the instrument under which such moneys or property were received, shall be kept in a separate fund to be known as the perpetual care fund.
- (2) The principal of such funds, whether kept in the perpetual care fund or otherwise, and unless already so invested when received, shall be invested within a reasonable time after receipt thereof, and kept invested, in such securities as are permitted for the investment of trust funds by sections 11-2.2 and 11-2.3 of the estates, powers and trusts law. The income arising therefrom shall be used solely for the perpetual care and maintenance of the lot or plots or parts thereof for which such income has been provided.
- (3) The corporation may, for the purpose of investing and reinvesting such funds, add the same to any similar trust fund or funds and apportion shares or interest to each trust fund, showing upon its records at all times every share or interest.
- (4) The corporation may accept in trust for the perpetual care of a lot, plot or part thereof in its cemetery, property not made eligible for the investment of trust funds under the foregoing provisions of this subdivision and may retain such property in the form in which received, separate and apart from the perpetual care fund, if directed so to do by the instrument under which such property is received, so long as such property remains in the form in which it was received; but whenever such property is sold or

otherwise disposed of, the proceeds of such sale or other disposition shall be invested in the manner heretofore provided in this subdivision for the investment of trust funds. The exchange of stock or evidences of indebtedness issued by a corporation for stock or evidences of indebtedness of the same corporation, or for stock, evidences of indebtedness, warrants or script received as a result of merger, consolidation or reorganization of such corporation, or the receipt of additional stock or evidences of indebtedness of such corporation, as a distribution by such corporation, shall not be deemed to be a disposition of the property originally received in trust, and such exchanged or additional property may be retained in place and stead of the property originally received, and under the same conditions. The corporation shall keep accurate accounts of all funds for the perpetual care and maintenance of cemetery lots, plots or parts thereof, separate and apart from its other funds. A copy of the record pertaining to each such perpetual care fund shall be at all times available at the office of the corporation during usual business hours, for inspection and copy by any owner of an endowed lot or his representative.

(d) Perpetual care fund; allocation of income and cost of care and maintenance. On or before the fifteenth day of March in each calendar year the officers of every cemetery corporation shall fix and determine that portion of the income on the investment of the principal of the perpetual care fund during the calendar or fiscal year immediately preceding, to be apportioned to each separate lot or part thereof for which a perpetual care agreement has been made. The cost during such previous calendar or fiscal year of the care of each lot or part thereof shall be allocated and charged against the income so apportioned to it. Any excess of the income so apportioned over and above the allocated cost of the care and maintenance of such lot or part thereof shall be credited to such lot or part thereof, to be used in any future years to make up the deficiency if the income apportioned to such lot or part thereof should, in any year since September first, nineteen hundred forty-nine, or in any future year, fall, or have fallen, below the cost of care thereof.

(e) Designation of fiduciary corporation by directors or trustees of cemetery corporation to act as custodians of funds. Notwithstanding the provisions of any other law, the directors or trustees of cemetery corporations are hereby authorized to designate a bank or trust company to act as custodian and trustee of any or all of the respective funds of such cemetery corporation received by it for the perpetual care of lots in the cemetery thereof pursuant to subdivision (b), of this section, the permanent maintenance of such cemetery pursuant to subdivision (a) of this section, and for special purposes pursuant to subdivision (f) of this section. Such corporate trustee shall be designated by a resolution duly adopted by the board of directors or trustees and approved by a justice of the supreme court of the judicial district in which the cemetery of said corporation is located; and the directors or trustees of such cemetery corporation may, with the approval of the justice of the supreme court, revoke such trust, and either take over such trust fund or name another trustee to handle the same, but if not so revoked, such trust shall be perpetual. Any bank or trust company accepting any such cemetery fund shall keep the same separate from all other funds, except that it may, irrespective of any provision contained in this article invest the same in a legal common trust fund or in shares of a mutual trust investment company organized under the banking law, and shall pay over the net income to the directors or trustees of the cemetery corporation by whom it shall be expended and applied to the purpose for which such trust fund was paid to the cemetery corporations and accounted for in accordance with such subdivisions (a), (b) and (f) of this section.

(e-1) Monument maintenance fund.

- (1) A cemetery corporation may, subject to the approval of the cemetery board, establish and maintain a monument maintenance fund. Such a fund is hereby declared to be and shall be held by the cemetery corporation as a trust fund, for the purpose of providing notice if such monuments are damaged or defaced by an act of vandalism and for the restoration of such monuments. Two or more cemetery corporations may establish a joint monument maintenance fund.
- (2) The principal of the fund shall be invested in securities permitted for the investment of trust funds by sections 11-2.2 and 11-2.3 of the estates, powers and trusts law. The principal of such fund shall remain inviolate, except that upon application to the supreme court in a district where a portion of the cemetery grounds is located, the court may make an order permitting the principal or a part thereof to be used for the purpose of restoring monuments damaged or defaced by an act of vandalism. The income arising from such investment shall be used solely for the costs and expenses resulting from an act of vandalism against monuments in such cemetery.

- (3) The fund shall be financed by a charge levied at the time of each interment at a rate established by each cemetery creating such a fund, subject to cemetery board approval pursuant to section fifteen hundred nine of this article. Such a charge shall be levied in addition to the approved rates for interment. The fund may also accept gifts, donations and bequests.
- (4) Each cemetery creating such a fund shall promulgate rules and regulations to administer the fund, subject to cemetery board approval pursuant to section fifteen hundred nine of this article. Such rules shall include the conditions under which the income from such fund may be properly expended.
- (5) The cemetery corporation shall keep accurate accounts of all moneys for the fund, separate and apart from its other funds.

