

CEMETERY REGULATION

Footnotes

See also chapter 523I

566A.1 Applicability of chapter requirements for certain organizations.

1. A corporation or other form of organization engaging in the business of the ownership, maintenance, or operation of a cemetery, which provides lots or other interment space for the remains of human bodies, is subject to this chapter. However, a religious cemetery is subject only to subsection 2, and sections 566A.2A and 566A.2B. Political subdivisions of the state which are counties are exempt from this chapter. Political subdivisions of the state other than counties are subject only to sections 566A.1A, 566A.2A, 566A.2B, and 566A.2D.

2. An organization which establishes a fund for the perpetual care of a cemetery shall establish the fund as an irrevocable trust to provide for the care and maintenance of the cemetery for which it was established, and shall provide for the appointment of a trustee, with perpetual succession, in case the organization is dissolved or ceases to be responsible for the cemetery's care and maintenance.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 566A.1]

91 Acts, ch 188, §12, 13; 95 Acts, ch 149, §29; 98 Acts, ch 1189, §25

566A.1A Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Agent*" means a person authorized by a cemetery or a cemetery operator to represent the cemetery in dealing with the public.
2. "*Cemetery*" means a cemetery, mausoleum, columbarium, or other space held for the purpose of burial, entombment, or inurnment of human remains and where such space is offered for sale to the public.
3. "*Cemetery operator*" means a person who owns, controls, operates, or manages a cemetery, who is responsible for the cemetery's care and maintenance, and who controls the opening and closing of all graves, crypts, and niches.
4. "*Columbarium*" means a structure or room or other space in a building or structure used or intended to be used for the inurnment or deposit of cremated human remains.
5. "*Commissioner*" means the commissioner of insurance or the deputy appointed under section 502.601.
6. "*Deed*" means the assignment or conveyance of interment rights.
7. "*Grave*" means a piece of land that is used or intended to be used for the underground burial of human remains, other than an underground mausoleum or columbarium space.
8. "*Human remains*" means the body of a deceased individual that is in any stage of decomposition or has been cremated.
9. "*Interment*" means the disposition of human remains by earth burial, entombment, or inurnment.

10. "*Interment rights*" means a right of use conveyed by contract or property ownership to inter human remains in a columbarium, grave, mausoleum, lawn crypt, or undeveloped space.
11. "*Lawn crypt*" means an outer enclosure, for a casket or similar inner burial container which is permanently installed below ground prior to the time of actual interment. A lawn crypt may permit single or multiple interments in a grave space.
12. "*Mausoleum*" means a building, structure, or part of a building or structure that is used or intended to be used for the entombment of human remains.
13. "*Mausoleum space*" means a niche, crypt, or specific place in a mausoleum that contains or is intended to contain human remains.
14. "*Niche*" means a recess in the wall of a mausoleum or columbarium for the deposit of human remains.
15. "*Perpetual care*" means maintenance, repair, and care of all interment spaces, features, buildings, roadways, parking lots, water supply, and other existing cemetery structures subject to the provisions of section 566A.3 and includes the general overhead expenses needed to accomplish such maintenance, repair, and care.
16. "*Perpetual care cemetery*" means a cemetery which has established a perpetual care fund for the maintenance, repair, and care of all interment spaces subject to perpetual care within the cemetery in compliance with section 566A.3.
17. "*Religious cemetery*" means a cemetery that is owned, operated, or controlled by a recognized church, religious society, association, or denomination.
18. "*Sale*" means a transfer for consideration of any interest in ownership, title, or right of use.
19. "*Undeveloped space*" means a mausoleum, columbarium space, or lawn crypt that is not ready for the burial of human remains on the date of the sale of the space.

95 Acts, ch 149, §30

566A.2 Designation.

All such organizations subject to the provisions of this chapter shall be, for the purposes hereof, designated either as "perpetual care cemeteries" or "nonperpetual care cemeteries."

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 566A.2]

566A.2A Perpetual care cemetery registry.

A perpetual care cemetery shall maintain a registry of individuals who have purchased items subject to the perpetual care requirements of this chapter including the amount deposited in trust for each individual. The registry shall include all transactions entered into on or after July 1, 1995.

95 Acts, ch 149, §31

566A.2B Interment rights agreement requirements contents.

