

SUNSET REVIEW: EVALUATION OF THE OFFICE OF CEMETERY OVERSIGHT



DEPARTMENT OF LEGISLATIVE SERVICES OCTOBER 2011

Sunset Review: Evaluation of the Office of Cemetery Oversight

**Department of Legislative Services
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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Warren G. Deschenaux
Director

October 31, 2011

The Honorable Thomas V. Mike Miller, Jr.
The Honorable Michael E. Busch
Honorable Members of the General Assembly

Ladies and Gentlemen:

The Department of Legislative Services (DLS) has completed its evaluation of the Office of Cemetery Oversight as required by the Maryland Program Evaluation Act. This evaluation process is more commonly known as “sunset review” because the agencies subject to evaluation are usually subject to termination; typically, legislative action must be taken to reauthorize them. This report was prepared to assist the committees designated to review the commission – the Senate Finance Committee and the House Health and Government Operations Committee – in making their recommendations to the full General Assembly. The office is scheduled to terminate on July 1, 2013.

DLS finds that there is a continued need for regulation of the cemetery and burial goods industry and that the office generally complies with its statutory and regulatory mandate. Since the 2005 full evaluation, the office has taken significant steps to improve compliance and address fiscal issues. DLS recognizes the positive changes implemented to date, and therefore recommends that the office’s termination date be extended by 10 years to July 1, 2023.

However, DLS recommends several changes to enhance the office’s consumer protection function. DLS recommends that the office procure a part-time, contractual accountant capable of analyzing perpetual care trust reports submitted by regulated cemeteries to ensure compliance with statutory perpetual care requirements. Moreover, most cemeteries operated by religious and nonprofit organizations are exempt from statutory perpetual care trust requirements. Cemetery maintenance remains an area of consumer protection concern; therefore, DLS repeats its recommendation from the 2005 evaluation that this exemption be repealed. DLS makes an additional recommendation that statute be amended to specifically exempt family cemeteries that do not conduct public sales from the Act’s various registration and permit, perpetual care, and preneed burial contract requirements. These cemeteries are currently not exempt under the Act; however, the office does not attempt to regulate them due to its interpretation of the legislative intent behind the Act.

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Honorable Members of the General Assembly
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The office's complaint processing and resolution is handled well, with an average length of time to close a complaint of approximately 30 days. However, the office has yet to comply with a statutory requirement to develop a schedule and standard for the prompt and timely processing and resolution of each complaint. DLS recommends that the director develop this schedule and standard and indicate on the office's annual complaint report the number of complaints resolved within the schedule. DLS further recommends that the office modify the annual complaint report to distinguish the type of purchase, focus of dissatisfaction, and type of resolution for both complaints and inquiries to clarify the data contained in the report.

The 2005 evaluation expressed concern that the office was not financially solvent and recommended that its special-fund status be repealed. DLS finds that the office has taken significant steps to ensure its future fiscal stability, including increasing the contract fee and deferring indirect costs. DLS recognizes these positive changes but notes that the office does not require supporting documentation to verify a cemetery's reported number of applicable sales contracts, the most significant source of the office's revenues. DLS recommends that the office alter the permit renewal forms to require this supporting documentation.

Finally, DLS makes several recommendations to (1) enhance communication between the office and the Advisory Council on Cemetery Operations; (2) raise the office's public profile with consumers; and (3) improve recordkeeping, reporting, and related administrative procedures. It also recommends that the advisory council and office conduct various studies to analyze issues or trends within the industry that were identified during this review. In total, DLS offers 20 recommendations; draft legislation to implement the recommended statutory changes is included as an appendix to the report.

DLS would like to acknowledge the cooperation and assistance provided by the office, its staff, the council, its members, and stakeholders throughout the review process. The director and council chair were provided a draft copy of the report for factual review and comment prior to its publication; written comments from the Department of Labor, Licensing, and Regulation on behalf of the office are included as an appendix to this report.

Sincerely,

Warren G. Deschenaux
Director

WGD/MCR/mlm

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Executive Summary

Pursuant to the Maryland Program Evaluation Act, the Department of Legislative Services (DLS) has evaluated the Office of Cemetery Oversight, which is scheduled to terminate July 1, 2013. DLS finds that there is a continued need for regulation of the cemeteries and burial goods industry by the State but has identified areas in which the office could improve its services.

This full evaluation has revealed significant advancement by the office and its Advisory Council on Cemetery Operations in addressing issues raised in the last full evaluation, and if this progress is continued, the office will continue to be an effective consumer protection agency. DLS makes the following recommendations based on these findings.

Recommendation 1: Statute should be amended to continue the Office of Cemetery Oversight and to extend its termination date by 10 years to July 1, 2023. Additionally, uncodified language should be adopted requiring the office to report to the Senate Finance and House Health and Government Operations committees, on or before October 1, 2013, on the implementation status of nonstatutory recommendations made by DLS that are adopted by the committees.

As required by Chapter 450 of 2010, the office has *drafted* regulations for crematories in conjunction with the State Board of Morticians and Funeral Directors. The new regulations will bring free-standing crematories and crematories in which an office permit holder or registrant is the

majority owner under the regulatory authority of the office. These new regulations bring an area of the death care industry (crematories) under the authority of the office that is not represented on the council. To add industry experience to the council in this new area, DLS recommends:

Recommendation 2: Statute should be amended to add a representative of crematories as a seventh industry member to the Advisory Council on Cemetery Operations, creating a 12-person council.

The Department of Labor, Licensing, and Regulation (DLLR) has encouraged all boards and commissions to reduce the number of annual meetings as a cost-saving measure. In accordance with these instructions, the advisory council and the director agreed to reduce the number of annual council meetings from about 10 to 8. Council members expressed concern that this reduction would reduce the council's effectiveness and perhaps lead to future reductions, in part because statute mandates only that the council meets at least once annually. These meetings provide the best opportunity for the director to obtain feedback from the members as a group and for the council to learn about office operations. For these reasons, DLS recommends:

Recommendation 3: Statute should be amended to increase the minimum number of advisory council meetings to four meetings per year, and additional meetings should continue to be authorized as necessary. The new director of the office should make every effort to attend

advisory council meetings to best receive advice from the council.

In the years following the creation of the office and the advisory council, the council was tasked with advising the director on proposed regulations and the code of ethics. These activities occupied a significant portion of the council's time during those early years of its existence. Members of the advisory council now feel underutilized because there is minimal interaction between the director and the council. To strengthen this relationship, DLS recommends:

Recommendation 4: Statute should be amended to require that the director provide copies of the office's annual noncompliance action plan report and annual complaint report to the members of the advisory council each year. The advisory council should respond to any issues raised by the director in the reports and develop a plan to study any ongoing issues during the following year.

Though many of the current advisory council members have served on the council for a long period of time or even since its inception, significant turnover in its membership is imminent. Four vacancies have recently arisen on the council, and new appointments are still forthcoming. Because new appointments have been infrequent, the office has not created any orientation materials to educate new members on the purpose and authority of the advisory council or on the statutes and regulations affecting the industry. To address this concern, DLS recommends:

Recommendation 5: The director and advisory council should collaborate on the

development of orientation materials for new members appointed to the council.

The conflict of interest provisions of the Public Ethics Law prohibit a board member from having a financial interest in, or being employed by, an entity subject to the authority of the member or of the agency with which the member is affiliated and from holding an employment relationship that would impair the member's impartiality and independence of judgment. Several industry representatives of the advisory council have resigned as a result of questions as to possible conflicts of interest arising from service in a leadership role for an industry association. It is unclear whether these members were properly advised of the limitations of serving on the council with a conflict or received the proper paperwork to declare this interest. To ensure future members are aware of any ethics requirement, DLS recommends:

Recommendation 6: Members of the advisory council must be adequately informed *prior to their appointment* of the requirements imposed on them by the Public Ethics Law. Statute should be amended to require the director to deliver to each member of the council the paperwork necessary to disclose any interest or employment held by the member at the time of appointment. The paperwork should be delivered at the time of appointment and prior to reappointment. DLLR should also work with the office and other boards and commissions to ensure that all members are regularly apprised of the ethics requirements that continue to apply to them. These requirements should be incorporated into the orientation materials developed by the director and advisory council.

The office has a dual role as a regulatory body and as the entity responsible for investigating and mediating consumer complaints. The effectiveness of the office in serving consumers is limited by its low profile in the public consciousness. At the time of entering into a contract with a consumer for the sale of burial goods or services, any person subject to the Maryland Cemetery Act must make certain written disclosures, including the name, address, and telephone number for the office. To further ensure consumers make note of these disclosures, DLS recommends:

Recommendation 7: Statute should be amended to require that the disclosure of the name, address, and telephone number of the Office of Cemetery Oversight be made on a separate form, which must be independently signed and dated by the consumer. Statute should require that the consumer be provided a copy of this form at the time the consumer is provided a copy of the contract.

Complaints to the office may arise from a situation in which a contract was never formed or in relation to a person who was not a party to the contract, in the case of relatives or friends. For these reasons, and because the office is still a relatively new regulatory body, consumer outreach is of particular importance. Soon after his appointment, the previous director created a newsletter to inform both industry members and consumers about the work of the office, to highlight industry issues, and to publicize the next meeting of the advisory council. Due to a variety of factors, this newsletter has never been updated.

Recommendation 8: The new director and a committee formed of members of the advisory council should update the

newsletter and develop a plan to ensure that the newsletter continues to be updated on a regular basis.

The legislation creating the office and the advisory council required the director, in conjunction with the State Board of Morticians and Funeral Directors and the Division of Consumer Protection of the Office of the Attorney General, to publish a consumer information pamphlet describing consumer rights and any other information the director considers reasonably necessary to aid consumers. This pamphlet has not been updated to include information on crematory goods and services, as mandated by Chapter 450 of 2010. There is no systematic dissemination of the pamphlet, but there have been occasional attempts to ensure the pamphlet is available in key locations. To address these concerns, DLS recommends:

Recommendation 9: The advisory council should develop a plan to improve consumer outreach. The plan should include an approach to disseminating the consumer information pamphlet to key locations around the State, such as nursing homes, churches, the offices of estate lawyers, consumer protection agencies of every county, and other locations.

The office does not maintain historical licensing records but is able to take a snapshot of the current registration and permit counts on a given day. The office has been able to produce historical licensing counts representing a similar timeframe each year, though the snapshots were taken on different dates. These numbers also do not reflect historic licensing counts for each category. Therefore, DLS recommends:

Recommendation 10: Statute should be amended to require the director to maintain a complete listing of the registration and permit numbers, including the registration and permit counts for each licensing category, and include the counts as of June 30 of that year in the office's annual report submitted to the General Assembly.

The office's inventory lists 3,098 private family cemeteries that do not conduct public sales, but the office lists only one cemetery in this category in its registration and permit count. The remaining 3,097 cemeteries are not accounted for under any other regulated category. Statute does not exempt private family cemeteries that do not conduct public sales from statutory registration and permit requirements. The office has assumed that the legislature intended that the office regulate only business entities, rather than private family cemeteries. To be consistent with the Maryland Cemetery Act, DLS recommends:

Recommendation 11: Statute should be amended to specifically exempt family cemeteries that do not conduct public sales from the registration and permit, perpetual care, and preneed burial contract requirements of the Maryland Cemetery Act. If this recommendation is not adopted by the General Assembly, the office should require the owner of a family cemetery to register with the office as a registered cemeterian and ensure compliance of each family cemetery with the perpetual care and preneed burial contract requirements of the Act.

When a registered sales counselor becomes employed with a new cemetery, the sales counselor must apply for a new registration and go through the lengthy

process for initial registration. If the sales counselor could instead transfer his or her registration to a new cemetery, the wait to obtain the new registration would be significantly reduced.

Recommendation 12: Statute should be amended to authorize an individual to transfer a registration from one business to another business without requiring a new registration to be issued by the office. The office should set an appropriate fee for the transfer and promulgate the fee in regulations.

It is important for cemeteries to keep well-managed, comprehensive, and accurate records that span significant periods of time because of the prolonged relationship a cemetery has with its customers, as well as in the event of any crises. The advisory council has periodically raised concerns about recordkeeping issues related to cemeteries, particularly in times of pandemic or natural disasters, but has not conducted any comprehensive research on the issue or developed a proposal for legislative consideration.

Recommendation 13: The advisory council should study recordkeeping practices for cemeteries in relation both to best practices and for disaster preparedness, including pandemics and natural disasters, with the intention of developing legislation to address this issue. The advisory council should develop a legislative proposal for introduction no later than the 2014 session. In developing the proposal, the council should determine the categories of cemeteries to which any recordkeeping requirements developed should be applied and should consider the

possibility of phasing in requirements to limit the economic impact on cemeteries.

All sole proprietor registered cemeterians, permit holders, or any other person subject to the perpetual care requirements must submit a perpetual care trust report to the office. Because of the number of these reports and their complexity, it is a strain for the director to review the reports for compliance, particularly the timeliness of deposits and the appropriateness of funding levels. The office, and consequently Maryland consumers, would benefit greatly from a staff accountant reviewing the reports, focusing solely on issues of noncompliance with the perpetual care requirements.

Recommendation 14: The Office of Cemetery Oversight should procure a part-time, contractual accountant capable of analyzing regulated cemeteries' perpetual care trust reports for noncompliance with statutory perpetual care requirements.

The 2005 full evaluation recommended repealing the exemption from perpetual care trust requirements for cemeteries owned by a local government, church, synagogue, or other religious organization or a nonprofit organization created before 1900 by an act of the General Assembly. Cemetery maintenance remains an area of consumer protection concern, so DLS recommends:

Recommendation 15: Statute should be amended to require any cemetery, other than a veterans' cemetery operated by the State, that sells or offers to sell to the public a burial lot or burial right in a cemetery at which perpetual care is stated or implied to comply with the perpetual care trust provisions, thereby repealing

the exemption from perpetual care trust requirements for a cemetery that is owned and operated by a local government, church, synagogue, religious organization, or nonprofit organization created before 1900 by an act of the General Assembly and currently selling or offering to sell a burial lot or right. Current fees applicable to trust reports should apply to anyone required to submit a perpetual care trust report. Consideration should be given to phasing in these requirements. Requiring the currently exempted cemeteries to adhere to the perpetual care trust requirements on July 1, 2013, with annual trust reports due to the office 120 days after the end of calendar 2013 is a reasonable timeframe.