(f) Acquisition of property for special purposes and in trust.

- (1) A cemetery corporation may acquire, otherwise than by condemnation, real or personal property, absolutely or in trust, in perpetuity or otherwise, and shall use the same or the income therefrom in pursuance of the terms of the instrument by which it was acquired, for the following purposes only:
 - (i) The improvement or embellishment, but not the enlargement, of its cemetery; (ii) The construction, preservation or replacement of any building, structure, fence, wall, or walk therein; (iii) The erection, renewal or preservation of any tomb, monument, stone, fence, wall, railing or other erection or structure on or around its cemetery or any lot or plot therein; (iv) The planting or cultivation of trees, grass, shrubs, flowers or plants in or about its cemetery or any lot or plot therein; (v) The construction, operation, maintenance, repair and replacement of a crematory or columbarium or both in its cemetery; (vi) The care, keeping in order and embellishment of any lot, plot or part thereof or the structures thereon, in its cemetery, as prescribed in the instrument transferring such property to the cemetery corporation, or by the person or persons from time to time having possession, care and control of such lot, plot or part thereof, as the case may be.
- (2) All moneys and property received by a cemetery corporation in trust under this subdivision, unless otherwise provided in the instrument under which such moneys or property were received and unless already so invested when received, shall be invested within a reasonable time after the receipt thereof, and kept invested in such securities as are permitted for the investment of trust funds by sections 11-2.2 and 11-2.3 of the estates, powers and trusts law. The corporation may, for the purpose of investing and reinvesting such funds, add the same to any similar trust fund or funds and apportion shares or interests to each trust fund, showing upon its records at all times every share or interest. The cemetery corporation shall maintain a record for each such trust fund. Such record shall be at all times available at the office of the corporation during usual business hours, for inspection and copy by any owner of an endowed lot or his representative.

(g) Trust for the care of burial ground. A cemetery corporation, incorporated under or by a general or special law, may receive tangible property, securities or funds in trust, and hold and invest the same and apply the principal or income thereof, in accordance with the terms of the trust, for the purpose of repairing, maintaining, improving or embellishing a burial ground, not constituting a part of the cemetery of such cemetery corporation, and located outside of a city of more than one million inhabitants and within ten miles of the cemetery of the corporation accepting such trust. The directors of such corporation, or a majority of them and the treasurer, shall annually within sixty days after the close of each calendar or fiscal year, make, sign and shall file at the office of the corporation a detailed accounting and report of such trust funds held under this subdivision and the use made of such funds or of the income thereof for the preceding calendar or fiscal year, which shall include among other things, properly itemized, the securities in which the same is then invested, and any purchases, sales or other changes made therein during the period covered by such report. Such accounting and report shall be at all times available at the office of the corporation, during usual business hours, for inspection and copy by any lot owner or any contributor to such trust fund.

(h) Vandalism, abandonment and monument repair or removal.

- (1) Cemeteries incorporated under this article shall contribute to a fund created pursuant to section ninety-seven-r of the state finance law for the maintenance of abandoned cemeteries, including the construction of cemetery fences, placement of cemetery lights and replacement of cemetery doors and locks, for the restoration of property damaged by acts of vandalism, and for the repair or removal of monuments or other markers not owned by the cemetery corporation that have fallen into disrepair or dilapidation so as to create a dangerous condition. Such fund shall be administered by a board of trustees comprised of the secretary of state, the attorney general and the commissioner of health, or their designees, who shall serve without additional compensation.
- (2) The fund shall be financed by contributions by the cemetery corporations of not more than five dollars (\$5.00) per interment or cremation in a manner to be determined by the New York state cemetery board. No contributions shall be collected upon the interment of the remains of a deceased person where a contribution was collected upon cremations.
- (3) The moneys of the fund shall be expended equally for the maintenance of abandoned cemeteries previously owned by a corporation incorporated pursuant to this chapter or the membership corporations law and the repair of cemetery vandalism damage and the repair or removal of monuments or other markers not owned by the cemetery corporation, provided, however, that the cemetery board may determine that circumstances necessitate an unequal distribution due to specific needs and may provide for such distribution. For purposes of this section, the maintenance of abandoned cemeteries may include the construction of cemetery fences, placement of cemetery lights and replacement of cemetery doors and locks.
- (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. For the purposes of this paragraph, such cemetery shall always be deemed an abandoned cemetery.
- (5) Authorization for payments by the fund for the repair of vandalism damage shall be made by the secretary of state only on approval by the New York state cemetery board which shall determine:
 - (i) that an act of vandalism to the extent described by the cemetery corporation did take place;
 - (ii) that either a written report of the vandalism was filed with the local police or sheriff's department, or, that the cemetery, upon consent of the division, made a determination not to file the report because the publicity generated by filing the report would have adverse consequences for the cemetery;
 - (iii) that the cost of repairs is fair and reasonable; and
 - (iv) that the cemetery corporation has been unable to obtain funds from the lot owner, his spouse, devisees or descendants within a reasonable period of time nor are there adequate funds in the cemetery corporations monument maintenance fund, if such a fund has been established by the cemetery.
- (6) Authorization for payments by the fund for the repair or removal of monuments or other markers not owned by the cemetery corporation shall be made by the secretary of state only on approval by the New York state cemetery board on application by the cemetery corporation showing:
 - (i) that the monuments or markers are so badly out of repair or dilapidated as to create a dangerous condition;
 - (ii) that the cost of remedying the condition is fair and reasonable;

- (iii) that the cemetery corporation has given not less than sixty days notice to the last known owner to repair or remove the monument or other marker and the said owner has failed to do so within the time prescribed in said notice.