An agreement for interment rights under this chapter must be written in clear, understandable language and do all of the following:

1. Identify the seller and purchaser.
2. Identify the salesperson.
3. Specify the interment rights to be provided and the cost of each item.
4. State clearly the conditions on which substitution will be allowed.
5. Set forth the total purchase price and the terms under which it is to be paid.
6. State clearly whether the agreement is a revocable or irrevocable contract, and, if revocable, which parties have the authority to revoke the agreement.
7. State the amount or percentage of money to be placed in the cemetery's perpetual care and maintenance guarantee fund.
8. Set forth an explanation that the perpetual care and maintenance guarantee fund is an irrevocable trust, that deposits cannot be withdrawn even in the event of cancellation, and that the trust's income shall be used by the cemetery for its maintenance, repair, and care.
9. Set forth an explanation of any fees or expenses that may be charged.
10. Set forth an explanation of whether amounts for perpetual care will be deposited in trust upon payment in full or on an allocable basis as payments are made.
11. Set forth an explanation of whether initial payments on agreements for multiple items of funeral and cemetery merchandise or services, or both, will be allocated first to the purchase of a grave, niche, columbarium space, or mausoleum space. If such an allocation is to be made, the agreement shall provide for the immediate transfer of such interment rights upon payment in full and prominently state that any applicable trust deposits under chapter 523A will not be made until the cemetery has received payment in full for the interment rights. The transfer of an undeveloped space may be deferred until such space is ready for burial.
12. If the transfer of an undeveloped space will be deferred until the space is ready for burial as permitted in subsection 11, the agreement shall provide for some form of written acknowledgment upon payment in full, specify a reasonable time period for development of the space, describe what happens in the event of a death prior to development of the space, and provide for the immediate transfer of the interment rights when development of the space is complete.
13. Specify the purchaser's right to cancel and the damages payable for cancellation, if any.
14. State the name and address of the commissioner.

95 Acts, ch 149, §32

566A.2C Annual report by nonperpetual care cemeteries.

1. A nonperpetual care cemetery shall file a written report with the insurance division within four months following the end of the cemetery's fiscal year. The report shall include all of the following:
 - a. The name and address of the cemetery.
 - b. An affidavit that the cemetery is a nonperpetual care cemetery in compliance with section 566A.5.

c. Copies of all sales agreement forms used by the cemetery.

2. The commissioner shall permit the filing of a unified annual report in the event of commonly owned or affiliated cemeteries.

3. The report shall be made under oath.

4. Notwithstanding chapter 22, all records maintained by the commissioner under this section are confidential and shall not be made available for inspection or copying except upon the approval of the commissioner or attorney general.

5. This section does not apply to a cemetery with average retail sales equal to or less than five thousand dollars for the previous three calendar years.

95 Acts, ch 149, §33; 98 Acts, ch 1189, §26, 27

566A.2D Annual report by perpetual care cemeteries.

1. A perpetual care cemetery shall file a written report as of the end of each fiscal year of the cemetery including the following:

a. The name and address of the cemetery.

b. The name and address of any trustee holding perpetual care and maintenance guarantee fund moneys.

c. The name and address of any depository holding perpetual care and maintenance guarantee fund moneys.

d. An affidavit that the cemetery is a perpetual care cemetery in compliance with section 566A.3.

e. Copies of all sales agreement forms used by the cemetery.

f. The amount of the principal of the cemetery's perpetual care funds at the end of the fiscal year.

g. The number of interments made and the number of deeds issued during the cemetery's preceding fiscal year.

2. The report shall be filed with the insurance division within four months following the end of the cemetery's fiscal year in the form required by the commissioner.

3. The commissioner shall permit the filing of a unified annual report in the event of commonly owned or affiliated cemeteries. A political subdivision subject to this section may commingle perpetual care funds for purposes of investment and administration and may file a single report, if each cemetery is appropriately identified and separate records are maintained for each cemetery.

4. The commissioner shall establish by rule an audit fee to be filed with the annual report. The audit report fee shall be based on the number of deeds issued by the cemetery during the reporting period. The audit fee shall apply only to perpetual care cemeteries and shall be based on the approximate cost of regulation.

5. Notwithstanding chapter 22, all records maintained by the commissioner under this subsection are confidential and shall not be made available for inspection or copying except upon approval of the commissioner or attorney general.

95 Acts, ch 149, §34

566A.3 Guarantee fund.

Except for political subdivisions of the state, any such organization subject to the provisions of this chapter which is organized or commences business in the state of Iowa after July 4, 1953, and desires to operate as a perpetual care cemetery shall, before selling or disposing of any interment space or lots, establish a minimum perpetual care and maintenance guarantee fund of twenty-five thousand dollars in cash. The perpetual care and maintenance guarantee fund shall be permanently set aside in trust to be administered under the jurisdiction of the district court of the county wherein the cemetery is located. Notwithstanding chapter 633, annual reports shall not be required unless specifically required by the district court. Reports shall be filed as necessary to approve trustees, trust agreements and amendments, changes in fees or expenses, and other matters within the district court's jurisdiction. The district court so having jurisdiction shall have full jurisdiction over the approval of trustees, reports and accounting of trustees, amount of surety bond required, and investment of funds. Only the income from such fund shall be used for the care and maintenance of the cemetery for which it was established.