Members of the advisory council have ample industry experience and could be helpful in the resolution of complaints. While the time-sensitive nature of complaint resolution makes requiring the investigator to bring each complaint to the council impractical, the occasional use of the council's knowledge and experience would be beneficial.

Recommendation 16: Statute should be amended to specifically authorize the director or the director's designee to confer with the advisory council as a whole or individual members of the council on complaint processing and resolution. Consideration should be given to closing portions of advisory council meetings to allow for more in-depth discussion of complaints.

The office must submit a detailed annual complaint report, which includes the number of formal complaints and inquiries sorted by type of cemetery, type of purchase, focus of dissatisfaction, and type of resolution,

including whether any disciplinary action was taken. The type of purchase, focus of dissatisfaction, and type of resolution for each complaint, however, makes no distinction between complaints and inquiries, making it difficult to determine data trends. To alleviate this issue, DLS recommends:

Recommendation 17: Statute should be amended to require the director to modify the second page of the annual complaint report to distinguish the type of purchase, focus of dissatisfaction, and type of resolution for both complaints and inquiries. Additionally, the report should define the types of resolution it lists.

Statute requires the director to adopt guidelines that establish a schedule for the prompt and timely processing and resolution of each complaint made to the director. No such guidelines exist. Further, the office is required by statute to include the number of complaints that are resolved in accordance with the guidelines. The annual report does not currently include this information. To comply with statute, DLS recommends:

Recommendation 18: The director must comply with statutory requirements and develop a schedule and standard for the prompt and timely processing and resolution of each complaint received by the office. Once developed, future annual complaint reports should include the number of complaints resolved within this timeframe.

The office currently charges a fee for certain cemetery sales contracts. The cemetery reports the number of applicable contracts on its biennial permit renewal application. The office does not require supporting documentation for this reported amount. Because sales contract fee revenue represents the majority of the office's revenue, DLS recommends:

Recommendation 19: Statute should be amended to require that the office's permit renewal forms be changed to require supporting documentation for the cemetery's reported number of applicable sales contracts.

Cremations in the State are increasing at a rate of 1% or 2% every year. This is a prevalent issue in the death care industry and may affect the office's finances if the corresponding number of burial plot sales continues to decrease, since the office's major source of revenue comes from fees stemming from those sales.

Recommendation 20: Uncodified language should be adopted to instruct the director and the advisory council to study the issue of the increasing rate of cremations within the death care industry. Particular attention should be paid to whether the rate of cremations will continue to rise at the same rate and the possible effect this trend may have on the office's finances.

Chapter 1. Introduction

Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as “sunset review” because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State entities according to a rotating statutory schedule as part of sunset review. The review process traditionally begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The Office of Cemetery Oversight last underwent a full evaluation as part of sunset review in 2005. The sunset bill did not pass the General Assembly in 2006 and was reconsidered during the 2007 session. An update to the 2005 evaluation was issued in January 2007 to assess the continued need for the evaluation’s recommendations. Chapter 348 of 2007 extended the office’s termination date by five years to July 1, 2013, and required a full sunset evaluation of the office on or before July 1, 2012, without preliminary evaluation. The 2005 evaluation and 2007 update raised issues for continued attention, including the office’s fiscal condition, industry issues in need of further study, concerns with regulatory compliance, and the introduction of new regulations for crematories.

The Death Care Industry in Maryland

The death care industry in Maryland includes the funeral industry, cemeteries, burial goods providers, and crematories. The funeral industry – licensed funeral directors, licensed morticians, and licensed funeral establishments, including the sale of burial goods by those licensees – is subject to regulation by the State Board of Morticians within the Department of Health and Mental Hygiene. This evaluation covers two segments of the death care industry not regulated under the Maryland Morticians Act – cemeteries and burial goods providers.

Chapter 209 of 1996 created the Task Force to Examine the State’s Cemetery and Funeral Industry. At the time, the estimated average funeral cost was \$4,470 and a burden to many families in the State. Chapter 209 found it essential that consumers in the State be afforded certain protections and guaranteed certain rights. There were 25 members of the task force including members of the General Assembly, representatives of government agencies, members of both the cemetery and funeral industries, and members of the general public. The task force was charged with assessing:

- the regulatory model of the funeral industry in the State as it compared to that of surrounding states;
- the costs to consumers of funeral merchandise and burial plots;
- the costs to the State and local governments for the burial of indigent individuals;
- interest rates and financing charges in the burial industry;
- issues facing small businesses in the funeral and burial industries;
- the religious needs of consumers as they relate to burial practices; and
- the reinterment of remains discovered in the development of property.

The task force was required to develop recommendations providing for consumer protections in the funeral and burial industries and propose legislative or regulatory changes required to implement the recommendations. The task force met 12 times between June 1996 and December 1996 and presented its findings and recommendations to the General Assembly on December 24, 1996. The task force presented several recommendations to provide greater protection to consumers in the purchase of funeral and cemetery goods and services. The task force also recommended the creation of the Office of Cemetery Oversight within the Department of Labor, Licensing, and Regulation (DLLR). Chapter 675 of 1997, the Maryland Cemetery Act, established the Office of Cemetery Oversight within DLLR and created the Advisory Council on Cemetery Operations.

History of Cemetery and Burial Goods Provider Regulation in Maryland

Prior to adoption of the Maryland Cemetery Act in 1997, the regulation of cemeteries in the State included limitations on the acreage used for burials, prohibitions on public thoroughfares in cemeteries, provisions relating to sales practices with respect to burial lots and crypts, and preneed and perpetual care trust provisions. Preneed and perpetual care trusts aim to protect consumers by ensuring that money paid in advance for goods or services is properly invested and that there are adequate funds to maintain the buildings and grounds of the cemetery into the future. Sellers of preneed goods and services were required to submit annual trust reports to the Secretary of State, and trustees submitted an annual account statement to the Commissioner of Financial Regulation in DLLR. Any cemetery in the State at which perpetual care was stated or implied was required to submit annual trust reports to the Secretary of State.

The limited regulatory authority over cemeteries on preneed issues, trust requirements, and perpetual care concerned the task force. The task force was particularly concerned that consumers did not have an authoritative body with which to file complaints pertaining to

cemeteries or a process whereby sanctions could be imposed when cemeteries violated the law or business standards. Unless the complaint against a cemetery constituted an unfair and deceptive trade practice, there was little action the Attorney General's Office could take on behalf of a consumer. For these reasons, the task force recommended the creation of the Office of Cemetery Oversight.

The Office of Cemetery Oversight and Advisory Council on Cemetery Operations

The Office of Cemetery Oversight registers and regulates the cemetery and burial goods industry in the State. The office is housed within DLLR's Division of Occupational and Professional Licensing and is headed by a full-time director appointed by the Secretary of Labor, Licensing, and Regulation with the approval of the Governor. A full-time investigator and full-time administrative aide provide support for office operations, and an assistant Attorney General is assigned to the office at 60% time. However, as the director who served throughout this evaluation resigned effective mid-October 2011, the investigator is now serving as the acting director.

The Advisory Council on Cemetery Operations serves as a source of expertise for the director and provides insight into the needs of the business community and the consumers served by the industry. The council consists of 11 members appointed to three-year terms by the Secretary of Labor, Licensing, and Regulation with no limit on the number of terms a council member may serve. Statute requires that the 11 appointed members include:

- three registered cemeterians representing the for-profit cemetery industry;
- one registered cemeterian representing a nonprofit cemetery;
- one registered seller from a monument company;
- one representative from a religious cemetery; and
- five consumers.

The current membership of the council is listed in **Appendix 1**. The council previously met 10 months out of the year, but due to budget and time concerns recently reduced this to 8 annual meetings. The approaches to cemetery regulation utilized by other states are outlined in the chart in **Appendix 2**.

An individual must be registered with the office as a registered cemeterian or a registered seller before engaging in the operation of a cemetery or providing burial goods. Statute defines "engaging in the operation of a cemetery" as owning, controlling, or managing a cemetery. The definition expressly includes performing activities necessary for the establishment, improvement, care, preservation, or embellishment of a cemetery; interment; and the provision of burial space or burial goods. A registrant may engage in the operation of a cemetery or burial goods business as a sole proprietor. Operation of a cemetery or burial goods business through a corporation, limited liability company, or partnership requires a permit from the office. Sales counselors

employed by a cemetery or burial goods business are also required to register with the office. As of September 27, 2011, the office regulated 1,276 entities, including 209 registered ceterierians, 56 registered sellers, 77 cemetery businesses, 12 nonprofit cemeteries, 24 burial goods businesses, and 878 sales counselors.

Chapter 675 also created the Cemetery Oversight Fund as a continuing, nonlapsing special fund, made up of biennial fees levied on the regulated entities. The purpose of the fund is to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the office. The 2005 full evaluation noted funding problems and recommended repealing the fund and the special-fund status of the office. The office resisted this recommendation and adopted regulations in 2006 increasing fees. The office remains special funded. A detailed discussion of the office's finances can be found in **Chapter 6** of this report.

Office and Advisory Council Should Be Continued

Regulation of cemeteries and burial goods businesses continues to be of great importance in serving the residents of the State. Registration and permitting requirements are designed not only to ensure that cemetery consumers are dealing with professionals, but also to ensure that consumers are protected in cemetery transactions. Oversight of preneed and perpetual care trusts ensures that the expensive investments made by consumers are protected for the duration of the lengthy business relationship common to the cemetery industry. This full evaluation has revealed significant advancement by the office and the advisory council in addressing issues raised in the last sunset review and, if this progress is continued, the office and council will continue to be a valuable asset to Maryland residents and to the cemetery industry.

Recommendation 1: Statute should be amended to continue the Office of Cemetery Oversight and to extend its termination date by 10 years to July 1, 2023. Additionally, uncodified language should be adopted requiring the office to report to the Senate Finance and House Health and Government Operations committees, on or before October 1, 2013, on the implementation status of nonstatutory recommendations made by DLS that are adopted by the committees.

Research Activities

In evaluating the Office of Cemetery Oversight, staff of DLS completed the following activities:

- reviewed documents and statistical information from the office regarding licensure, complaints, and finances;
- reviewed statutes and regulations related to the office and the advisory council;

- reviewed perpetual care trust reports submitted to the office;
- examined complaint files and data, focusing on the nature and disposition of complaints and conducting an independent analysis of complaint timelines;
- accompanied the investigator on an inspection of a cemetery;
- visited a crematory located on the grounds of a cemetery;
- attended advisory council meetings and reviewed meeting minutes;
- reviewed regulatory practices for the cemetery industry in other states;
- interviewed officials of associations representing cemeterians;
- interviewed the office director, investigator, and assistant Attorney General; and
- interviewed the chair of the advisory council and each of the other council members.

Report Organization

This chapter has provided an overview of the evaluation process and the death care industry in Maryland. **Chapter 2** outlines the structure and function of the office and the advisory council. **Chapter 3** provides an overview of registration and permit requirements for cemeteries in Maryland. **Chapter 4** discusses regulation of perpetual care and preneed sales. **Chapter 5** discusses the procedures for resolving consumer complaints. **Chapter 6** examines the office's finances. DLS findings and recommendations can be found throughout this report. **Appendix 5** is the draft legislation to implement the statutory recommendations made by DLS. The office has reviewed a draft of this evaluation, and DLLR's written comments on its behalf are contained in **Appendix 6**. Appropriate factual corrections and clarifications have been made throughout the document. Therefore, references in those comments may not reflect this published version of the report.

Chapter 2. The Office and the Advisory Council

Legislation Has Changed Regulation of the Cemetery Industry

Few legislative changes have affected the Office of Cemetery Oversight or cemeteries since the 2005 sunset evaluation and the 2007 update, but measures resulting from those studies have had a significant effect on the cemetery industry. Recent legislation has expanded the authority of the director of the office and brought crematories under the regulatory authority of the office and the State Board of Morticians and Funeral Directors beginning in the fall of 2011. Prior to the passage of the 2007 legislation, a departmental bill expanded the director's authority over persons that have not registered with or obtained a permit from the office but are subject to the registration and permit requirements of the Maryland Cemetery Act. It made the perpetual care trust requirements pertaining to deposits, reporting, and recordkeeping as well as provisions relating to the establishment, purpose, and enforcement of trust agreements apply to any person that states or implies that perpetual care will be provided. More recently, the director was authorized to require sellers of preneed goods and services to correct any underfunding, including interest, due to a preneed trust fund. A listing of significant legislative changes affecting the office since the 2005 sunset evaluation is shown in **Exhibit 2.1**.

Exhibit 2.1 Major Legislative Changes Since the 2005 Sunset Evaluation

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2006	348	Extends certain provisions of law that applied only to registrants and permit holders to any person subject to the registration or permit provisions of law.
2007	348	Extends the termination date of the Office of Cemetery Oversight by six years to July 1, 2013, and requires a full evaluation of the office on or before July 1, 2012, without preliminary evaluation. Requires the director to maintain a list of all for-profit cemeteries and nonreligious-nonprofit cemeteries associated with a registrant or permit holder and a list of all <i>bona fide</i> religious-nonprofit cemeteries, veterans' cemeteries, and local government-owned cemeteries required to file a certain statement or report. Requires the director to conduct an inventory and issue a report of all known burial sites in the State, to be updated every five years. Requires the director to use the inventory to determine the rate of compliance with the registration, permit, and reporting requirements. Requires the director to report annually to the General Assembly on compliance and complaint activity. Requires the office to report in 2008, 2009, and 2010 on the implementation of the Department of Legislative Services (DLS) recommendations.