(7) The New York state cemetery board shall promulgate rules defining standards of maintenance, as well as what type of vandalism or out of repair or dilapidated monuments or other markers shall qualify for payment of repair or removal by the fund and the method and amount of payment of contributions described in subparagraph two of this paragraph upon the recommendation of the state cemetery board citizens advisory council created by section fifteen hundred seven-a of this article (State cemetery board citizens advisory council).

(8) Nothing contained in this paragraph is to be construed as giving a cemetery corporation an "insurable interest" in monuments or other embellishments on a plot, lot or part thereof, nor is it meant to imply that the cemetery corporation has any responsibility for repairing vandalism damage not covered by this fund, nor for repairing or removing out of repair or dilapidated monuments or other markers not owned by the cemetery corporation, nor shall it constitute the doing of an insurance business.

§ 1507-a. State cemetery board citizens advisory council.

(a) There is hereby created a state cemetery board citizens advisory council, to study, investigate, monitor and make recommendations with respect to the maintenance and operation of the state cemetery vandalism restoration, monument repair or removal and administration fund. Such advisory council shall study and investigate incidents of cemetery abandonment, vandalism and desecration, monitor the administration of such fund and recommend changes to improve the management of and expenditures from the state cemetery vandalism restoration, monument repair or removal and administration fund.

(b) The advisory council shall be composed of a member designated by the secretary of state, a member designated by the attorney general, a member designated by the commissioner of health, a member designated by the comptroller and a member designated by the commissioner of taxation and finance. The appointees to the advisory council shall not be employees of the department of state, department of law, department of health, department of audit and control or department of taxation and finance. Each of the members shall serve for a term of two years, provided, however, that the first appointments by the comptroller and commissioner of taxation and finance shall serve for a term of one year. Vacancies occurring other than by expiration of term shall be filled in the same manner as the original appointments for the balance of the unexpired term. Persons designated or appointed to the advisory council shall have demonstrated a long-standing interest, knowledge and experience in the care and preservation of gravesites. One member shall be elected chairman of the advisory council by a majority vote of the members of such council.

(c) The members of the advisory council shall receive no compensation for their services but shall be reimbursed for travel expenses incurred in the performance of their duties.

(d) The advisory council shall meet at least quarterly at the call of the chairman.

(e) The advisory council may request and shall receive from any department, division, board, bureau, commission, agency, public authority of the state or any political subdivision thereof such assistance and data as will enable it properly to carry out its activities hereunder and effectuate the purposes set forth herein.

Penal Law

§ P2TEA60 - AUTHORIZED DISPOSITIONS OF OFFENDERS

§ 60.29 Authorized disposition; cemetery desecration.

When a person is convicted of an offense defined in section 145.22 or 145.23 of this chapter or of an attempt to commit such an offense, and the sentence imposed by the court for such conviction includes a sentence of probation or conditional discharge, such sentence shall, where appropriate, be in accordance with paragraph (h) of subdivision two of section 65.10 of this article as such section relates to cemetery crime.

§ 65.10 Conditions of probation and of conditional discharge.

1. In general. The conditions of probation and of conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

2. Conditions relating to conduct and rehabilitation. When imposing a sentence of probation or of conditional discharge, the court shall, as a condition of the sentence, consider restitution or reparation and may, as a condition of the sentence, require that the defendant:

- (a) Avoid injurious or vicious habits;
- (b) Refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;
- (c) Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip him for suitable employment;
- (d) Undergo available medical or psychiatric treatment and remain in a specified institution, when required for that purpose;
- (e) Participate in an alcohol or substance abuse program or an intervention program approved by the court after consultation with the local probation department having jurisdiction, or such other public or private agency as the court determines to be appropriate;
- (e-1) Participate in a motor vehicle accident prevention course. The court may require such condition where a person has been convicted of a traffic infraction for a violation of article twenty-six of the vehicle and traffic law where the commission of such violation caused the serious physical injury or death of another person. For purposes of this paragraph, the term "motor vehicle accident prevention course" shall mean a motor vehicle accident prevention course approved by the department of motor vehicles pursuant to article twelve-B of the vehicle and traffic law;
- (f) Support his dependents and meet other family responsibilities;
- (g) Make restitution of the fruits of his or her offense or make reparation, in an amount he can afford to pay, for the actual out-of-pocket loss caused thereby. When restitution or reparation is a condition of the sentence, the court shall fix the amount thereof, the manner of performance, specifically state the date when restitution is to be paid in full prior to the expiration of the sentence of probation and may establish provisions for the early termination of a sentence of probation or conditional discharge pursuant to the provisions of subdivision three of section 410.90 of the criminal procedure law after the restitution and reparation part of a sentence of probation or conditional discharge has been satisfied. The court shall provide that in the event the person to whom restitution or reparation is to be made dies prior to the completion of said restitution or reparation, the remaining payments shall be made to the estate of the deceased.
- (g-1) Reimburse a consumer credit reporting agency for the amount of the fee or fees that could have been charged by such agency to a domestic violence victim, as defined in section three hundred eighty-t of the general business law, had such victim not been eligible to receive security freeze services without charge pursuant to subdivision (n) of such section;
- (h) Perform services for a public or not-for-profit corporation, association, institution or agency, including but not limited to services for the division of substance abuse services, services in an appropriate community program for removal of graffiti from public or private property, including any

property damaged in the underlying offense, or services for the maintenance and repair of real or personal property maintained as a **cemetery plot, grave, burial place or other place of interment of human remains**. Provided however, that the performance of any such services shall not result in the displacement of employed workers or in the impairment of existing contracts for services, nor shall the performance of any such services be required or permitted in any establishment involved in any labor strike or lockout. The court may establish provisions for the early termination of a sentence of probation or conditional discharge pursuant to the provisions of subdivision three of section 410.90 of the criminal procedure law after such services have been completed. Such sentence may only be imposed upon conviction of a misdemeanor, violation, or class D or class E felony, or a youthful offender finding replacing any such conviction, where the defendant has consented to the amount and conditions of such service;

§ 80.00 Fine for felony.