To continue to operate as a perpetual care cemetery, any such organization shall set aside and deposit in the perpetual care fund not less than the following amounts for lots of interment space thereafter sold or disposed of:

1. A minimum of twenty percent of the gross selling price with a minimum of twenty dollars for each adult burial space, whichever is the greater.
2. A minimum of twenty percent of the gross selling price for each child's space with a minimum of five dollars for each space up to forty-two inches in length or ten dollars for each space up to sixty inches in length, whichever is the greater.
3. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars for each crypt in a public mausoleum, whichever is the greater.
4. A minimum of twenty percent of the gross selling price with a minimum of ten dollars for each inurnment niche in a public columbarium.

The initial perpetual care fund established for any cemetery shall remain in an irrevocable trust fund until such time as this fund has reached one hundred thousand dollars, when the initial twenty-five thousand dollar deposit may be withdrawn. An affidavit shall be filed with the commissioner providing prior notice of the withdrawal and attesting that the money has not previously been withdrawn. Except as approved by the commissioner upon sufficient proof that the money has not previously been withdrawn, the withdrawal must take place within one year after the fund reaches one hundred thousand dollars.

A perpetual care cemetery may require a contribution to the cemetery's perpetual care guarantee fund for each grave marker, tombstone, monument, or item of ornamental merchandise installed in the cemetery from the purchaser of such merchandise. A cemetery may establish a separate perpetual care fund for this purpose. The contribution, if required by the cemetery, shall be uniformly charged on every installation and shall be set aside and deposited in the perpetual care trust fund. The contributions shall be nonrefundable and shall not be withdrawn from the trust fund once deposited.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 566A.3]

95 Acts, ch 149, §35; 96 Acts, ch 1160, § 19; 98 Acts, ch 1189, §28

566A.4 Application to prior cemeteries.

An organization subject to this chapter which was organized and engaged in business prior to July 4, 1953 is a perpetual care cemetery if it at all times subsequent to that date complies with the requirements of a perpetual care cemetery as set forth in section 566A.3.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 566A.4]

83 Acts, ch 101, § 116

566A.5 Nonperpetual care cemeteries.

1. Each nonperpetual care cemetery shall have printed or stamped at the head of all of its contracts, deeds, statements, letterheads, and advertising material, the legend: "This is a nonperpetual care cemetery", and shall not sell any lot or interment space in the cemetery unless the purchaser of the lot or interment space is informed that the cemetery is a nonperpetual care cemetery.

2. A nonperpetual care cemetery or cemetery operator or employee or agent of a nonperpetual care cemetery shall not advertise or represent that the cemetery is a perpetual care cemetery or use any similar title, description, or term indicating that the cemetery provides guaranteed or permanent maintenance and care or that the cemetery has a trust fund or endowment fund to pay for the expenses of such care.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 566A.5]

95 Acts, ch 149, §36; 97 Acts, ch 89, §1, 2

566A.6 Perpetual care cemeteries.

A nonperpetual care cemetery after July 4, 1953, may become a perpetual care cemetery by placing in the perpetual care trust fund twenty-five thousand dollars or five thousand dollars per acre of all property sold, whichever is the greater, and by complying with the requirements for a perpetual care cemetery as provided in section 566A.3.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 566A.6]

83 Acts, ch 101, § 117

566A.7 Commission or bonus unlawful.

It shall be unlawful for any organization subject to the provisions of this chapter to pay or offer to pay to, or for any person, firm or corporation to receive directly or indirectly a commission or bonus or rebate or other thing of value, for or in connection with the sale of any interment space, lot or part thereof, in any cemetery described in section 566A.1 of this chapter. The provisions of this section shall not apply to a person regularly employed and supervised by such organization or to a person, firm, corporation, or other entity licensed under chapter 523A that contracts with the cemetery to sell interment spaces or lots. The conduct of any person, firm, corporation, or other entity described in this section is the direct responsibility of the cemetery.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 566A.7]

92 Acts, ch 1078, § 14

566A.8 Discrimination prohibited.

It shall be unlawful for any organization subject to the provisions of this chapter to deny the privilege of

interment of the remains of any deceased person in any cemetery described in section 566A.1 of this chapter solely because of the race or color of such deceased person. Any contract, agreement, deed, covenant, restriction or charter provision at any time entered into, or bylaw, rule or regulation adopted or put in force, either subsequent or prior to July 4, 1953, authorizing, permitting or requiring any organization subject to the provisions of this chapter to deny such privilege of interment because of race or color of such deceased person is hereby declared to be null and void and in conflict with the public policy of this state. No organization subject to the provisions of this chapter or any director, officer, agent, employee or trustee thereof or therefor, shall be liable for damages or other relief, or be subjected to any action in any court otherwise having jurisdiction in the premises by reason of refusing to commit any act declared unlawful herein.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 566A.8]

566A.9 Penalty.