<u>Year</u>	<u>Chapter</u>	<u>Change</u>
2007	348	<p>Extends the applicability of certain provisions of law to nonregistered and nonpermit holding individuals and cemetery owners. Defines the term “perpetual care.” Authorizes the designee of the director to conduct an investigation and an inspection of the records and site of a registered cemeterian, registered seller, and permit holder and to review and attempt to negotiate settlement of complaints by consumers against registered cemeterians or permit holders.</p> <p>Requires the advisory council to study the issue of abandoned and neglected cemeteries, develop a model for addressing the issue, and develop a legislative proposal for introduction no later than the 2009 legislative session. Requires the director and advisory council to study the potential regulation of preconstruction sale of space in garden crypts and mausoleum crypts and prepare a proposal for introduction during the 2008 legislative session.</p>
2010	150	<p>Authorizes the Director of the Office of Cemetery Oversight to require sellers of preneed goods and services to correct any underfunding, including interest, due to a preneed trust fund.</p>
	450	<p>Requires the Office of Cemetery Oversight and the State Board of Morticians and Funeral Directors to establish a process for regulating crematories that provides for registration, issuance of permits, or licensure, as appropriate based on the regulatory entity. A crematory is regulated either by the office or the board based on the crematory’s ownership. The office and the board regulate facilities in which their registrant/permit holders or licensees hold the majority of ownership. Independent (or free-standing) crematories are subject to the jurisdiction of the office.</p> <p>Crematories under the jurisdiction of the Office of Cemetery Oversight are required to hold a permit for the crematory business if the crematory is not a sole proprietorship, and a crematory operator must also be registered with the office.</p> <p>By October 1, 2011, the office and the board must adopt identical regulations in specified areas and must determine whether to adopt financial stability requirements for crematories.</p>

Source: Laws of Maryland

As required by Chapter 348 of 2007, the Advisory Council on Cemetery Operations studied abandoned and neglected cemeteries and preconstruction sales of mausoleums. The council created legislative proposals on both issues, which are discussed in greater detail in

Chapter 4 of this report. Also in response to Chapter 348, the office undertook the task of creating an inventory of all known burial sites in the State. The office has identified more than 5,000 cemeteries in the State. Rather than periodically updating the list, the process is ongoing, with cemeteries added as they are brought to the office's attention.

Other recent legislation has had a more tangential impact on the cemetery industry. Chapter 268 of 2008 required a person who violates a provision of law prohibiting the destruction of funerary objects to pay for the restoration of any damaged or defaced property in a cemetery to the property's owner or the cemetery's owner. Chapters 198 and 199 of 2010 altered the definition of junk or scrap metal to include specific used articles of ferrous or nonferrous metals, including cemetery urns and grave markers. Under the measure, a State junk metal dealer or scrap metal processor may not purchase a cemetery urn, grave marker, or any of the other used articles unless the individual selling the items, at the time of the purchase, provides appropriate authorization from a relevant business or unit of federal, State, or local government specifically authorizing the individual to conduct the transaction.

Given New Oversight Responsibilities, Advisory Council Membership Should Include a Crematory Representative

As required by Chapter 450 of 2010, the office has *drafted* regulations for crematories in conjunction with the State Board of Morticians and Funeral Directors. The new regulations will bring under the regulatory authority of the office free-standing crematories and crematories in which an office permit holder or registrant holds the majority of ownership. Crematories in which a licensee of the board holds the majority ownership fall under the board's jurisdiction. The six industry members of the advisory council are appointed from industry areas affected by office regulation, but these new regulations bring an area of the death care industry (crematories) under the authority of the office that is not represented on the council.

The draft regulations establish a permit and registration process, accompanying fees, a hearing process for permit denial, procedures for crematory inspections, complaint procedures, and grounds for discipline and penalties. They also set forth procedures to be followed by a permit holder in performing a cremation in the State. The owner of a crematory must obtain a permit from the office to engage in the operation of a crematory, and an individual designated as the registered crematory operator by a crematory owner is required to obtain a registered crematory operator permit from the office. There are no examination, training, or continuing education requirements for crematory owners or operators. The fee for a crematory permit will be \$350, and the fee for a registered crematory operator will be \$300. As of the writing of this report, the assistant Attorney General has met with her counterpart at the board to create substantially similar regulations for the two entities and hopes to get final approval from the director and advisory council by the end of October 2011.

However, the legislation required the office and board to adopt identical regulations by October 1, 2011 – that deadline has not been met. A unit may not adopt a proposed regulation until at least 45 days after its first publication in the *Maryland Register*. As of early

October 2011 proposed regulations had not been submitted by either the office or the board. It is unclear when the regulations will become effective.

Recommendation 2: Statute should be amended to add a representative of crematories as a seventh industry member to the Advisory Council on Cemetery Operations, creating a 12-person council.

Advisory Council Has Been Underutilized

The authority for regulating the cemetery industry is vested solely in the director, who is appointed by the Secretary with the approval of the Governor, and is prohibited from (1) holding any position or engaging in another business that interferes or conflicts with the position of the director; (2) being a registered cemeterian or a registered seller; (3) engaging in any act for which registration is required under the Maryland Cemetery Act; or (4) in connection with any registered cemeterian, registered seller, permit holder, funeral director, funeral establishment, or related death care entity directly or indirectly receiving or becoming entitled to receive any fee, perquisite, or compensation. The current director was appointed by the Secretary in 2009.

Statute creating the advisory council is quite vague as to its function, aside from directing the council to convene “at least once a year to give advice to the Secretary [of Labor, Licensing, and Regulation] and the Director.” Statute requires the director to get advice from the advisory council and consult with representatives of the cemetery industry before adopting rules and regulations to carry out the Maryland Cemetery Act in the Business Regulation Article and before adopting a code of ethics for engaging in the operation of a cemetery or providing burial goods. Though not directed by statute, the advisory council also assists the director in formulating legislation and in developing a response to bills affecting cemeteries proposed during the legislative session. The last sunset evaluation tasked the council with studying several issues affecting the cemetery industry. These studies, discussed further in **Chapter 4**, required the council to draft legislative proposals to address deficiencies that the council perceived in current law.

The council has no authority over registration or permits issued by the office or over consumer complaints. Many members of the council, industry members in particular, believe their experience in the cemetery industry would be beneficial to the office staff in the performance of the office’s duties. For example, one member of the advisory council suggested that the council could advise the investigator on areas of focus during the course of a cemetery inspection. Members also suggested that the council may have insight into ways to more efficiently ascertain industry standards for comparative use when investigating a consumer complaint. Though the investigator was universally praised for her handling of consumer complaints, many members of the council stated that an increased role for the council in advising on complaints could improve the effectiveness of the office.

Many council members also expressed concern that, though the former director had no prior experience in the cemetery industry, he did not seem eager to embrace the perspective the

advisory council had to offer, both from their collective years of industry experience and from their long service on the council. One example in which the council's industry experience could have been utilized was in the creation of the cemetery inventory required under Chapter 348 of 2007. Although statute tasked the director with developing and maintaining the inventory, one council member expressed that the knowledge of industry members could have advised staff on the development of the inventory. Though the director is not required to consult the advisory council on particular matters beyond the adoption of specific regulations, the new director should utilize the council as a valuable resource when appropriate.

Statutory Minimum Number of Advisory Council Meetings Should Be Increased

Though statute only requires the advisory council to meet once per year, the council is authorized to hold additional meetings as necessary. Since its inception, the advisory council has strived to schedule 10 to 11 meetings per year. Members are active and there has rarely, if ever, been a problem reaching a quorum at each meeting. Although the advisory council performs much of its work at its meetings, subcommittees are established as necessary to study issues of special concern. Members are also asked to regularly attend meetings of the State Board of Morticians and Funeral Directors, with at least one member of the advisory council present at each meeting. Advisory council meeting agenda topics include issues new to the cemetery industry, issues of industry or consumer concern, and trending topics that continue to affect cemeteries in the State. Meetings include the approval of prior meeting minutes, reports from the director and investigator, and often feature a guest speaker. Near the time of the legislative session, the advisory council also discusses legislation affecting cemeteries and its position, if any, on the measures. The council meetings typically last three hours, with agenda items often moved to the next meeting because of time constraints.

Recently, the Department of Labor, Licensing, and Regulation (DLLR) has encouraged all boards and commissions to reduce the number of annual meetings to reduce the cost of meeting space and of travel reimbursements for members. Though on occasion the chair has been able to find alternate meeting locations that could be used by the advisory council free of charge, these locations have been far outside of Baltimore City, requiring the director to commute a great distance to attend the meeting. This increases the amount of time the director must devote to the meeting and requires the department to pay for the director's travel expenses. Therefore, the Department of Legislative Services (DLS) concludes that using locations outside of the department building for advisory council meetings is generally not a viable alternative to address DLLR's cost concerns.

To accommodate the request to reduce meetings, the advisory council and the director agreed to reduce the schedule for the 2011 calendar year to eight meetings. Nearly every member of the council expressed concern that the reduction in the number of meetings would limit the effectiveness of the council, both in its capacity as advisor to the director and in its ability to attract and retain engaged members. The members also expressed concern that the

recent reduction is a first step in further reducing the number of annual meetings to an untenable level that would ultimately strip the advisory council of its value.

As discussed in the previous section, the director may not be using the advisory council to its potential. The director expressed that attending the council meetings was not always the best use of his or the investigator's time. DLS encourages the director to attend the meetings of the advisory council, as these meetings provide the best opportunity for the director to obtain feedback from the members as a group and for the council to learn about office operations. While the investigator's report could be given by the director at the monthly meetings in the investigator's absence, there is no adequate substitute for the director's role in advisory council meetings.

Recommendation 3: Statute should be amended to increase the minimum number of advisory council meetings to four meetings per year, and additional meetings should continue to be authorized as necessary. The new director of the office should make every effort to attend advisory council meetings to best receive advice from the council.

Communication between the Office and the Advisory Council Needs to Be Improved

In the years following the creation of the office and the advisory council, the council was tasked with advising the director on proposed regulations and the code of ethics. These activities occupied a significant portion of the council's time during those early years of its existence. More recently, the council was assigned a number of tasks as a result of the 2007 legislation that reauthorized the office and council. As these research projects have been completed, continuing interaction between the office and the council has understandably waned. Though the council occupies itself with a full agenda at each of its meetings, the lack of ongoing projects emphasizes the lack of communication between office staff and members of the council.

Members of the advisory council feel underutilized largely because there is minimal interaction between the director and the council. The members of the advisory council all reported that, aside from the occasional phone call regarding administrative matters, their only contact with any of the office staff has been at the advisory council meetings, which occur less than once a month and in rare instances when the investigator calls with a question related to a complaint. Increased interaction between the director and the advisory council in examining industry issues may help to connect the two and improve their working relationship. While the director gives a report at each council meeting, a comprehensive view of office operations would enhance the council members' understanding of industry regulation and increase their ability to provide effective advice.

Recommendation 4: Statute should be amended to require that the director provide copies of the office's annual noncompliance action plan report and annual complaint report to the members of the advisory council each year. The advisory council should respond to any

issues raised by the director in the reports and develop a plan to study any ongoing issues during the following year.

Newly Appointed Members of the Advisory Council Must Be Better Informed

Though many of the current advisory council members have served on the council for a significant period of time or even since its inception, with some also serving on the task force preceding the creation of the office and council, significant turnover in its membership is imminent. Four vacancies have recently arisen on the council, and new appointments are still forthcoming. Three industry members have resigned, and a consumer member passed away during the course of this evaluation. Because new appointments have been infrequent, the office has not created any orientation materials to educate new members on the purpose and authority of the advisory council or on the statutes and regulations affecting the industry. Consumer members, with no prior experience with the office or the cemetery industry in Maryland, are particularly in need of such materials at the time of their appointment.

Recommendation 5: The director and advisory council should collaborate on the development of orientation materials for new members appointed to the council.

The Public Ethics Law governs boards and commissions created by statute, regulation, or executive order having the force of law. Special statutory provisions may exempt members of boards or commissions from certain provisions of the Public Ethics Law, including a limited exemption for interest or employment held at the time of appointment, if the interest or employment is publicly disclosed at the time of the appointment to the appointing authority, the Ethics Commission, and to the Senate if confirmation is required. At the time of appointment, the appointing authority should send the disclosure forms to request this exemption. If the situation disclosed is acceptable to the appointing authority, the exemption is in effect during the board member's term. This exemption does not exempt the member from other ethics restrictions, such as the nonparticipation requirements. Though the council is structured as an advisory rather than a regulatory entity, it is subject to the same ethics requirements as other executive boards and commissions.

The conflict of interest provisions of the Public Ethics Law prohibit a board member from having a financial interest in, or being employed by, an entity subject to the authority of the member or of the agency with which the member is affiliated and from holding an employment relationship that would impair the member's impartiality and independence of judgment. The State Ethics Commission has determined that holding an unpaid leadership office in a professional association is considered employment for the purposes of the Public Ethics Law.

At the July advisory council meeting, representatives from the State Ethics Commission gave a presentation on the ethics requirements applicable to the council's members in response to questions raised by members at recent prior meetings. During the presentation, several members suggested that they were unaware as to whether they had received the paperwork necessary to disclose interest or employment at the time of appointment. If the required paperwork was

delivered, it is evident that members were unaware of its significance. Several industry representatives of the advisory council have resigned as a result of questions as to possible conflicts of interest arising from service in a leadership role for an industry association. It is unknown why the members decided to resign. It is also unclear whether these members of the advisory council received the necessary paperwork to request an exemption for an interest or employment held at the time of appointment. If these members obtained the necessary exemption, it is possible they were not properly advised of the limitations of serving on the council with a conflict.

Recommendation 6: Members of the advisory council must be adequately informed *prior to their appointment* of the requirements imposed on them by the Public Ethics Law. Statute should be amended to require the director to deliver to each member of the council the paperwork necessary to disclose any interest or employment held by the member at the time of appointment. The paperwork should be delivered at the time of appointment and prior to reappointment. DLLR should also work with the office and other boards and commissions to ensure that all members are regularly apprised of the ethics requirements that continue to apply to them. These requirements should be incorporated into the orientation materials developed by the director and advisory council.

Consumer Outreach Must Improve and Remain a Regular Focus

The office has a dual role as a regulatory body and as the entity responsible for investigating and mediating consumer complaints. The effectiveness of the office in serving consumers is limited by its low profile in the public consciousness. At the time of entering into a contract with a consumer for the sale of burial goods or services, registrants, permit holders, or any other person subject to the provisions of the Maryland Cemetery Act must make certain written disclosures, including the name, address, and telephone number for the office. State law requires the disclosures to be conspicuously incorporated in the contract in 12-point type. This disclosure is meant to inform consumers of the existence of the office as a resource for information and complaints. Members of the advisory council believe, however, that this disclosure may get lost in a lengthy contract signed by a person who may be in mourning and, therefore, not in a state of mind to benefit from the information.

Recommendation 7: Statute should be amended to require that the disclosure of the name, address, and telephone number of the Office of Cemetery Oversight be made on a separate form, which must be independently signed and dated by the consumer. Statute should require that the consumer be provided a copy of this form at the time the consumer is provided a copy of the contract.