7. When the court imposes a fine pursuant to section 145.22 or 145.23 of this chapter, the court shall direct that no less than ten percent of such fine be credited to the **state cemetery vandalism restoration and administration fund** created pursuant to section ninety-seven-r of the state finance law.

Penal Law

ARTICLE 145 - CRIMINAL MISCHIEF AND RELATED OFFENSES

Section 145.00 Criminal mischief in the fourth degree.

145.05 Criminal mischief in the third degree.

145.10 Criminal mischief in the second degree.

145.12 Criminal mischief in the first degree.

145.13 Definitions.

145.14 Criminal tampering in the third degree.

145.15 Criminal tampering in the second degree.

145.20 Criminal tampering in the first degree.

145.22 Cemetery desecration in the second degree.

145.23 Cemetery desecration in the first degree.

145.25 Reckless endangerment of property.

145.26 Aggravated cemetery desecration in the second degree.

145.27 Aggravated cemetery desecration in the first degree.

145.30 Unlawfully posting advertisements.

145.35 Tampering with a consumer product; consumer product defined.

145.40 Tampering with a consumer product in the second degree.

145.45 Tampering with a consumer product in the first degree.

145.50 Penalties for littering on railroad tracks and rights-of-way.

145.60 Making graffiti.

145.65 Possession of graffiti instruments.

145.70 Criminal possession of a taximeter accelerating device.

§ 145.22 Cemetery desecration in the second degree.

A person is guilty of cemetery desecration in the second degree when:

(a) with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he damages any real or personal property maintained as a cemetery plot, grave, burial place or other place of interment of human remains; or

(b) with intent to steal personal property, he steals personal property which is located at a cemetery plot, grave, burial place or other place of interment of human remains and which property is owned by the person or organization which maintains or owns such place or the estate, next-of-kin or representatives of the deceased person interred there.

Cemetery desecration in the second degree is a class A misdemeanor.

§ 145.23 Cemetery desecration in the first degree.

A person is guilty of cemetery desecration in the first degree when with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he:

(a) damages any real or personal property maintained as a cemetery plot, grave, burial place or other place of interment of human remains in an amount exceeding two hundred fifty dollars; or

(b) with intent to steal personal property, he steals personal property, the value of which exceeds two hundred fifty dollars, which is located at a cemetery plot, grave, burial place or other place of interment of human

remains and which property is owned by the person or organization which maintains or owns such place or the estate, next-of-kin or representatives of the deceased person interred there; or

(c) commits the crime of cemetery desecration in the second degree as defined in section 145.22 of this article and has been previously convicted of the crime of cemetery desecration in the second degree within the preceding five years.

Cemetery desecration in the first degree is a class E felony.

§ 145.26 Aggravated cemetery desecration in the second degree.

A person is guilty of aggravated cemetery desecration in the second degree when, having no right to do so nor any reasonable ground to believe that he or she has such right, he or she opens a casket, crypt, or similar vessel containing a human body or human remains which has been buried or otherwise interred in a cemetery and unlawfully removes therefrom a body, bodily part, any human remains or any object contained in such casket, crypt or similar vessel for the purpose of obtaining unlawful possession of such body, bodily part, human remains or object for such person or a third person.

Aggravated cemetery desecration in the second degree is a class E felony.

§ 145.27 Aggravated cemetery desecration in the first degree.

A person is guilty of aggravated cemetery desecration in the first degree when such person commits the crime of aggravated cemetery desecration in the second degree and has been previously convicted within the past five years of the crime of cemetery desecration in the second degree as defined in section 145.22 of this article, cemetery desecration in the first degree as defined in section 145.23 of this article or aggravated cemetery desecration in the second degree as defined in section 145.26 of this article.

Aggravated cemetery desecration in the first degree is a class D felony.

REAL PROPERTY LAW

CHAPTER 50 OF THE CONSOLIDATED LAWS REAL PROPERTY LAW

- Article 1. Short title; definitions (§§ 1-2).
2. Tenure of real property (§§ 10-18).
 4. Uses and trusts (§§ 119-123).
 - 4-A. Trust indentures and interests therein (§§ 124--130-k).
 6. Dower and curtesy (§§ 189-207).
 7. Landlord and tenant (§§ 220-238).
 - 7-A. Portable kerosene heaters (§§ 239--239-g).
 8. Conveyances and mortgages (§§ 240-282).
 9. Recording instruments affecting real property (§§ 290-336).
 - 9-A. Subdivided lands (§§ 337--339-c).
 - 9-B. Condominium act (§§ 339-d--339-kk).
 10. Discharge of ancient mortgages (§ 345).
 12. Registering title to real property (§§ 370-436).
 - 12-A. Real estate brokers and real estate salesmen (§§ 440--443-a).
 - 12-B. Home inspection professional licensing. (§§ 444-a--444-q).
 - 12-C. Apartment information vendors (§§ 446-a--446-j).
 13. Cemetery lands (§§ 450-451).
 14. Property condition disclosure in the sale of residential real property (§§ 460-467).
 15. Prohibition and disclosure of private transfer fee obligations (§§ 470-476).
 20. Laws repealed; construction; when to take effect (§§ 600-602).

Article 13 - CEMETERY LANDS

450 - Lands used for cemetery purposes not to be sold or mortgaged.