Any person, firm or corporation violating any of the provisions of this chapter, shall be guilty of a simple misdemeanor.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 566A.9]

566A.10 Extent of offenses.

Each day any person, firm or corporation violates any provision of this chapter, except the commission of any act declared unlawful in section 566A.7 or section 566A.8, shall be deemed to be a separate and distinct offense.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 566A.10]

566A.11 Speculation prohibited.

No organization subject to the provisions of this chapter nor any person representing it in a sales capacity shall advertise or represent, in connection with the sale or attempted sale of any interment space, that the same is or will be a desirable speculative investment for resale purposes.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 566A.11]

566A.12 Administration.

1. *Cemetery registry.* The commissioner shall establish and maintain a public registry of perpetual care cemeteries.

2. *Investigations and audits.* The commissioner or the attorney general, for the purpose of discovering violations of this chapter or rules adopted pursuant to this chapter, may do any of the following:

a. Audit any cemetery, for cause or on a random basis, to determine compliance with this chapter. A cemetery shall make available to the commissioner or attorney general the cemetery's deed registry and those books, accounts, records, and files related to the sale of interment rights. Notwithstanding chapter 22, all business records and files acquired by the commissioner or attorney general pursuant to an audit under this subsection are confidential and shall not be made available for inspection or copying unless ordered by a court for good cause shown. If it is determined pursuant to an audit that a material violation of this chapter or rules adopted pursuant to this chapter has occurred, the cost of the audit may be assessed to the cemetery.

b. Administer oaths and affirmations, subpoena witnesses, receive evidence, and require the production of

documents and records in connection with an investigation or proceeding being conducted pursuant to this chapter.

c. Apply to the district court for issuance of an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, where the person has refused to obey a subpoena issued by the commissioner or attorney general. The person may also be required to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

3. Cease and desist orders. If an audit or investigation provides reasonable evidence that a person has violated this chapter, or any rule adopted pursuant to this chapter, the commissioner may issue an order directed at the person to cease and desist from engaging in such act or practice.

4. Receiverships.

a. The commissioner shall notify the attorney general if the commissioner finds that a perpetual care cemetery subject to regulation under this chapter meets one or more of the following grounds for the establishment of a receivership:

(1) Is insolvent.

(2) Has utilized trust funds for personal or business purposes in a manner inconsistent with the requirements of this chapter, and the amount of funds currently held in the trust is less than the amount required by this chapter.

b. The commissioner or the attorney general may apply to the district court in any county of the state for a receivership. Upon proof of any of the grounds for a receivership described in this section the court may grant a receivership.

5. Injunctions. The commissioner or the attorney general may apply to the district court for an injunction to restrain any cemetery subject to this chapter and any agents, employees, trustees, or associates of the cemetery from engaging in conduct or practices deemed a violation of this chapter or rules adopted pursuant to this chapter. Upon proof of any violation of this chapter described in the petition for injunction, the court may grant the injunction. The commissioner or the attorney general shall not be required to post a bond. Failure to obey a court order under this subsection constitutes contempt of court.

90 Acts, ch 1213, §31; 95 Acts, ch 149, §37; 98 Acts, ch 1189, §29, 30

566A.13 Violations and penalties.

A violation of this chapter or rules adopted by the commissioner pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided by section 714.16, including but not limited to provisions relating to injunctive relief and penalties, apply to a violation of this chapter.

90 Acts, ch 1213, §32; 95 Acts, ch 149, §38

566A.14 Rules.

The division of insurance may adopt rules pursuant to chapter 17A as necessary and appropriate to administer this chapter.

95 Acts, ch 149, §39

566A.15 Cemetery fund.

A special revenue fund is created in the state treasury, under the control of the commissioner, to be known as the insurance division cemetery fund. Commencing July 1, 1995, one dollar from the audit fee for each deed reported on the annual report required by section 566A.2D, executed during the preceding fiscal year, shall be deposited in the insurance division cemetery fund by the commissioner. However, if the balance of the fund on July 1 of any year exceeds two hundred thousand dollars, the allocation to the fund shall not be made, and the total sum of the fees paid pursuant to section 566A.2D shall be deposited in the general fund of the state. Notwithstanding section 8.33, moneys in the fund shall not revert to the general fund but shall remain in the cemetery fund. Moneys in the cemetery fund are appropriated to the insurance division and, subject to authorization by the commissioner, may be used to pay the expenses of that office incurred in the administration of the audit, investigative, and enforcement duties and obligations imposed under this chapter, and the expenses of receiverships established pursuant to section 566A.12.

95 Acts, ch 149, §40; 96 Acts, ch 1034, § 54