Even an enhanced disclosure requirement may not be sufficient to enhance consumer awareness. Complaints may arise from a situation in which a contract was never formed or in relation to a person who was not a party to the contract, in the case of relatives or friends. For these reasons, and because the office is still a relatively new regulatory body, consumer outreach is of particular importance. The office has taken steps to raise consumer awareness, including

using an outreach specialist employed by the department. As discussed in **Chapter 5**, the office has not seen an increase in the number of complaints, so it is unclear whether the outreach specialist has been successful in connecting with consumers.

Soon after his appointment, the director created a newsletter to inform both industry members and consumers about the work of the office, to highlight industry issues, and to publicize the next upcoming meeting of the advisory council – listed as December 3, 2009. This newsletter is available both in print format and on the office website. Due to a particularly complex and time-consuming case against a cemetery, the director has not found the time to devote to drafting an updated newsletter. The director has said it would be easier to update the newsletter if articles were contributed by members of the advisory council, but that he has not received anything from them. Several advisory council members expressed that they would welcome the opportunity to contribute to an updated newsletter if asked and stressed the importance of the newsletter as an outreach tool. A number of past meeting minutes also mention offers by council members to the director to draft articles for the newsletter.

Recommendation 8: The new director and a committee formed of members of the advisory council should update the newsletter and develop a plan to ensure that the newsletter continues to be updated on a regular basis.

The legislation creating the office and the advisory council required the director, in conjunction with the State Board of Morticians and Funeral Directors and the Division of Consumer Protection of the Office of the Attorney General, to publish a consumer information pamphlet that describes (1) the rights of consumers in the purchase of funeral, cemetery, and crematory goods and services; and (2) any other information that the director considers reasonably necessary to aid consumers. The requirement to include information on crematory goods and services was added as part of Chapter 450 of 2010. The pamphlet was originally published in 2005 and was updated with a sticker to reflect changes to the administration. The pamphlet has not yet been updated to reflect the mandate to include crematories. When the pamphlet is updated, this will also give the director the opportunity to reflect Secretary Sanchez's appointment as the Secretary of Labor, Licensing, and Regulation.

There is no systematic dissemination of the consumer information pamphlet, but there have been occasional attempts to ensure the pamphlet is available in key locations. When the investigator conducts an inspection of a cemetery, she often brings copies of the pamphlet for the cemetery to stock in a prominent location such as the lobby or another customer waiting area. A consumer member on the council also brings copies of the pamphlet to various locations in which a consumer might be thinking about a cemetery visit, such as nursing homes or churches. In early 2006, the chair of the council suggested that each council member contact his or her respective county consumer protection agency and provide the agency with copies of the office's brochure, but it is unknown if this suggestion was followed or if the practice continues. To better increase awareness, the consumer protection agencies of every county should be contacted, rather than just those in which a council member resides.

Recommendation 9: The advisory council should develop a plan to improve consumer outreach. The plan should include an approach to disseminating the consumer information pamphlet to key locations around the State, such as nursing homes, churches, the offices of estate lawyers, consumer protection agencies of every county, and other locations.

Chapter 3. Registration and Permitting Requirements

Cemetery Regulation in Maryland

The Office of Cemetery Oversight's regulatory authority over cemeteries, crematories, and burial goods businesses extends to the owners and operators of the cemetery, crematory, or burial goods business. An individual must be registered with the office before engaging in the operation of a cemetery or crematory or providing burial goods. Statute defines "engaging in the operation of a cemetery" as owning, controlling, or managing a cemetery. The definition expressly includes performing activities necessary for the establishment, improvement, care, preservation, or embellishment of a cemetery; interment; and the provision of burial space or burial goods. "Engaging in the operation of a crematory" means controlling or managing a crematory.

A registrant may engage in the operation of a cemetery, crematory, or burial goods business as a sole proprietor. Operation of a cemetery, crematory, or burial goods business through a corporation, limited liability company, or partnership requires a permit from the office. A business operated by a sole proprietor is not required to obtain a permit, but the sole proprietor must be registered with the office. Sales counselors employed by a cemetery or burial goods business are also required to register with the office. In order to qualify for a registration from the office, an applicant must be at least 18 years old and of good character and reputation. The business with which an applicant is affiliated must be financially stable. Each applicant designated as the responsible party has to demonstrate the financial stability of the business with which the applicant is affiliated by providing the director with a financial statement prepared by a certified public accountant retained by the business.

To qualify for a permit, a corporation, limited liability company, or partnership must designate a responsible party for each cemetery, crematory, or burial goods business. The responsible party must be a registered cemeterian, registered crematory operator, or registered seller. In addition, the business must provide the name and address of each affiliated cemetery, crematory, or burial goods business and a list of the officers, directors, members, partners, agents, and employees of the business applying for the permit. To qualify for a permit, the business must also demonstrate financial stability.

Exempt from the registration and permit requirements of the Maryland Cemetery Act are persons that own and operate a *bona fide* religious-nonprofit cemetery in the State, a nonprofit organization created before 1900 by an act of the General Assembly, local government-owned cemeteries, and veterans' cemeteries operated by the State. The exemption for veterans' cemeteries was adopted because they are regulated by the Maryland Veterans Commission under § 9-913 of the State Government Article. In addition, because of federal grant agreements, state veterans' cemeteries are also regulated by Title 38 of the United States Code. A cemetery exempt from the registration and permit requirements of the Maryland Cemetery Act is generally still required to file with the office, at least once every two years, a statement that includes the name and address of the cemetery, the name and address of the organization that owns and

operates the cemetery, and the name and address of the individual who is responsible for the oversight of the cemetery. The statement is not required from exempt cemeteries at which no burials have taken place within the previous five years.

Registrations and permits expire two years after issuance. A registrant or permit holder may bring an expired registration or permit current at any time. The office does not issue “inactive” registrations or permits and has no plans to implement licensing of this type. **Exhibit 3.1** shows the corresponding fee for each type of registration and permit and for various services performed by the office.

The office does not maintain historical licensing records but is able to take a snapshot of the current registration and permit counts on a given day. Though these snapshots were taken on different dates, the office has been able to produce historical licensing counts representing a similar timeframe each year, which are shown in **Exhibit 3.2**. These numbers, however, do not reflect historic licensing counts for each category. These specific numbers cannot be retrieved once the date has passed, and records are not currently maintained to show this information. The totals are distinguished between registrations and permits that are current and those that have expired. Because an expired registration or permit can be brought current at any time, the expired figures represent a cumulative total of expired licenses, not merely those that have expired that year.

Exhibit 3.1 Fees Charged by the Office of Cemetery Oversight

Registration Fees	<u>Amount</u>
Registered cemeterian who is a sole proprietor of a cemetery	\$150
Registered seller who is the sole proprietor of a burial goods business	150
Registered cemeterian who is not the sole proprietor of a cemetery	150
Registered seller who is not the sole proprietor of a burial goods business	150
Registered cemeterian who operates a nonprofit cemetery that sells burial goods	150
Sales counselor at a burial goods business	100
Sales counselor at a nonprofit cemetery that sells burial goods	100
Registered cemeterian who operates a nonprofit cemetery which does not sell burial goods	50
Permit Fees	
Cemetery corporation	200*
Cemetery partnership	200*
Cemetery LLC	200*
Cemetery LLP	200*
Burial goods business corporation	200*
Burial goods business partnership	200*
Burial goods LLC	200*
Burial goods LLP	200*
Nonprofit cemetery that sells burial goods	200*
Nonprofit cemetery which does not sell burial goods	50
Cemetery branch office	50
Burial goods business branch office	50
Other Fees	
Returned check	50
Business address change	50
Business name change	50
Personal name change	50
Duplicate or replacement registration or permit	50
Perpetual care trust fund report (annual)	25
Preneed burial trust fund report (annual)	25

Note: Renewal fees are the same as the initial registration or permit fee in each category.

*In addition to the \$200 permit fee, licensees must pay \$10 per sales contract of \$250 or more entered into within the business' past two fiscal years.

LLC = limited liability corporation LLP = limited liability partnership

Source: Office of Cemetery Oversight; Code of Maryland Regulations, 09.34.03

Recommendation 10: Statute should be amended to require the director to maintain a complete listing of the registration and permit numbers, including the registration and permit counts for each licensing category, and include the counts as of June 30 of that year in the office's annual report submitted to the General Assembly.

Exhibit 3.2
Total Registrations and Permits Issued by the Office
2006-2011

<u>Date of Count</u>	<u>Current Registrations and Permits</u>	<u>Expired Registrations and Permits</u>	<u>Total</u>
June 22, 2006	948	1,209	2,157
May 2, 2007	979	1,490	2,469
June 9, 2008	1,107	1,754	2,861
June 10, 2009	1,346	2,020	3,366
May 28, 2010	1,333	2,342	3,675
June 13, 2011	1,284	2,756	4,040

Source: Department of Labor, Licensing, and Regulation

While these numbers do not reflect the registration and permit counts for the same date each year, they indicate a general trend toward increased numbers of registrations and permits for the office. The significant increase in current registrations and permits between the end of fiscal 2007 and the end of fiscal 2009 is likely due to the office's effort to increase compliance, which was raised in the previous sunset evaluation. The director could not explain the slight decrease in registrations and permits in fiscal 2010 and 2011 but stressed that there has been a degree of fluctuation in sales counselor registrations. For example, an individual working for a larger cemetery with many locations would likely hold several registrations, allowing the individual to conduct sales at each location. If that counselor were to become employed at a different cemetery with only one location, the same individual would then hold only one registration.

Exhibit 3.3 shows the number of registrations and permits issued in each category as of September 27, 2011. The office has broken up the categories to show the type of cemetery corporation and burial goods business, though these entities are charged the same permit fee. The largest numbers of registrations are held by sales counselors and registered cemeteterians. This chart also shows that only 92 of more than 5,000 cemeteries identified in the State are regulated by the office.

Exhibit 3.3
Registrations and Permits by Category
September 27, 2011

<u>Category</u>	<u>Current</u>	<u>Expired</u>	<u>Total</u>
Registered Cemeterian Sole Proprietor	92	2	4
Cemetery Corporation	56	37	93
Cemetery Partnership	0	1	1
Cemetery LLC	21	4	25
Cemetery LLP	0	1	1
Registered Cemeterian	207	403	610
Registered Seller Sole Proprietor	16	20	36
Burial Goods Business Corporation	16	21	37
Burial Goods Partnership	0	3	3
Burial Goods LLC	8	5	13
Burial Goods Branch Office	1	1	2
Registered Seller	40	66	106
Sales Counselor	869	2,241	3,110
Nonprofit Cemetery (No Goods Sold)	7	7	14
Nonprofit Registered Cemeterian (No Goods Sold)	11	9	20
Family-Private Cemetery (No Public Sales)	1	0	1
Nonprofit Cemetery (Sells Goods)	5	0	5
Nonprofit Sales Counselor (Sells Goods)	9	6	15
Nonprofit Registered Cemeterian (Sells Goods)	6	2	8
Family-Private Registered Cemeterian (No Goods Sold)	1	0	1

Source: Department of Labor, Licensing, and Regulation

The office identified more than 5,000 cemeteries in the State in response to a legislative mandate in Chapter 348 of 2007. The measure required the director to conduct an inventory of all known burial sites and use the inventory to determine the rate of compliance with statutory registration, permit, and reporting requirements. The director is also required to report annually to the General Assembly on compliance. The office continues to work on categorizing all cemeteries to identify those which should have permits but which are not currently regulated and take appropriate action to assure that they are in compliance.

The number of cemeteries identified in each category is shown in **Exhibit 3.4**. The number of cemeteries listed in the inventory in regulated categories does not match the number of cemeteries reported by the office in its registration and permit statistics. Some differences could be explained by the cemeteries that have not been categorized but fall into the “unknown” category. For instance, the 21 Cemetery LLCs shown in Exhibit 3.3 above may be accounted for amongst the 483 unknown entities. Moreover, the inventory lists 3,098 private family cemeteries

that do not conduct public sales. The office lists one cemetery in this category in its registration and permit count, and the remaining 3,097 of these cemeteries clearly are not accounted for under any other regulated category. Though statute only specifically exempts veterans' cemeteries and cemeteries operated by a religious nonprofit organization, a nonprofit organization created by the General Assembly before 1900, or a local government from the registration and permit requirements of the Maryland Cemetery Act, the office has not required that the owner of a family cemetery (which is not similarly exempted) register with the office as a ceterian. According to the office's assistant Attorney General, the office has assumed that the legislature intended that the office regulate only business entities, rather than private family cemeteries. Based on this interpretation, family cemeteries have also been exempted from the perpetual care and preneed trust requirements of the Act. If this interpretation of legislative intent is not accurate, the office should require the owner of a family cemetery to register with the office as a registered ceterian.

Exhibit 3.4
Inventory of Cemeteries in Maryland

<u>Category of Cemetery</u>	<u>Number of Cemeteries</u>
Cemetery Corporation	90
Cemetery Partnership	0
Cemetery LLC	0
Cemetery LLP	0
Family-Private (No Public Sales) Cemetery	3,098
Nonprofit (No Goods Sold) Cemetery	33
Nonprofit (Sells Goods) Cemetery	2
Nonprofit Religious Cemetery	1,635
Abandoned	11
Pet	0
Veterans'	17
Local Government	121
Unknown	483

Note: The inventory on the website includes listings of individuals registered with the office; thus, the "unknown" category may include registrations issued for ceterians, sellers, or sales counselors, or a permit issued for a burial goods business.

Source: Office of Cemetery Oversight website

Recommendation 11: Statute should be amended to specifically exempt family cemeteries that do not conduct public sales from the registration and permit, perpetual care, and preneed burial contract requirements of the Maryland Cemetery Act. If this recommendation is not adopted by the General Assembly, the office should require the

owner of a family cemetery to register with the office as a registered cemeterian and ensure compliance of each family cemetery with the perpetual care and preneed burial contract requirements of the Act.