451 - Acquisition of lands for cemetery purposes in certain counties.

§ 450. Lands used for cemetery purposes not to be sold or mortgaged.

1. No land actually used and occupied for cemetery purposes shall be sold under execution or for any tax or assessment, nor shall such tax or assessment be levied, collected or imposed, nor shall it be lawful to mortgage such land, or to apply it in payment of debts, so long as it shall continue to be used for such cemetery purposes, except cemetery lands in which interments have not been made may be sold under execution to satisfy a valid judgment of a court of record. Whenever any such land shall cease to be used for cemetery purposes, any judgment, tax or assessment which, but for the provisions of this section would have been levied, collected or imposed, shall thereupon forthwith, together with interest thereon, become and be a lien and charge upon such land, and collectible out of the same. The provisions of this section shall not apply to any lands held by the city of Rochester or to lands lying within the village of Lewiston, Niagara county.
2. The provisions of subdivision one of this section shall not apply to real property taxes and assessments levied or imposed on the land described in subdivision one of this section on or after the first day of January, nineteen hundred eighty-two, but the provisions of section four hundred forty-six of the real property tax law shall be applicable to such land on or after such date.

§ 451. Acquisition of lands for cemetery purposes in certain counties.

It shall not be lawful for any person to take by deed, devise or otherwise or set apart or use any land or ground in any of the counties of Westchester, Kings, Queens, Richmond, Bronx, New York, Rockland, Suffolk, Putnam or Nassau, for cemetery purposes without the consent of the board of supervisors for such county, or of the city council of the city of New York, as the case may be, first had and obtained in like manner as provided for in the membership corporations law; and said board of supervisors or city council in granting such consent may annex thereto such conditions, regulations and restrictions as such board may deem the public health or the public good require.

Real Property Tax Law § 446

Cemeteries.

§ 446. Cemeteries.

1. Real property actually and exclusively used for cemetery purposes shall be exempt from taxation and exempt from special ad valorem levies and special assessments.
2. In addition to the exemption provided in subdivision one of this section, unimproved land, which is not presently used for cemetery purposes, but in which interments are reasonably and in good faith anticipated, shall be exempt from taxation, special ad valorem levies and special assessments. An exemption pursuant to this subdivision shall be granted only upon application by the owner of the property on a form prescribed by the commissioner. The application shall be filed with the assessor of the appropriate county, city, town or village on or before the taxable status date of such county, city, town or village.
3. The term "cemetery purposes", as used in this section shall mean land and buildings, whether privately or publicly owned or operated, used for the disposal or burial of deceased human beings, by cremation or in a grave, mausoleum, vault, columbarium or other receptacle. Such term shall also include land and buildings actually used and essential to the providing of cemetery purposes including, but not limited to, the on site residence of a full-time caretaker and a storage facility for necessary tools and equipment.
4. No real property shall be entitled to receive an exemption pursuant to this section if the owner or operator of such real property or any officer, member or employee thereof, shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, other than reasonable compensation for services performed, or, if the ownership or operation is a guise or pretense for directly or indirectly making any other pecuniary profit for such owner or operator or for any of its officers, members or employees.

Executive Law

§ 221-b Reporting to New York state violent crimes analysis program.

1. Every law enforcement agency which receives a report of an actual or attempted abduction or molestation shall notify the New York state violent crimes analysis program, via the requirements of the New York statewide police information network, of such report. Such program shall make comparisons of data in its files, and report to the law enforcement agency making an initial report, any similarities to other reports received by such program. The violent crimes analysis program shall also notify the unit of a law enforcement agency which investigates homicides when a report reveals similarities, patterns or modus operandi which appear in reports of homicides.

2. Notwithstanding any other provision of law to the contrary, every law enforcement agency that accepts responsibility for investigating a homicide or attempted homicide, **the discovery of unidentified human remains**, a reported missing person case where circumstances indicate a strong possibility of foul play, or a sexual assault or attempted sexual assault, shall make a written report of such investigation to the New York state violent crimes analysis program. Such program shall conduct a computerized commonality analysis and provide the submitting law enforcement agency the results of such analysis. Every written report made to the violent crimes analysis program shall be in form and content as determined and prescribed by such program, upon the approval of the superintendent of state police. An initial written report shall be made to the violent crimes analysis program within thirty days of commencement of an investigation. The results of a computerized commonality analysis shall be provided by such program to the submitting law enforcement agency upon completion of such analysis in a timely manner, as prescribed by the superintendent of state police.

Education Law

Title 1 - GENERAL PROVISIONS

Article 5 - UNIVERSITY OF THE STATE OF NEW YORK

Part 1 - GENERAL ORGANIZATION

§ 233. State Museum; collections made by the staff.

