

NEW JERSEY REGISTER
VOLUME 39, ISSUE 20
ISSUE DATE: OCTOBER 15, 2007
RULE ADOPTIONS
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY CEMETERY BOARD

Adopted Amendment: N.J.A.C. 13:44J-8.4

Adopted New Rule: N.J.A.C. 13:44J-14.3

Pre-Construction Sales of Mausoleum Space

Proposed: October 2, 2006 at 38 N.J.R. 4170(a).

Adopted: June 14, 2007 by the New Jersey Cemetery Board, Marion Brozowski, President.

Filed: September 20, 2007 as R.2007 d.323, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-3.6).

Authority: N.J.S.A. 45:27-4.

Effective Date: October 15, 2007.

Expiration Date: May 2, 2011.

Federal Standards Statement

A Federal standards analysis is not required because there are no applicable Federal laws or standards applicable to the adopted amendment and new rule.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

13:44J-8.4 Temporary storage prior to final entombment or interment within a single cemetery

(a) (No change.)

(b) A cemetery company may temporarily store human remains in a properly constructed receiving vault prior to final entombment or interment for up to four years. If a cemetery company needs to temporarily store human remains for more than four years, the cemetery company must obtain the written consent for an extension, which includes a set term for the extension, from the person who has the right to control the disposition of remains pursuant to N.J.S.A. 45:27-22. The cemetery company shall advise the Board that the person who has the right to control the disposition of remains has granted the extension. The cemetery company may transfer the remains from the place of temporary storage to the place of final entombment or interment without obtaining a disinterment permit and without the presence of a licensed funeral director if both the temporary storage and final resting place are within a single cemetery.

(c)-(e) (No change.)

13:44J-14.3 Pre-construction sales of mausoleum space

(a) For the purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

"Complete construction" means that all requirements for entombment in the mausoleum have been met.

"Construction costs" means the costs directly associated with the building project, such as:

1. Architect fees;
2. City*, county* and State permit fees;
3. Contractor fees;
4. Soil testing;
5. Landscaping;
6. Furniture and fixtures;
7. Engineering;
8. Site plan development; and
9. Installation of utility lines and other expenses of a similar nature that are necessary to complete construction of the mausoleum.

"Pre-construction sale" means the sale, assignment or reservation of mausoleum space to a consumer for monetary consideration, prior to the time that the mausoleum space is available for entombment.

(b) A cemetery company may offer for sale space in a mausoleum that has not been constructed.

(c) Any cemetery company that offers mausoleum space in a pre-construction sale must complete construction of the mausoleum within four years from the date of the first pre-construction sale, except as permitted pursuant to (e) below.

(d) Within 30 days of the first pre-construction sale, a cemetery company shall inform the Board in writing of the date of the first sale and shall post notification of the date of the first sale in its office or, if the cemetery company has no office, at the construction site.

(e) A cemetery company may apply to the Board for a one year extension of the four-year deadline for completion. The Board may grant the extension if it deems the cemetery company to be actively engaged in constructing the mausoleum and determines that delays in the completion of the mausoleum are not due to any misconduct of the cemetery company. An application for an extension shall be filed at least 120 days prior to the end of the four-year period and shall include:

1. The date of the first pre-construction sale;
2. The reasons the cemetery company was unable to complete construction within the four-year deadline;
3. Any documents that establish the reasons why the cemetery company was unable to complete construction;
4. The number of human remains temporarily entombed pending completion of construction; and
5. The number of anticipated spaces in each mausoleum under construction and the number of sold spaces in each mausoleum.

(f) If a cemetery company enters into a contract with another entity for the sale of spaces in a mausoleum that will be sold in a pre-construction sale, the cemetery company shall ensure that the contract contains a provision that requires the other entity to indemnify the cemetery company*, to the extent of the amount the other entity received in conjunction with the sale,* for any refunds made to consumers pursuant to (h) and (i) below.

(g) A cemetery company that has been granted a one-year extension pursuant to (e) above, and that has not completed the construction of the mausoleum within that one-year period, shall apply to the Board for another one year extension

pursuant to (e) above. An application for an extension shall be filed at least 120 days prior to the end of the one-year extension granted pursuant to (e) above. The Board may approve such an extension with conditions or restrictions.

(h) A cemetery company that is granted an extension pursuant to (g) above shall make a full refund of the *[purchase price]* *monies paid* to any pre-construction purchaser within 30 days of receiving a request for refund from the purchaser or his or her authorized representative.

(i) If construction is not completed as required by (c) above and an extension has not been granted pursuant to (e) or (h) above, the cemetery company shall cease selling pre-construction spaces and shall make a full refund of the *[purchase price]* *monies paid* to every consumer who has purchased a space.

(j) A sales contract for a pre-construction mausoleum space must disclose:

1. That the sale is for mausoleum space that has not yet been constructed and is not available for interments at the time of the sale;

2. The projected date the cemetery company will complete construction; and

3. The fact that the cemetery company is allowed to apply to the Board for permission to extend the date of completion beyond four years from the date of the first pre-construction sale and that a purchaser has the right to a full refund if the cemetery company does not complete construction within five years from the date of the first pre-construction sale.

(k) The purchaser of a pre-construction mausoleum space shall initial the disclosures in the sales contract required by (j) above.

(l) A cemetery company that offers mausoleum space in a pre-construction sale must place no less than 45 percent of the purchase price in a ledgered account and use the funds in this account for deposits to the Maintenance and Preservation Fund, deposits to the building fund, construction costs or refunds. Funds remaining in this account upon the completion of construction shall revert to the cemetery company.

(m) The requirements of (a) through (l) above shall apply to all pre-construction sales made after *[(the effective date of this rule)]* *October 15, 2007*.