Registration Process Is Being Streamlined

During the course of this review, the office took steps to reduce the lengthy process of completing a registration. Under the former process, the director received and reviewed each sales counselor renewal. Once approved, the applicant was then sent a bill for the cost of renewal. The fee would be paid to a third-party bank, which then sent confirmation once funds were received, indicating that the office should send out the renewal. The registration could take weeks to arrive to the sales counselor. Beginning in August 2011, sales counselor renewals have been processed by the department's centralized licensing unit, approved, and released for printing and mailing within 48 hours. This process could be delayed if (1) the cemetery itself has failed to renew; (2) the responsible party has failed to renew; or (3) the name signed as the responsible party does not match the name in the office records. These changes to the sales counselor renewal process did not require any expenditure by the office because the cost of using the central licensing unit is already included in the direct cost allocation in the office's budget. Unfortunately, this streamlined process does not affect the timeline for initial registrations or initial or renewal permits.

Cemetery licensing is well suited to allow an online licensing process because registrations and permits do not require verification of any prior training or continuing education at renewal. The office has been studying the possibility of implementing an online licensing system, which would significantly reduce the time involved in renewing a permit or registration. In the fall of 2005, the office received a cost estimate of \$55,000 from the IBM Corporation to create a system for online renewals. The possibility of purchasing online licensing software was again raised in 2008, but the office finances were unable to support the expenditure. If the office remains financially stable, as discussed in **Chapter 6**, it may be able to afford to implement an online renewal system in the near future. Again, this streamlining would only affect permit and registration renewal and would not affect the initial process. The office has not received an estimate for the cost of implementing a comprehensive online registration and permitting process but intends to first evaluate the benefits of the renewal system.

Another option for streamlining the registration of sales counselors lies in the process used when a sales counselor changes jobs. Currently, when a registered sales counselor becomes employed with a new cemetery, the sales counselor must apply for a new registration and go through the lengthy process for initial registration. If the sales counselor could instead transfer to a new cemetery, which could be done as with an address change, the wait to obtain the new registration would be significantly reduced. To cover costs while remaining revenue neutral, the office could charge the same \$50 address change fee, the \$100 new registration fee, or some other appropriate fee. Reducing the time a sales counselor spends without a valid registration would allow the individual to continue making sales, which is the source of their

commission-based income, and reduce the likelihood that an individual is making a sale without being properly registered with the office.

Recommendation 12: Statute should be amended to authorize an individual to transfer a registration from one business to another business without requiring a new registration to be issued by the office. The office should set an appropriate fee for the transfer and promulgate the fee in regulations.

Recordkeeping Requirements Should Be Studied

Cemetery records not only indicate where a person's body is currently located in a cemetery but also reflect preneed purchases of burial plots, goods, and services. These purchases can be made years or even decades before the need for them arises. Because of the prolonged relationship a cemetery has with its customers, it is important for cemeteries to keep accurate records that span significant periods of time. It is particularly important that these records be available and comprehensive in times of crisis so that the cemetery can respond to consumer needs.

Though statute requires persons subject to the perpetual care requirements to keep detailed records of their sales of burial lots or burial rights and the money received, there are no standards as to the manner in which the records are kept, nor do the requirements apply to those cemeteries exempted from the perpetual care trust requirements. Moreover, reviews of these records are focused on ensuring that the accounting requirements of perpetual care are being met and concentrate only on sales completed since the requirements were enacted.

The Advisory Council on Cemetery Operations has periodically raised concerns about recordkeeping issues related to cemeteries, particularly in times of pandemic or natural disasters, but has not conducted any comprehensive research on the issue or developed a proposal for legislation. In May 2006 the council invited two guest speakers to share their experiences in Mississippi after Hurricane Katrina. During the hurricane many cemeteries were damaged, and a building that housed cemetery records was destroyed. Both speakers highly recommended that electronic copies of all cemetery documents be stored at an off-site location in case of emergency. In May 2010 the council heard a guest speaker from the Maryland State Archives who emphasized the importance of cemetery records as one of the many sources of information critical for connecting the past with the present. The speaker discussed environmental factors such as temperature and humidity levels and the impact they have on record stability or deterioration and how the acid level in both ink and paper play a role in the longevity of paper records. Electronic records also have limitations with the estimated shelf life of a compact disc of five years, and the shelf life of microfilm of 100 years. The speaker also urged that cemeteries store duplicate records off-site, such as with online backup services.

The chair of the council surveyed registered cemeterians throughout the State about disaster planning during spring 2007. Approximately one-third of the registrants completed and returned the survey and more than 69% of the respondents stated that their cemeteries were at the

lowest level of readiness should a pandemic, natural disaster, or other catastrophic event occur. In light of the survey results, the council discussed the possibility of requiring in statute that cemeteries maintain backup records at off-site locations. Members of the council discussed the cost that would be incurred by the cemeteries, particularly older cemeteries with voluminous records.

Recommendation 13: The advisory council should study recordkeeping practices for cemeteries in relation both to best practices and for disaster preparedness, including pandemics and natural disasters, with the intention of developing legislation to address this issue. The advisory council should develop a legislative proposal for introduction no later than the 2014 session. In developing the proposal, the council should determine the categories of cemeteries to which any recordkeeping requirements developed should be applied and should consider the possibility of phasing in requirements to limit the economic impact on cemeteries.

Chapter 4. Perpetual Care and Preneed Regulation

Lack of Accountant Review of Trust Reports Endangers Consumer Protection

Chapter 719 of 1973 established the perpetual care provisions relating to any person owning, operating, or developing a cemetery at which perpetual care was stated or implied. “Perpetual care,” which went undefined in statute until Chapter 348 of 2007, is defined as the “maintenance, including the cutting of grass abutting memorials or monuments, administration, supervision, and embellishment of a cemetery and its ground, roads, and paths” as well as “the repair and renewal of buildings, including columbaria and mausoleums, and the property of the cemetery.” Each sole proprietor registered cemerterian, permit holder, or any other person subject to the registration or permit provisions of the Maryland Cemetery Act who sells or offers to sell to the public a burial lot or burial right in a cemetery for which perpetual care is stated or implied must establish a perpetual care trust fund with a minimum deposit of \$10,000, \$25,000, or \$50,000, depending on the type of cemetery and the amount of developed land area. In addition to this initial deposit, the cemetery must contribute to the fund within 30 days after the end of the month in which a purchaser of burial rights makes a final payment on that purchase of at least 10% of the actual selling price of each right of interment or at least 10% of the fair retail value if the burial space is sold at a discount. Chapter 719 exempted from the perpetual care requirements cemeteries owned by a local government, church, synagogue, or other religious organization. Chapter 212 of 1974 also exempted any nonprofit organization created before 1900 by an act of the General Assembly from the perpetual care trust provisions.

All sole proprietor registered cemerterians, permit holders, or any other person subject to the perpetual care requirements must keep detailed records of their sales of burial lots or burial rights and the money received. These records are subject to examination by the director, Attorney General, and the State’s Attorney for the county where the cemetery is located. Any person subject to the trust requirements who violates the provisions regarding perpetual care may be referred by the director to the Attorney General for civil enforcement or the appropriate State’s Attorney for criminal enforcement. The Attorney General may sue for injunctive or other equitable relief, impose a civil penalty of up to \$5,000, or both. A person who establishes or operates a cemetery in violation of the perpetual care provisions is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000, imprisonment for up to one year, or both.

Chapter 386 of 1991 required the applicable cemeteries to submit annual perpetual care trust reports to the Secretary of State. However, in 1997 the Maryland Cemetery Act created the Office of Cemetery Oversight and required that regulated cemeteries submit these reports to the office. Each report filed with the office must contain certain information, including the beginning balance of the trust fund, the annual amount of money received subject to the trust requirements, the annual amount of money deposited into the trust fund, and the annual amount of money spent on relevant maintenance and care for the cemetery. Each report submitted to the office must be certified as to correctness by a certified public accountant (CPA) retained by the cemetery.

Audits of these reports are focused on the accuracy of required and actual deposits. While an audit may discover noncompliance with perpetual care requirements, the audit's main objective is to discover any material misstatement of the various balances. Hence, it is the office's responsibility to determine noncompliance. The office receives approximately 80 reports a year and each report can span 50 pages. It is a strain for the director to review the reports for compliance, particularly the timeliness of deposits and the appropriateness of funding levels. The office, and consequently the consumer, would benefit greatly from a staff accountant reviewing the reports, focusing solely on issues of noncompliance with the perpetual care requirements. The office estimates that a contractual accountant could perform this task on a part-time, one-day-a-week basis for the cost of \$10,000 to \$15,000. This amount is feasible for the office given the importance of ensuring quality maintenance of cemeteries and the office's relatively strong fiscal status, as discussed in **Chapter 6**.

Recommendation 14: The Office of Cemetery Oversight should procure a part-time, contractual accountant capable of analyzing regulated cemeteries' perpetual care trust reports for noncompliance with statutory perpetual care requirements.

Exemptions to Perpetual Care Requirements Should Be Revisited

Chapter 186 of 2001 required all cemeteries created in the State after October 1, 2001, and not exempt from the perpetual care requirements, to establish a perpetual care trust fund. In addition to the exemption for cemeteries owned by a local government, church, synagogue, other religious organization, and certain nonprofit organizations, Chapter 186 exempted cemeteries owned and operated by a State veterans' agency from the perpetual care requirements. The exemption for veterans' cemeteries is appropriate since federal funds are available from the Department of Veterans Affairs State Cemetery Grants Program for the establishment, expansion, or improvement of a veterans' cemetery owned and operated by a state. Further, any cemetery assisted by a grant from the Department of Veterans Affairs must be maintained and operated according to the operational standards and measures of the National Cemetery Administration.

While not all cemeteries in the State are statutorily required to establish perpetual care trust funds for the continual care and maintenance of the cemetery, one way of ensuring that cemeteries are not left abandoned and neglected is to require that a perpetual care trust fund be established for the cemetery. The reasons for exempting from the perpetual care requirements cemeteries owned by a local government, church, synagogue, other religious organization, or nonprofit organization created before 1900 by an act of the General Assembly are unclear as the legislative history for the 1973 and 1974 acts is unavailable. However, it is clear that the General Assembly intended to ensure that any perpetual care funds collected by a cemetery be available for the perpetual care of the cemetery.

Chapter 765 of 1984 required *any* cemetery that sold preneed goods or services to establish a trust account into which a certain portion of any amounts received by the cemetery under a preneed burial contract must be placed. Chapter 765 provided for no exemptions to the

preneed trust requirements, and current law still requires any seller of preneed goods or services to establish a preneed trust account. Additionally, Chapter 150 of 2010 authorizes the Director of the Office of Cemetery Oversight to require sellers of preneed goods and services to correct any underfunding, including interest, due to a preneed trust fund. Unlike the perpetual care requirements, consumer protections regarding preneed burial contracts apply regardless of the type of cemetery or burial goods provider offering the goods or services.

The 2005 full evaluation recommended repealing the exemption from perpetual care trust requirements for cemeteries owned by a local government, church, synagogue, or other religious organization or a nonprofit organization created before 1900 by an act of the General Assembly. The office testified that the expansion of its responsibility in reviewing perpetual care trust reports would be too great, especially since there is little indication of regulatory issues or consumer complaints. As shown by Exhibit 3.4 of **Chapter 3**, the office's inventory lists almost 1,800 currently exempted cemeteries that may be required to adhere to the perpetual care requirements, including the submission of an annual report to the office. However, as noted above, the perpetual care trust requirements only apply to cemeteries currently selling or offering to sell a burial lot and it is unknown how many of these currently exempted cemeteries are currently selling or offering to sell a burial lot or burial right to the public. Therefore, the number of cemeteries that will be required to adhere to the perpetual care trust requirements may be fewer than the 1,800 known cemeteries listed in the inventory.

It is true that repealing the exemption from perpetual care requirements for these cemeteries will increase the office's responsibilities. However, the addition of a part-time accountant, as discussed above, should help to absorb the office's increased duties. It also may be necessary that the office employs the accountant on a full-time basis and seeks additional assistance on a contractual basis. In order to further assist the office in handling the increase in responsibilities, consideration should be given to prioritizing the review of the trust reports. For example, the office may provide a cursory review of the trust reports received from the currently exempted cemeteries coupled with a more thorough review of the reports from randomly selected cemeteries. Finally, while it is unclear from the office's complaint report whether maintenance is an issue at cemeteries currently exempted from perpetual care requirements, each year the office receives numerous complaints regarding maintenance at currently regulated cemeteries. It is clear that cemetery maintenance remains an area of consumer protection concern.

Recommendation 15: Statute should be amended to require any cemetery, other than a veterans' cemetery operated by the State, that sells or offers to sell to the public a burial lot or burial right in a cemetery at which perpetual care is stated or implied to comply with the perpetual care trust provisions, thereby repealing the exemption from perpetual care trust requirements for a cemetery that is owned and operated by a local government, church, synagogue, religious organization, or nonprofit organization created before 1900 by an act of the General Assembly and currently selling or offering to sell a burial lot or right. Current fees applicable to trust reports should apply to anyone required to submit a perpetual care trust report. Consideration should be given to phasing in these requirements. Requiring the currently exempted cemeteries to adhere to the perpetual

care trust requirements on July 1, 2013, with annual trust reports due to the office 120 days after the end of the calendar 2013 is a reasonable timeframe.

Office and Advisory Council Proposed Legislation as Required by the Previous Full Evaluation

The 2005 full evaluation recommended that the Advisory Council on Cemetery Operations study the issue of abandoned and neglected cemeteries with the intention of developing legislation to address the issue. The recommendation directed the advisory council to (1) seek input from the Maryland Association of Counties, the Maryland Municipal League, the Department of Public Safety and Correctional Services, the Maryland Department of Planning, other historic preservation entities, and other appropriate persons; and (2) develop a legislative proposal for introduction no later than the 2009 session. The advisory council developed a proposal creating the Maryland Cemetery Heritage Program, which included the creation of a new special fund, the Maryland Cemetery Heritage Fund. At the time the proposal was submitted to the chairs of the Senate Finance Committee and the House Economic Matters Committee in February 2009, the department did not support the creation of a new special fund. The department expressed that the expansion of special fund programs within State government could meaningfully undercut the flexibility needed to maintain the State's budgetary and revenue requirements in a difficult financial environment. The department advised the committees to review and consider the advisory council's recommendations for action at a time when the State's budgetary situation would allow them to be addressed without the economic constraints of the time. Legislation implementing the advisory council's proposal has not been submitted to the General Assembly.