1. All scientific specimens and collections, works of art, objects of historic interest and similar property appropriate to a general museum, if owned by the state and not placed in other custody by a specific law, shall constitute the collections of the state museum. The state museum shall be the custodian of the collections, shall perform standard curatorial, research and educational activities and a director appointed by the regents shall constitute its head.
2. Any scientific collection made by a member of the museum staff during his term of office shall, unless otherwise authorized by resolution of the regents, belong to the state and form part of the state museum.
3. The state of New York, through its legislative authority accepts the provisions of section one hundred twenty of the federal-aid highway act of nineteen hundred fifty-six (70 Stat. 374) relating to the salvage of **archaeological or paleontological objects**, including but not limited to ruins, historic sites, **Indian burial grounds, cemeteries**, buildings, artifacts, fossils or, other objects of antiquity having national significance from an historical, cultural, social or scientific standpoint, and empowers and directs the commissioner of education to promulgate joint regulations with the department of environmental conservation, the office of general services, and the office of parks, recreation and historic preservation and make agreements with those and other appropriate state departments or agencies and such agency or agencies as needed to carry out the purposes of such provision of law.
4. Except as otherwise provided in subdivision three of this section, no person shall investigate, excavate, remove, injure, appropriate or destroy any object of **archaeological**, historical, cultural, social, scientific or **paleontological** interest, situated on, in or under lands owned by the state of New York, without the written permission of the commissioner of education. A violation of this provision shall constitute a class A misdemeanor. The attorney general, either independently or upon referral from a state agency, shall seek civil and/or criminal prosecution, civil and/or criminal penalties and any other relief, including but not limited to seizure and forfeiture of the appropriate items, and forfeiture of the instrumentalities of the unauthorized actions on state lands. The discovery of any such objects shall be forthwith reported to the commissioner by the state department or agency having jurisdiction over such lands.
5. Permits for the examination, excavation or gathering of **archaeological**, historical, cultural, social, scientific or **paleontological** objects upon the lands under their respective jurisdictions may be granted by the heads of those state departments or agencies to persons authorized by the commissioner of education for the purposes of the state museum and state science service, for the purpose of the preservation of any such objects worthy of permanent preservation and, in all cases, to the acquisition and dissemination of knowledge relating thereto.

Indian Law

Article 2 - General Provisions

§ 12-a. Indian cemetery or burial grounds. The office of parks and recreation shall have the power to designate any Indian cemetery or burial ground as a place of historic interest pursuant to subdivision one of section 3.09 of the parks and recreation law provided, however, that such cemetery or burial ground is not located upon any Indian reservation located wholly or partly within the state. No person shall destroy, alter, convert, or in any way impair any such cemetery or burial ground which has been so designated as a place of historic interest or any artifact or other object thereon which is or may be of relevance to the historic interest thereof without the prior express written permission of the office of parks and recreation.

The attorney general, at the request of the office of parks and recreation, is hereby authorized to institute an action in supreme court in the judicial district wherein such cemetery or burial ground is located to enjoin violations or threatened violations of this section.

Title C- Parks, recreation and historic preservation

Article 14 - HISTORIC PRESERVATION

14.01 - Declaration of policy.

14.03 - Definitions.

14.05 - Statewide historic preservation program.

14.07 - State register of historic places; inventory of historic property; statewide comprehensive historic preservation plan.

14.09 - State agency activities affecting historic or cultural property; notice and comment.

§ 14.01 Declaration of policy. The legislature determines that the historical, **archeological**, architectural and cultural heritage of the state is among the most important environmental assets of the state and that it should be preserved. It offers residents of the state a sense of orientation and civic identity, is fundamental to our concern for the quality of life, and produces numerous economic benefits to the state. The existence of irreplaceable properties of historical, archeological, architectural and cultural significance is threatened by the forces of change. It is hereby declared to be the public policy and in the public interest of this state to engage in a comprehensive program of historic preservation to accomplish the following purposes:

1. To promote the use, reuse and conservation of such properties for the education, inspiration, welfare, recreation, prosperity and enrichment of the public;
2. To promote and encourage the protection, enhancement and perpetuation of such properties, including any improvements, landmarks, historic districts, objects and sites which have or represent elements of historical, **archeological**, architectural or cultural significance;
3. To encourage and assist municipalities to undertake preservation programs and activities;
4. To foster civic pride in the beauty and accomplishments of the past through cooperation with municipalities and local organizations;
5. To preserve and enhance the state's attractions to tourists and visitors.

§ 14.03 Definitions. When used in this article, unless a different meaning clearly appears from the context, the terms listed below shall have the following meanings:

1. "Agency preservation officer" means the commissioner, director or chairperson of any state department, agency, board, commission, public benefit corporation or public authority, or his representative identified in accordance with the provisions of subdivision two of section 14.05 of this article.
2. "Board" means the state board for historic preservation.
3. "Chairman" means the chairman of the state board for historic preservation.
4. "Historic preservation" means for the purposes of this article and notwithstanding any other provision of law, the study, designation, protection, restoration, rehabilitation and use of buildings, structures, historic districts, areas, and sites significant in the history, architecture, **archeology** or culture of this state, its communities or the nation.
5. "Historic and/or cultural place or property" means any building, structure, district, area, site or object including underground and underwater sites, that is of significance in the history, architecture, **archeology** or culture of the state, its communities or the nation.
6. "Historic district" means any area which: (a) has a special character or special historical, **archeological**, architectural, or cultural value; or (b) represents one or more periods or styles of architecture typical of one or more eras; and (c) causes such area, by reason of such factors, to constitute a distinct section.
7. "Municipality" for the purpose of this article only means any county, city, town or village.

8. "Municipal official" means the chief executive officer of any municipality or his or her designated representative.
9. "National register" means the national register of historic places authorized by the National Historic Preservation Act of 1966.
10. "Registered property" means any historic place or property within the boundaries of the state nominated by the commissioner for listing on the national register of historic places or listed on the New York state register of historic places established pursuant to section 14.07 of this article.
11. "State agency" means any state department, agency, board or commission of the state, or a public benefit corporation or public authority at least one of whose members is appointed by the governor.
12. "State register" means the state register of historic places established pursuant to section 14.07 of this article.

§ 14.05 Statewide historic preservation program.