The 2007 sunset extension legislation further required the advisory council and director to study the potential regulation of preconstruction sales of space in garden crypts and mausoleum crypts and prepare a legislative proposal for the 2008 legislative session. In order to develop the proposal, members of the advisory council and the director met with members of the Maryland Freestate Cemetery and the Cremation and Funeral Association; sent proposals to a number of owners of cemeteries; and reviewed other states that regulate preconstruction sale of space in crypts. The council's proposal would have required the creation of preconstruction trust funds and provided the office the ability to sanction any cemetery in the event of noncompliance. The department submitted this proposal in September 2007 to the Senate Finance and House Economic Matters committees; however, the committees took no action regarding the proposal.

Both legislative proposals are attached to this evaluation at **Appendices 3 and 4**.

Chapter 5. Complaint Processing and Resolution

Complaint Processing

The Office of Cemetery Oversight handles complaints from consumers and is required to submit an annual report to the General Assembly on the number of complaints received and resolved. Since the office began such reporting, it has generally received 300 or more complaints and inquiries annually (**Exhibit 5.1**). While the number of inquiries received can fluctuate in any given year, the office generally receives 100 formal complaints a year. According to the Maryland Department of Health and Mental Hygiene's Vital Statistics Administration, there were approximately 44,000 deaths in Maryland in 2009. Considering the amount of deaths in the State each year coupled with innumerable cemetery visits, the number of complaints the office receives is relatively low.

When a formal complaint reaches the office, the office sends a letter to the cemetery usually within one or two days of receipt of the complaint. The letter spells out the facts as described by the complainant and provides the cemetery with a three-week deadline to respond to the allegations. The office contacts the cemetery by phone if the cemetery does not respond within this deadline. After receiving the cemetery's official response, the office may either choose to dismiss the complaint and send a letter to the complainant or perform a site visit to verify whether the cemetery has rectified the complaint. In fiscal 2010, the last full fiscal year for which complaint statistics were made available to the Department of Legislative Services (DLS), the average resolution time was 36 days. Given that cemeteries often wait up to three weeks before replying to the office's initial letter, this average resolution time is reasonable. Often a complaint centers on an issue or a cemetery over which the office has no regulatory authority, such as poor customer service or a concern at a religious cemetery. In these cases the office sends a letter to the complainant stating its lack of authority, and it considers the matter closed. However, even with matters such as these, the office may attempt to mediate between the complainant and cemetery to come to a mutually satisfactory conclusion.

To assist in the investigative process or should the negotiations fail, the director has the authority to hold hearings on any matter covered by the Maryland Cemetery Act, including the power to administer oaths, examine witnesses, and receive evidence. The director also has subpoena power and may issue cease and desist orders. Subject to the hearing provisions in the Act, the director has the authority to deny, reprimand, suspend, or revoke a registration or permit for violation of the Act. In the event that a registrant or permit holder is charged with a violation that could result in suspension or revocation of the registration or permit, the director is authorized to petition a court to appoint a receiver or trustee to take charge of the assets and operate the business. However, while the director has this authority, practical considerations may make appointing a receiver difficult, such as finding a willing cemetery operator to act as a receiver. In addition to the director's authority to negotiate settlements between a complainant and a registrant or permit holder, the director may receive and attempt to negotiate settlements to resolve complaints concerning persons exempt from the registration and permit requirements of

the Act as well as issues outside the office's regulatory authority. However, the director is not authorized to take further action to resolve these complaints.

Exhibit 5.1
Volume of Complaints and Related Inquiries Handled by the
Office of Cemetery Oversight
Fiscal 2006-2011

<u>Complaints Filed Against</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011*</u>
Regulated						
For-profit	94	103	79	65	91	53
Nonprofit	3	3	0	4	3	1
Burial Goods	<u>2</u>	<u>4</u>	<u>2</u>	<u>14</u>	<u>5</u>	<u>2</u>
Total Regulated	99	110	81	83	99	56
Unregulated						
Religious	4	6	4	1	8	0
Veterans'	0	1	0	0	0	0
Pet Cemeteries	0	1	0	0	0	0
Abandoned	3	0	1	0	1	1
Local Government	1	0	0	0	0	0
Private	N/A	2	0	0	0	1
Funeral Home	N/A	N/A	N/A	N/A	0	1
General Industry	<u>0</u>	<u>0</u>	<u>2</u>	<u>1</u>	<u>0</u>	<u>0</u>
Total Unregulated	8	10	7	2	9	3
Total Complaints	107	120	88	85	108	59
Inquiries Filed	168	287	241	250	198	87

*Complaint statistics for the last six months of fiscal 2011 are unavailable.

Source: Department of Legislative Services Review of the Office of Cemetery Oversight's Annual Complaint Forms for fiscal 2006-2011

Advisory Council's Assistance May Be Valuable in Complaint Resolution

As discussed in **Chapter 2**, the statute creating the Advisory Council on Cemetery Operations is vague as to the council's function. It is statutorily required to meet at least once a year and give advice to the director. The council has no authority over consumer complaints. However, members of the advisory council have ample experience within the industry, and the

members believe this experience could be helpful in the resolution of complaints. For example, the council could help to identify industry standards regarding any pricing complaint. The office may also want to consider closing a portion of the advisory council meetings to allow the investigator to speak more freely regarding pending investigations or potential litigation. Under Maryland's Open Meetings Act, a public body such as the advisory council may meet in closed session or adjourn an open session to a closed session in limited circumstances, including discussions of a pending case or criminal investigation against a person regulated by the office. This would alleviate any privacy concerns regarding a complaint. While the time-sensitive nature of complaint resolution makes requiring the investigator to bring each complaint to the council impractical, the occasional use of the advisory council's knowledge and experience would be beneficial.

Recommendation 16: Statute should be amended to specifically authorize the director or the director's designee to confer with the advisory council as a whole or individual members of the council on complaint processing and resolution. Consideration should be given to closing portions of advisory council meetings to allow for more in-depth discussion of complaints.

Annual Complaint Report Lacks Detail and Required Timeline Information

The previous full evaluation recommended the office submit a more detailed annual report. Consequently, the annual report submitted by the office to the General Assembly was greatly expanded by Chapter 348 of 2007. The annual report now includes the number of formal complaints and inquiries sorted by type of cemetery, type of purchase, focus of dissatisfaction, and type of resolution including whether any disciplinary action was taken. Although not required by statute, the annual report also tracks the number of inquiries made each year. An official complaint must be written, be made under oath by the complainant, and state the complaint's underlying facts. An inquiry consists of a phone call placed to the office. If the office believes there are grounds for an official complaint against a cemetery, the office sends a formal complaint form to the caller or directs the caller to download the form from the office website. If the caller returns the form with an official complaint, the phone call is not counted as an inquiry but rather as an official complaint. A large portion of inquiries regard unregulated cemeteries and, therefore, do not become complaints.

The second page of the annual report focuses on the type of purchase, focus of dissatisfaction, and type of resolution for each complaint. These numbers are based on the total number of complaints and inquiries. However, there is no distinction between complaints and inquiries as on the first page of the annual report. The report's combination of complaints and inquiries make it difficult to determine data trends for complaints only. For example, as shown in **Exhibit 5.2**, the report for the first half of fiscal 2011 indicates that there were 33 instances of complaints or inquiries involving employee services. It is unclear how many formal complaints involved employee services. Because inquiries represent nothing more than a phone call, a more specific second page may assist in true assessment of common problems within the industry.

Additionally, it may be helpful to add definitions to each type of resolution. “Complaint withdrawn” is annually the most common type of resolution other than “information provided”; however, the office’s parameters for deciding whether a complaint was withdrawn or dismissed are unclear on the face of the report. According to the office, a “complaint withdrawn” is actually an inquiry which is never followed by an official written complaint. The category’s name is misleading without the inclusion of a definition. A definition listed on the report would inform the reviewer of the report whether these complaints or inquiries were dismissed or withdrawn according to the office’s standards. The annual complaint report already defines what constitutes the “legal issue” focus of dissatisfaction. A similar explanation could be made for the types of resolution. Additionally, separating the statistics on the second page of the report may also resolve any confusion over what constitutes a certain category.

Since fiscal 2008, the annual complaint report has also included the average resolution time. Although the office reports on the average complaint resolution time, it does not report how many complaints are resolved within a specified timeframe. Statute requires the director to adopt guidelines that establish a schedule for the prompt and timely processing and resolution of each complaint made to the director. The 2005 full evaluation noted that no such guidelines existed. To the director’s knowledge there is still no developed guideline. Despite the lack of a clear deadline, the office’s average resolution time of 36 days in fiscal 2010 was reasonable. As shown in **Exhibit 5.3**, DLS inspected nearly 60 complaint files, largely taken from fiscal 2010 and 2011. Of the complaint files DLS inspected, the majority of complaints were resolved within 40 days and any extended delay was often caused by the cemetery’s delay in providing an official response. However, the development of a schedule is required by statute and would provide a known deadline to ensure complaints are resolved quickly. Once the schedule is completed, statute dictates that the annual complaint report include the number of complaints resolved within this timeframe.

Exhibit 5.2
Complaints and Inquiries
Focus of Dissatisfaction and Type of Resolution
Fiscal 2006-2011

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011^a</u>
Focus of Dissatisfaction						
Contract Terms	64	52	58	90	58	36
Performance of Contract	37	99	48	25	28	19
Maintenance	88	59	35	49	52	32
Employee Services	27	46	60	54	66	33
Sales Practices	4	10	6	4	5	2
Legal Issues	44	219	159	145	125	42
Fees Charged	1	21	38	40	35	16
Burial Location	15	31	20	33	30	13
Miscellaneous	5	34	30	25	16	13
Recordkeeping	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>16</u>	<u>12</u>
Total	285	571	454	465	431	218
Type of Resolution						
Information Provided	N/A	157	125	128	90	27
Referred to Appropriate Resource	N/A	23	14	25	32	17
Complaint Withdrawn	N/A	118	109	99	84	47
Complaint Dismissed	N/A	12	20	19	29	10
Complaint Resolved through Mediation	N/A	74	55	62	68	44
Administrative Sanction Sought/Imposed	N/A	0	0	0	0	0
Criminal Sanction Sought/Imposed	<u>N/A</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	275^b	384	323	333	303	145

^aComplaint statistics for the last six months of fiscal 2011 are unavailable.

^bThe office did not categorize complaints received as specific types of resolution in fiscal 2006. However, there were 275 total complaints and inquiries.

Notes: The totals for “Focus of Dissatisfaction” are larger than the total numbers of complaints and inquiries because many complaints or inquiries allege multiple grounds for dissatisfaction. Additionally, the totals for “Type of Resolution” do not sum to the total numbers of complaints and inquiries, possibly due to timing inconsistencies regarding the reopening of a complaint.

Source: Department of Legislative Services Review of the Office of Cemetery Oversight’s Annual Complaint Forms for fiscal 2006-2011

Exhibit 5.3
Number of Days to Resolve Complaints
Reviewed by the Department of Legislative Services
Fiscal 2006-2011

<u>Days Taken to Resolve</u>	<u>Pre-2011</u>	<u>2011</u>
1 – 20	2	1
21 – 30	9	14
31 – 40	5	4
41 – 50	4	4
51 – 60	1	1
More than 60	0	3

Notes: The Department of Legislative Services reviewed an additional 10 complaint files which had an atypical resolution or incomplete records so that the timeframe for resolution could not be determined. Only a few of the complaints reviewed date back as far as fiscal 2006.

Source: Department of Legislative Services Review of the Office of Cemetery Oversight's Annual Complaint Forms for fiscal 2006-2011

Recommendation 17: Statute should be amended to require the director to modify the second page of the annual complaint report to distinguish the type of purchase, focus of dissatisfaction, and type of resolution for both complaints and inquiries. Additionally, the report should define the types of resolution it lists.

Recommendation 18: The director must comply with statutory requirements and develop a schedule and standard for the prompt and timely processing and resolution of each complaint received by the office. Once developed, future annual complaint reports should include the number of complaints resolved within this timeframe.

Chapter 6. Fiscal Issues

Special-fund Status Remains Appropriate for the Office

The Cemetery Oversight Fund was established to cover the documented direct and indirect costs of fulfilling the statutory and regulatory duties of the Office of Cemetery Oversight; however, the office had great trouble covering its expenditures for the first 10 years of its existence. The 2005 full evaluation of the office recommended that statute be amended to repeal the Cemetery Oversight Fund and the special-fund status of the office. This recommendation was based on the office's fiscal performance and the unpredictability of its primary revenue source. At the time of the evaluation, the fund had not had sufficient collections to cover office expenditures in five of the eight years the office had been in operation. The department responded to this recommendation by stating its concern that the switch to general fund status would trigger cost containment measures and, consequently, a contraction of services and service-related timeframes. The recommendation was not adopted and the office maintained its special-fund status.

Because registration and permit activity occurs on a biennial basis, revenues are alternately high in one year and low in the other. The ability to carry over fund balance is intended to allow the office to cover its direct costs as well as the indirect costs charged by the department in both years. Accordingly, revenues and expenditures for this office should be examined on a two-year basis. Although the office's regulatory activity was initiated in fiscal 1999, most registrations and permits are renewed in even-numbered years. Despite the fiscal instability noted by the 2005 full evaluation, the Department of Labor, Licensing, and Regulation (DLLR) and the office have implemented several measures since fiscal 2008 to ensure that the office is financially solvent.

The most significant measure that the department has implemented to ensure the office's fiscal solvency is an increase in contract fees. In addition to the fees charged for the issuance of a permit, the office also collects a sales fee from a cemetery for every contract entered into for an amount greater than \$250. A cemetery must report the number of applicable contracts when it renews its permit. As shown in **Exhibit 6.1**, the largest revenue source for the office has been the sales contract fee. Of the total special fund revenue that the office reports it has collected between fiscal 2007 and 2011, 77% is attributable to these sales contracts. The department has increased contract fees twice in the past 10 years and plans another increase in fiscal 2012. The department increased the fee from \$3 to \$5 and \$5 to \$10 in fiscal 2002 and 2007, respectively. The increase in fiscal 2012 will raise the fee to \$13. As shown in **Exhibit 6.2**, the fiscal 2007 sales contract fee greatly increased the total amount of revenues collected in fiscal 2008 compared with fiscal 2006. The doubling of sales contract fees allowed the office to cover its expenditures for the next four years despite the presence of higher direct and indirect costs.

Exhibit 6.1
Sales Contract Revenue as a Share of Total Special Fund Revenue
Fiscal 2007-2011

<u>Fiscal Year</u>	<u>Total Revenue Collected by Office</u>	<u>Revenue Attributable to Sales Contracts</u>	<u>Sales Contract Revenue as % of Total Revenue</u>
2007	\$261,686	\$190,545	72.8%
2008	621,543	522,515	84.1%
2009	284,090	190,425	67.0%
2010	515,035	437,125	84.9%
2011	<u>331,090</u>	<u>218,510</u>	<u>66.0%</u>
Total	\$2,013,444	\$1,559,120	77.4%

Note: Total revenue amounts for each year do not match the total revenue numbers reported in Exhibit 6.2. According to DLLR, this is due to a timing issue relating to the receipt of contract fees.

Source: Department of Labor, Licensing, and Regulation

Fiscal 2010's total expenditures were the highest in the history of the office. This is largely due to three factors. First, an agreement between DLLR and the Department of Budget and Management deferred indirect costs in fiscal 2007 and 2008 until fiscal 2010, which enabled the office to cover direct costs in those two years. Even without this deferment of approximately \$80,000 in indirect costs, the office still would have had a surplus at the end of fiscal 2008. Second, beginning in fiscal 2010 the Department of General Services began to charge rent. This accounted for an almost \$30,000 increase in the office's expenditures for fiscal 2010 and 2011. Third, salary expenses increased due to the hiring of the director in the second half of fiscal 2009. These increases in expenditures diminished the large surplus created by the fiscal 2007 fee increase and resulted in a biennial deficit for the 2010-2011 cycle.

Exhibit 6.2
Fiscal History of the Office of Cemetery Oversight
Fiscal 2006-2011

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
Starting Special Fund Balance	\$24,892	\$7,000	(\$82,685)	\$199,781	\$151,837	\$255,351
Revenues Collected	356,243	222,502	598,973	282,385	631,130	207,880
Total Revenues Available	381,135	229,502	516,288	482,166	782,967	463,231
Total Expenditures	374,150	312,187	316,505	330,329	527,616	415,340
Direct Costs	325,585	312,187	316,505	300,063	403,579	371,332
Indirect Costs	48,565	-	-	30,266	124,037	39,008
BRFA Adjustment	-	-	-	-	-	5,000
Annual Surplus/(Deficit)	(17,907)	(89,685)	282,468	(47,944)	103,514	(207,460)
Biennial Surplus/(Deficit)		(107,592)		234,524		(103,946)
Ending Special Fund Balance	\$6,895	(\$82,685)	\$199,783	\$151,837	\$255,351	\$47,891

Source: Department of Labor, Licensing, and Regulation

The sales contract fee increase from \$10 to \$13 is projected to go into effect in January or February 2012. According to DLLR, most cemetery permits are renewed in December; thus, the fiscal 2012 revenue levels should closely mirror fiscal 2010's with an increase for the relatively small number of cemeteries renewing after the fee increase. Additionally, while fiscal 2013 is the first year in which all applicable cemeteries will pay the increased fee, it is a low revenue year in the biennial cycle and the office will not see the full effect of the fee increase until fiscal 2014. However, as **Exhibit 6.3** illustrates, the office has accumulated a large enough surplus that the office should not have difficulty maintaining a positive fund balance while anticipating the effects of the fee increase. As noted above, approximately 77% of the office's revenues are derived from contract fees. Therefore, the fiscal 2014 revenue amount will reflect a 30% increase (from \$10 to \$13) on the vast majority of its revenue. This increase should create another surplus large enough for the office to last several years in the future. The surplus could also be used to fund potential expenditures such as the salary of an accountant or the implementation of an online license renewal system, discussed in prior chapters.

Exhibit 6.3
Financial Solvency of Office of Cemetery Oversight
Fiscal 2012-13 Projection with Sales Contract Fee Increase

	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>
Starting Special Fund Balance	\$151,837	\$255,351	\$47,891	\$257,891
Revenues Collected	631,130	207,880	660,000	260,000
Total Revenues Available	782,967	463,231	707,891	517,891
Total Expenditures	527,616	415,340	450,000	465,000
Direct Costs	403,579	371,332	410,000	420,000
Indirect Costs	124,037	39,008	40,000	45,000
BRFA Adjustment	-	5,000	-	-
Annual Surplus/(Deficit)	103,514	(207,460)	210,000	(205,000)
Biennial Surplus/(Deficit)		(103,946)		5,000
Ending Special Fund Balance	\$255,351	\$47,891	\$257,891	\$52,891

Source: Department of Labor, Licensing, and Regulation; Department of Legislative Services

Increased Attention to Reported Sales Contract Figures Could Create Additional Revenues

A cemetery reports the number of sales contracts for greater than \$250 entered into within the past two years when it submits a permit renewal application. The space for reporting this figure is a single line on the application. The applicant must sign the bottom of the application and agree that any misstatement is grounds for a denial of the permit. No supporting documentation is provided by the cemetery. While the director believes that the numbers reported by cemeteries are accurate, it may be beneficial to confirm the reported figure because contract fees represent the majority of office revenues. Verification of the reported figure could be accomplished by requiring the cemetery to provide supporting documentation. Additionally, as discussed in **Chapter 4**, the office should consider hiring an accountant on a contractual basis to verify compliance with perpetual care requirements. This accountant could also perform occasional audits of the supporting documents cemeteries provide to account for the number of sales contracts reported on its permit renewal. If an accountant is not hired, the investigator may perform a check of the supporting documents with the cemetery's record during her scheduled inspections. The office could collect more revenue if cemeteries are found to be underreporting sales contract fees.

Recommendation 19: Statute should be amended to require that the office's permit renewal forms be changed to require supporting documentation for the cemetery's reported number of applicable sales contracts.

Increasing Number of Cremations May Affect Future Revenues

Due to a multitude of factors, including the relatively low cost of cremations and the current economic climate, cremations in the State are increasing at a rate of 1% or 2% every year. Approximately 44,000 deaths occurred in Maryland in 2009 and 33% of these deaths were disposed of by cremation, an increase from 21% in 1999. As discussed in **Chapters 2 and 3**, the office will begin to regulate six crematories, while the majority of crematories will be regulated by the State Board of Morticians and Funeral Directors. Though the office will collect some additional revenue in contract fees from these crematories, it is unlikely that the increasing popularity of cremations will affect the office's finances in the next five years. However, it is an issue that is becoming prevalent in the death care industry and could affect the office's finances if the trend continues or accelerates. If an increasing number of cemeteries branch into the crematory industry, this impact could be more significant.

Recommendation 20: Uncodified language should be adopted to instruct the director and the advisory council to study the issue of the increasing rate of cremations within the death care industry. Particular attention should be paid to whether the rate of cremations will continue to rise at the same rate and the possible effect this trend may have on the office's finances.

Appendix 1. Advisory Council Membership

Industry Members

F. Thomas Claxton (Nonprofit cemeteries) (RESIGNED) Term expires 9/30/12

Richard Cody (For-profit cemeteries) (RESIGNED) Term expires 9/30/12

Erich March (For-profit cemeteries) Term expired 9/30/11

Sarah Rex (For-profit cemeteries) (RESIGNED) Term expires 9/30/13

Walter Tegeler (Monument companies) Term expired 9/30/11

David Zinner (Religious cemeteries) Term expires 9/30/12

Consumer Members

David Goodman, Chair Term expires 9/30/13

Jay Cherry (DECEASED) Term expires 9/30/13

Susan Cohen Term expires 9/30/13

Frank Porter Term expires 9/30/12

Harriet Suskin Term expires 9/30/14

Appendix 2. Cemetery Regulation by Jurisdiction

<u>Jurisdiction</u>	<u>Regulating Body</u>	<u>Regulation Information</u>	<u>Board Membership</u>
Alabama	Alabama Department of Insurance	License required for preneed sales.	
Alaska	None		
Arizona	Arizona Department of Real Estate	Regulates cemetery brokers and salespeople and regulates the sale of cemeteries.	
Arkansas	Arkansas Cemetery Board	Permit required to operate a cemetery.	Seven-member board plus an alternate – the Securities Commissioner plus six members appointed by the Governor: four industry and two consumer members. One of the consumer members must be age 60 or older to represent the elderly. The alternate is an industry member also appointed by the Governor to substitute if there is a conflict of interest with an industry member.
California	Department of Consumer Affairs – Cemetery and Funeral Bureau	Regulates funeral directors, funeral homes, cemeteries, and crematories.	Seven-member advisory committee appointed by the Chief of the Cemetery and Funeral Bureau – four industry and three public members.
Colorado	Division of Insurance	License required for preneed contract sellers.	
Connecticut	None		
Delaware	Cemetery Board	Registration required for cemetery companies and cemetery owners.	Five-member board appointed by the Secretary of the Department of Health and Social Services – three industry and two public members.

<u>Jurisdiction</u>	<u>Regulating Body</u>	<u>Regulation Information</u>	<u>Board Membership</u>
District of Columbia	None		
Florida	Board of Funeral, Cemetery and Consumer Services	Regulates funeral directors, funeral establishments, embalmers, cemeteries, refrigeration facilities, and preneed sellers.	Nine-member board – five industry members, three consumer members, and Deputy State Registrar or designee.
Georgia	Georgia State Board of Cemeterians	Regulates perpetual care cemeteries and preneed sellers, including preneed funeral homes.	Seven-member board appointed by the Governor – six industry members and one consumer member.
Hawaii	Cemetery and Preneed Funeral Authority	License required for cemeteries and preneed funeral authorities.	
Idaho	Idaho Department of Finance – Securities Bureau	Registration required for endowment care cemeteries.	
Illinois	Office of the Comptroller – Cemetery Care and Burial Trust Division	License required for private cemeteries that accept care funds and businesses that sell pre-need funeral goods and services.	
Indiana	State Board of Funeral and Cemetery Service	Regulates cemeteries and funeral directors.	Ten-member board – four funeral directors, three cemeterians, two public members, and a representative from the Indiana State Board of Health.
Iowa	Insurance Division – Iowa Securities Bureau	Cemeteries must pay an annual filing fee for each deed issued. Regulates preneed sales and perpetual care cemeteries.	

<u>Jurisdiction</u>	<u>Regulating Body</u>	<u>Regulation Information</u>	<u>Board Membership</u>
Kansas	Secretary of State	Private and nonreligious nonprofit cemeteries must register with the Secretary of State.	
Kentucky	Consumer Protection Division – Cemetery and Funeral Home Section	Regulates cemeteries, funeral homes, and crematoria.	
Louisiana	Louisiana Cemetery Board	Certificate of authority required to operate a cemetery except certain family burial grounds and certain fraternal, municipal, community, federal, state, and religious cemeteries.	Seven-member board appointed by the Governor – five industry members and two consumer members. Industry members must be in a current managerial role at a cemetery.
Maine	Maine Center for Disease Control and Prevention – Division of Environmental Health	Responsible for the oversight of cemeteries, mausolea, crematoria, and new and expanded burial grounds.	
Maryland	Office of Cemetery Oversight and Advisory Council on Cemetery Operations	Office regulates cemeteries, cemetery salespeople, and some crematories.	Eleven-member council – six industry members and five consumer members.
Massachusetts	None		
Michigan	Office of the Michigan Cemetery Commissioner	Registers and regulates private, nonreligious cemeteries.	
Minnesota	None		

<u>Jurisdiction</u>	<u>Regulating Body</u>	<u>Regulation Information</u>	<u>Board Membership</u>
Mississippi	Secretary of State Regulation and Enforcement Division	Any funeral home or cemetery which sells preneed funeral or cemetery merchandise or services is required to register.	
Missouri	Office of Endowed Care Cemeteries and Endowed Care Cemetery Advisory Committee	Regulates endowed (perpetual) care cemeteries.	Five-member committee – three registered endowed care cemetery owners or managers and two public members.
Montana	None		
Nebraska	Nebraska Department of Insurance	License required for Preneed Sellers and Preneed Sales Agents.	
Nevada	Nevada Division of Insurance	License required for cemetery merchandise agents and sellers, also funeral agents and funeral sellers.	
New Hampshire	None	(Annual financial report of trust funds filed with Attorney General – no indication it is audited).	
New Jersey	New Jersey Cemetery Board	Regulates nonreligious cemeteries.	Ten-member board – five industry, two public, Ex-Officio Commissioner's Designee of Dept. of Health and Senior Services, Ex-Officio Community Affair Commissioner or Designee, and Ex-officio-AG or Designee.

<u>Jurisdiction</u>	<u>Regulating Body</u>	<u>Regulation Information</u>	<u>Board Membership</u>
New Mexico	New Mexico Regulation and Licensing Department – Financial Institutions Division	Regulates endowed care cemeteries.	
New York	Division of Cemeteries in the Department of State	Regulates only those cemeteries that are incorporated under the Not-for-Profit Corporation Law. Not regulated: religious, municipal, private, national, and family cemeteries.	Three-member board – designees (one each) of the Secretary of State, the Attorney General, and the Commissioner of Health.
North Carolina	North Carolina Cemetery Commission	Licenses and regulates cemeteries, cemetery management organizations, cemetery sales organizations, cemetery brokers and individual pre-need cemetery salespeople.	Nine-member commission – seven appointed by the Governor; two owners and/or managers of cemeteries in North Carolina; three nominees submitted by the N.C. Cemetery Association; and two public members. Two members appointed by the General Assembly: one on the recommendation of the President Pro Tempore of the Senate, and one on the recommendation of the Speaker of the House.
North Dakota	North Dakota Department of Health	License required for perpetual care cemeteries except religious or owned by a political subdivision.	