1. The commissioner shall continue and advance a statewide historic preservation program which shall include:
 - (a) Surveying and inventorying historic places and properties for nomination to the national register and state register of historic places; and
 - (b) Continuing planning activities to foster the preservation and management of historic properties as living parts of our communities and the effective representation of historic preservation in state environmental planning activities; and
 - (c) Administering a program of grants with funds available from the federal government and funds appropriated by the state for the purpose of assisting local and regional preservation programs or projects preserving historic properties for public benefit; and
 - (d) Assisting and encouraging local governments and private agencies and individuals to expand and advance their historic preservation programs and activities; and
 - (e) Educating the public by increasing awareness and pride in historic and cultural resources and the opportunities for continuing use and adaptive reuse of historic properties.
2. For the purpose of implementing and coordinating the statewide historic preservation program established pursuant to the provisions of this article and such other provisions of law which may be applicable, every state agency shall have a preservation officer who as defined in this article shall serve as liaison to the commissioner on matters affecting historic preservation in relation to properties within their respective jurisdictions. For the purposes of this article, the responsibility of an agency preservation officer shall extend to all property owned by or held on behalf of the people of the state by the agency of which he is an officer. Each agency preservation officer may delegate the liaison role created pursuant to this article by submitting the name of the designee or designees, in writing, to the commissioner. For the purpose of implementing and coordinating the statewide historic preservation program pursuant to the provisions of this article and such other provisions of law which may be applicable to local government programs for the preservation, restoration and maintenance of the historical, architectural, **archeological** and cultural environment, the chief executive officer or the designee of such officer or each municipality in the state shall serve as liaison to the commissioner on matters affecting historic preservation in relation to properties within such officer's respective jurisdiction.
3. The commissioner may prepare and distribute informational material and conduct informational meetings and other sessions for agency preservation officers and municipal officials appropriate to the promotion of state and local preservation activities and the proper fulfillment of their liaison role.
4. Each agency preservation officer shall and municipal officials may: cooperate with the commissioner concerning the conduct of a comprehensive survey of historic resources which shall be used in the compilation of a comprehensive inventory of historic property; advise the commissioner concerning state and local historic preservation policy and programs, and assist the commissioner in the preparation of reports.

§ 14.07 State register of historic places; inventory of historic property; statewide comprehensive historic preservation plan.

1. State register of historic places.

(a) The commissioner, in consultation with the board, shall establish a listing of sites, districts, structures, buildings, areas or objects above or below the surface of the earth whether on land or in the waters of the state, together with any designated improvements thereon, significant in the history, architecture, **archeology** or culture of the state, its communities or the nation. Such listing shall constitute the New York state register of historic places. All historic places within the state listed on or nominated by the commissioner for inclusion on the national register of historic places before or after this article becomes law shall be deemed to be listed on the state register.

(b) The commissioner, with the advice of the board, shall establish the procedures and the criteria for listing on the state register consistent with the criteria established for listing on the national register and for classifying whether such places are primarily of national, state or local significance. The criteria for listing on the national register which shall be used as a guide for listing on the state register are as follows:

The quality of significance in American history, architecture, **archeology**, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- A. that are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. that are associated with the lives of persons significant in our past; or
- C. that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. that have yielded, or may be likely to yield, information important in prehistory or history. Such procedures shall include opportunity for the public to make proposals for listing on the state register, the notification in advance of the listing to the agency preservation officers and/or municipal official having jurisdiction over the property and for the mailing of notification of pending action to the owner or owners of record of the property, if privately owned, at their last known address; provided however, that if one listing affects more than one property owner or where the owner or owners cannot be ascertained, the publishing of notice of pending listing in a newspaper of general circulation in the area where the property is located shall constitute adequate notice. Such procedures shall also provide for timely review and consideration of listing places on the state register which the United States Secretary of the Interior has designated as eligible for the national register. When a proposal for listing with sufficient supporting documentation is made by a municipal official, local historic preservation board or commission or a member of the public, a decision on listing the proposed property with an appropriate finding supporting the decision shall be issued in writing by the commissioner not more than one hundred eighty days after such proposal is received by the commissioner.

(c) If the municipal official of any municipality with jurisdiction over any property or the owner or owners of such property, other than that included upon or nominated for inclusion upon the national register of historic places prior to the effective date of this article, advises the commissioner in writing within fifteen days of mailing or publishing of notification that the municipality or owner questions the eligibility of the proposed property, the commissioner shall postpone the listing until the municipality or owner has the reasonable opportunity to present a written statement to the commissioner and the board.

(d) The benefits and protections of this article upon any listing on the state register shall accrue in full force and effect from the date of its listing. Within forty-five days after the listing of any property on the state register, the commissioner shall notify the appropriate agency preservation officer and/or municipal official and the owner of the property affected, if privately owned, at his last known address. With respect to all properties deemed to be listed on the state register because they were listed on or nominated to the national register before this article became law, within a reasonable time after this article becomes law, the commissioner shall notify the

appropriate agency preservation officer and/or municipal official and the owner of the property affected, if privately owned, at his last known address. Such notice shall include the registered properties' classification as primarily of national, state or local significance. The commissioner shall also cause notice of the listing to be published in a newspaper of general circulation in the area where the property is located. Such publication of notice shall be in lieu of the personal notice hereinabove required in instances where one listing affects more than one property owner and in instances where the owner or owners of the listed property cannot be ascertained.

(e) No place may be removed from the state register unless it is determined by the commissioner, after consultation with the board, that the qualities that gave it significance and for which it was initially listed no longer exist.

(f) The commissioner shall, upon request, provide information on the places listed on the state register and on sites included in the statewide inventory maintained by the office pursuant to the provisions of subdivision two of this section to any person making a written request for such information, with the exception of sites that may be damaged by unauthorized investigators if their location be generally publicized. Notwithstanding the provisions of any other law, information on such archeological sites may be withheld from the public at the discretion of the commissioner in consultation with the commissioner of education and will be released, where appropriate, in a format approved by such commissioners. The commissioner may establish a reasonable fee for the preparation, duplication and mailing of requested information.

(g) The commissioner shall include in the state register all places he determines to be of significance after consultation with the board. In making the listing the commissioner shall indicate whether the place is primarily of national, state or local significance.

2. Statewide inventory of historic property.

(a) The commissioner, with the assistance of the agency preservation officers of all state departments, agencies, boards, commissions, public benefit corporations and public authorities shall prepare and maintain an inventory of all property owned by the state, public benefit corporations or public authorities, which may qualify for nomination to the national register of historic places and/or listing on the state register of historic places. In addition, the commissioner in cooperation with municipal officials, shall prepare and maintain an inventory of all other property publicly and privately owned which may qualify for nomination to the national register and listing on the state register.

(b) The commissioner shall consult with the commissioner of education and consider information from surveys of archeological sites prepared by such department. The commissioner of education shall cooperate with the commissioner by continuing to expand, maintain and review the department of education's inventory of archeological sites and provide information thereon to the commissioner.

(c) The commissioner shall assist and encourage private organizations and groups in undertaking surveys, studies and inventories of historic places and cultural resources.

(d) These inventories shall constitute the statewide inventory of historic places and shall be represented on appropriate maps of the entire inventory. Inclusion of a historic place on the inventory shall not by itself be deemed to be a determination by the state of such place's significance for purposes of section 15 (a) of Public Law 89-574 as subsequently amended. The commissioner shall regularly review this inventory and, with the advice of the board, select sites for listing on the state register and for nomination to the national register and make recommendations to the commissioner of the office of general services of buildings on the inventory which have available space deemed suitable for state use.

3. Statewide comprehensive historic preservation plan. The commissioner, in consultation with the board, shall prepare a statewide comprehensive historic preservation plan. This plan may include proposals for the preservation and use of registered property. The annual state plan submitted to the Heritage Conservation and Recreation Service in the United States Department of Interior may substantially be used in preparing this plan. The agency preservation officers shall cooperate and municipal officials may cooperate with the commissioner in the promulgation of plans and proposals in relation to historic places within their respective

jurisdictions. The commissioner shall update the plan annually. The commissioner shall annually notify every agency preservation officer and municipal official of the availability of the state plan or the annual update and a copy of the annual plan or update shall be sent to every agency preservation officer and municipal official requesting such a plan or update.

4. From funds available from the federal government for historic preservation purposes which may be used for reimbursement as hereinafter provided, and funds appropriated by the state for the purpose of assisting local and regional preservation programs including funds for survey and planning, the commissioner may provide reimbursement to municipalities and private organizations which undertake surveys and studies of historic places and cultural resources, prepare local historic preservation reports or otherwise assist the commissioner in carrying out his historic preservation responsibilities.

§ 14.09 State agency activities affecting historic or cultural property; notice and comment.

1. As early in the planning process as may be practicable and prior to the preparation or approval of the final design or plan of any project undertaken by a state agency, or prior to the funding of any project by a state agency or prior to an action of approval or entitlement of any private project by a state agency, the agency's preservation officer shall give notice, with sufficient documentation, to and consult with the commissioner concerning the impact of the project if it appears that any aspect of the project may or will cause any change, beneficial or adverse, in the quality of any historic, architectural, archeological, or cultural property that is listed on the national register of historic places or property listed on the state register or is determined to be eligible for listing on the state register by the commissioner. Generally, adverse impacts occur under conditions which include but are not limited to (a) destruction or alteration of all or part of a property; (b) isolation or alteration of its surrounding environment; (c) introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting; or (d) neglect of property resulting in its deterioration or destruction. Every agency shall fully explore all feasible and prudent alternatives and give due consideration to feasible and prudent plans which avoid or mitigate adverse impacts on such property. In the event that the agency has filed or will file with the department of environmental conservation, with respect to that contemplated project, a draft environmental impact statement pursuant to the provisions of article eight of the environmental conservation law, it shall provide a copy thereof to the commissioner and the chairman of the board and shall also supply such further information as the commissioner may request. This section shall not apply to a state project that is necessary to prevent an immediate and imminent threat to life or property.

2. The commissioner shall undertake a review and make comment within thirty days of receipt of notice, with sufficient documentation, of a proposed project as to whether or not such proposed project may have an adverse impact on any property that is listed on the national register of historic places or on the state register or is determined to be eligible for the state register by the commissioner. The comment shall be put on file and shall be available to the public on request. If it is determined that a project may have an adverse impact on such property, the commissioner shall so notify the agency in writing. Upon receipt of such notification from the commissioner, the agency shall immediately contact the commissioner for the purpose of exploring alternatives which would avoid or mitigate adverse impacts to such property consistent with the policy and provisions of this article and other provisions of law relating to historic preservation. To the fullest extent practicable, it is the responsibility of every state agency, consistent with other provisions of law, to avoid or mitigate adverse impacts to registered property or property determined eligible for listing on the state register by the commissioner. In order to avoid inconsistency or duplication in review functions, the commissioner shall establish procedures in accordance with other provisions of this section whereby reviews conducted under this section are coordinated with the reviews of project or plan proposals under other provisions of law and regulation. When a project is being reviewed pursuant to section one hundred six of the national historic preservation act of 1966, the procedures of this section shall not apply and any review or comment by the commissioner and the board on such project shall be within the framework or procedures of the section one hundred six review. The commissioner shall issue an annual report outlining state agency actions on which comment had been requested or issued under this section. Proposed alternatives and results of the review process shall be included in said annual report.