<u>Jurisdiction</u>	<u>Regulating Body</u>	<u>Regulation Information</u>	<u>Board Membership</u>
Ohio	Division of Real Estate and Professional Licensing – Ohio Cemetery Dispute Resolution Commission	Registration required for cemeteries owned by political subdivisions or the government; religious, fraternal, or benevolent organizations; and cemetery associations or companies. Cemetery operators submit a list of their sellers for the purpose of registering the individual sellers.	Nine-member commission appointed by the Governor – seven industry and two public members.
Oklahoma	Oklahoma Insurance Department	Permit required for an organization to engage in the sale of prepaid cemetery merchandise. Cemeteries must file a perpetual care annual report.	
Oregon	Oregon Mortuary and Cemetery Board	Licenses funeral establishments, immediate disposition companies, funeral service practitioners, embalmers, apprentices, cemetery authorities or crematory authorities, and preneed salespeople.	Eleven-member board appointed by the Governor – seven industry members: crematorium operator, funeral service practitioner; cemetery operator, special district; embalmer; cemetery operator, for profit; FSP / embalmer; cemetery operator, city / county; and four public members, one of whom must be a senior citizen.
Pennsylvania	State Real Estate Commission	Licenses required for cemetery brokers and cemetery salespeople. Registration required for a cemetery company that is not owned or controlled by a bona fide church or religious congregation or fraternal organization or by any association created by a bona fide church or religious organization or fraternal organization.	
Rhode Island	None		

<u>Jurisdiction</u>	<u>Regulating Body</u>	<u>Regulation Information</u>	<u>Board Membership</u>
South Carolina	South Carolina Perpetual Care Cemetery Board	Licenses perpetual care cemeteries. Not regulated: governmental cemeteries, nonprofit cemeteries, church cemeteries, nature preserve cemeteries, and family burial grounds.	Seven-member board – four industry and three public members.
South Dakota	None		
Tennessee	Department of Commerce and Insurance, Burial Services Section and Cemetery Advisory Board	License required for cemeteries other than church cemeteries, family cemeteries, community cemeteries, military cemeteries and cemeteries owned and operated by a municipality. Registration required for preneed sellers and preneed sales agents.	Five-member advisory board appointed by the Commissioner of Commerce and Insurance. All industry members.
Texas	Texas Department of Banking	Regulates perpetual care cemeteries except cemeteries that are owned by municipalities, cities, churches, and other nonprofit organizations.	
Utah	None		
Vermont	None		
Virginia	Cemetery Board	Licenses required for cemeteries except those owned and operated by churches, the State of Virginia, all counties, cities and towns, and certain nonprofit, association, and family cemeteries. Registration required for cemetery salespeople.	Seven-member board – four industry members, two consumer members, and one representative of local government.

<u>Jurisdiction</u>	<u>Regulating Body</u>	<u>Regulation Information</u>	<u>Board Membership</u>
Washington	Department of Licensing Funeral and Cemetery Unit	Licenses funeral establishments, cemeteries, and crematories. License required to operate a cemetery and for prearrangement sales.	
West Virginia	State Tax Department	Registration required for preneed cemetery companies.	
Wisconsin	Cemetery Board	Licenses and regulates cemetery authorities, licenses cemetery salespersons, and registers cemetery preneed sellers.	Six-member board – four industry and two public members.
Wyoming	Wyoming Insurance Department	Privately owned cemeteries must submit an annual perpetual care report.	

Appendix 3. A Proposal for Creating the Maryland Cemetery Heritage Program

As developed by the Advisory Council on Cemetery Operations; reprinted with the permission of the Office of Cemetery Oversight

The Advisory Council proposes the three following working definitions:

“Neglected Cemetery” – A cemetery with two or more burials, of exclusively human remains, that has an identifiable owner and which shows significant signs of the following conditions: excessive growth of vegetation; repeated acts of vandalism; disintegration of grave markers or boundaries; a lack of care or maintenance; a lack of proper records of ownership of burial rights and locations of interments; or failure to maintain standards for care and fiscal responsibility which conditions have continued for a period of six (6) months or more.

“Abandoned Cemetery” – A cemetery with two or more burials of exclusively human remains, which shows significant signs of one or more of the following: excessive growth of vegetation; repeated acts of vandalism; disintegration of grave markers or boundaries; a lack of care or maintenance; a lack of proper records of ownership of burial rights and locations of interments; or failure to maintain standards for care and fiscal responsibility and that meets the following conditions: 1) no identifiable owner can be found who is legally responsible or financially capable of the upkeep of the cemetery; 2) no burials or inurnments have been made in the previous five (5) years; and 3) no maintenance has occurred within the past five (5) years except for maintenance rendered by a government entity.

“Insolvent Cemetery” – A cemetery, with two or more burials of exclusively human remains, whose debts exceed its assets or which is unable to meet its debts in the ordinary course of business.

A. Creation of a Special Fund – Maryland Cemetery Heritage Fund

The Advisory Council proposes the creation of a special fund. This fund will be created by using two primary revenue sources:

1. The addition of a fourth check-off item on State income tax returns that will be identified as the “**Maryland Cemetery Heritage Fund**” (the “Fund”); and
2. A mechanism whereby individuals and corporations/business interests can donate, or contribute to the fund directly. (This proposal would allow individuals to bequeath their estates to the fund.) If possible, this mechanism would be created as a nonprofit with tax exempt status so that there would be some tax benefit for individuals/corporations who donate to the Fund.

The Comptroller will be responsible for collecting contributions. The monies collected will not be credited to the General Fund but will remain a separate Special Fund – a non-lapsing, non-budgeted fund held outside of the Treasury. The fund would be set up to accept non-restricted private gifts.

The Fund will remain inactive until a minimum balance of \$500,000 is achieved. The Fund must maintain a minimum balance of \$500,000 on an annual basis in order to remain in active status. If the Fund is below \$500,000 on the last day of the fiscal year, it will return to inactive status

starting on the first day of the new fiscal year and remain inactive until the last day of the new fiscal year. If the Fund balance returns to \$500,000 or more by the last day of the new fiscal year, it will become active on the first day of the next fiscal year.

The Fund will always maintain a minimum balance of \$250,000 or more, when active. The Fund balance may not drop below \$250,000. The \$250,000 balance will be properly invested and the interest generated on an annual basis will be added to the portion of the Fund available for grants. (Ideally, the goal would be to bring the principal balance to at least \$1,000,000 which would become a permanent endowment.) The Fund would be set up to allow the possibility of investment outside of the State Treasury similar to practices already followed by the Maryland Historical Trust.

When the Fund reaches a minimum of \$500,000 it will then be considered “active”. A total of \$250,000 or more will become available for: 1) direct matching grants; 2) administrative costs for counties and municipalities agreeing to participate and comply with the statute’s requirements; and 3) administrative costs incurred by the administering agency (Maryland State Archives). Up to twenty percent (20%) of the available Fund balance will be reserved for administrative costs of the counties or municipalities; twenty percent (20%) for the Maryland Archives to cover administrative costs; and the remaining sixty percent (60%) of the Fund in any given year that is eligible for disbursement would be reserved for approved matching grants.

The Maryland Archives would be responsible for managing the Fund and for ensuring that funds are appropriated in a way that allows the Fund to remain in an active status on a continual basis from year to year.

B. Coordinator of Cemetery Issues/Concerns

Participation in the program is voluntary. Each Maryland county or municipality which agrees to participate would: 1) identify/designate one person in county government as the “**Coordinator of Cemetery Issues/Concerns**” (the “Coordinator”); 2) establish a formal cemetery registry; and 3) make a good faith effort to document every cemetery existing within its boundaries within six (6) years.

Counties and municipalities that are in compliance would submit contact information on at least an annual basis (or whenever a change occurs) for the designated county or municipality to the Maryland Archives and to the Maryland Office of Cemetery Oversight. In addition, each county would make available a full copy of their cemetery registry to the Maryland Archives and the Maryland Office of Cemetery Oversight and provide annual updates. Counties and municipalities that are in full compliance may apply for funds in an amount not to exceed \$2,000 per year (when the fund is active – on a first come, first served basis) with a maximum expenditure of 20% of the available fund balance to help with administrative costs.

C. Cemetery Preservation Grant

Constituents and volunteer organizations located in counties and municipalities that have complied with the elements set forth in B. above would be eligible to submit an application to the Fund for a matching “**Cemetery Preservation Grant**” (“Grant”) of up to, but not exceeding \$15,000 in a ten (10) years time period. The local Coordinator would be responsible for providing the application form along with the grant requirements checklist.

The Grant application process would include:

1. a completed application;
2. a description of the group or organization applying for the Grant;
3. documentation of the exact name and location (including GPS coordinates if available), size (in acreage and approximate number of interments) and history of the cemetery;
4. documentation evidencing that the cemetery meets the definitional requirements of an “abandoned” cemetery;
5. documentation that the volunteer organization managing the project has committed to obtaining permission to access the cemetery and to perform restoration work and will obtain such permission before the Grant is awarded;
6. proof of a workable plan that details not only how the cemetery will be restored but also demonstrates how the cemetery will be maintained in the future;
7. photographic documentation of the cemetery’s current condition;
8. restoration plans detailing what will be improved and showing a detailed budget of the cost of materials and labor;
9. proof that the balance of funds needed above and beyond the amount provided by the matching Grant are in hand (up to 20% of matching funds may be attributed to “in-kind” services);
10. details of the restoration plan that will demonstrate that the project will not “cause harm” and will achieve the stated goals;
11. certification that volunteers have been trained and are competent to participate in cemetery restoration work prior to launching the restoration effort;
12. a projected time frame indicating when work will commence and when it will be completed;
13. upon project completion (and within 60 days) submission to the County or municipality Coordinator of a written report summarizing the project’s outcome with photographic documentation;
14. a detailed financial final report documenting exactly how funds were spent;
15. an agreement to return any unused funds back to the Fund; and

The County or municipality Coordinator upon receipt of the Cemetery Preservation Grant Application and supporting documentation shall complete a review, and if all requirements are met, shall rate the application package as complete and indicate whether the project has received County/municipality approval/endorsement. The County or municipality Coordinator

(after approval) shall forward the completed and reviewed application packet to the Maryland Cemetery Heritage Fund Coordinating Committee, located in the Maryland Archives, for review.

D. The Maryland Cemetery Heritage Fund Coordinating Committee (MCHFCC)

The **Maryland Cemetery Heritage Fund Coordinating Committee (MCHFCC)** will be housed under the Maryland Archives and will be comprised of members representing the following groups/organizations: The Maryland Archives; the Maryland Department of Planning, Maryland Historical Trust; the Department of Public Safety & Correctional Services; the Maryland Department of Natural Resources; the Maryland Department of Agriculture; the Maryland State Department of Education; the Maryland Department of Higher Education; the Department of Labor, Licensing and Regulation, Office of Cemetery Oversight; the Department of Health and Mental Hygiene, State Board of Morticians; the Maryland Comptroller's Office; the Maryland-National Capital Park and Planning Commission (M-NCPPC); the Maryland Office of the Attorney General; the Maryland Association of Counties; the Maryland Municipal League; the Maryland Cemetery, Funeral and Cremation Association; a Maryland monument dealer; a Maryland cemetery preservation group; a Maryland genealogy group; and a Maryland service organization (e.g. Lions Club).

The State Archivist will designate an "Administrative Director" and support staff that will be responsible for program development and ongoing management of the Maryland Cemetery Heritage Fund. The Administrative Director and his staff will be responsible for coordinating the efforts of the MCHFCC and the development of program regulations, guidelines, and criteria. The Administrative Director will manage and coordinate the statewide Cemetery Census Project and develop and manage the Adopt a Cemetery Program. The Administrative Director will set the agenda and calendar for the MCHFCC and will provide oversight and coordination of all efforts to address issues related to abandoned cemeteries in the State of Maryland.

The MCHFCC will meet at least four times a year on a schedule to be determined by the Office of the Maryland Archives.

The MCHFCC will be responsible, along with staff at the Maryland Archives, for the timely development and approval of specific regulations, guidelines, and criteria for the operation and administration of the Maryland Cemetery Heritage Fund and associated programs to be submitted, as needed, to the AELR Committee for approval.

The MCHFCC will be responsible for review and final approval (by a majority of a quorum vote) of applications forwarded by local County or municipal Coordinators to the Maryland Cemetery Heritage Fund for Cemetery Preservation Grants. The MCHFCC is charged with reviewing each application to ensure that all possible and available State assets and resources are being utilized (e.g. inmates from Public Safety and Correctional Services) to ensure the successful outcome of the project.

E. Cemetery Census

A local and statewide inventory of all cemeteries will be conducted over a six years period commencing with the signing of legislation launching this initiative and completed by no later than January 1, 2016.

The Maryland Cemetery Heritage Fund Coordinating Committee (MCHFCC), in cooperation with staff of the Maryland Archives, will develop a standardized information collection framework to be used by all County and municipal Coordinators to collect and record information about each cemetery located in the county or municipality.

The standard framework will contain and categorize the cemetery according to at least the following elements: Name; Address/Location, GPS Coordinates (if available); Name and contact information for responsible party; Approximate age of cemetery; Status (abandoned, neglected, active); Religious (Denomination)/ Non-Religious; For profit/Not for profit; Accessibility; a condition rating on a scale of 1 to 10; and any additional elements as determined by the MCHFCC.

Each County or municipality participating in this proposal will designate one individual who will be the Coordinator of Cemetery Issues/Concerns or “go to person” regarding any matters pertaining to cemeteries within the county or municipality. The Coordinator will be responsible for establishing and maintaining an **Electronic/Digital Cemetery Registry** (the “Registry”) for all cemeteries located in the county or municipality.

Each participating county or municipality shall make every effort to advertise the census project and to encourage citizens to submit cemetery information to the Registry. The Registry will be made available to the public via a link on the county’s website. The link will allow citizens to submit information on line to the Coordinator.

The local County or municipality Coordinator will share (by January 1, 2016) the Registry contents and provide annual updates to the Maryland Cemetery Heritage Fund located in the office of the Maryland Archives and to the Maryland Office of Cemetery Oversight.

The County or municipality Coordinator will identify and refer potential cemeteries that meet criteria (to be developed by no later than 2012 by the MCHFCC) for the Adopt a Cemetery Program which will be launched upon the completion of the statewide cemetery census six years from the signing of legislation launching this initiative.

The Office of Maryland Archives will use the county and municipality registries to compile a searchable electronic statewide Registry of all cemeteries identified in the State by no later than 2016 and will make this Registry available to the public via a link on its website.

The Maryland Department of Natural Resources will support the cemetery census by conducting an inventory of all cemeteries located on state land under the control of the Department. The

information gathered will be submitted to the appropriate local county or municipality Registry through the County or municipality Coordinator. This effort shall be initiated immediately upon passage of legislation creating the Maryland Cemetery Heritage Fund and shall be completed by January 1, 2016.

F. Adopt a Cemetery Program

The Administrative Director of the Maryland Cemetery Heritage Fund will be responsible for developing a statewide **Adopt a Cemetery Program** modeled after the State Highway Administration's Adopt a Highway Program.

The program will be fully developed and ready to begin by January 1, 2016. Nominations and referrals for cemeteries to be considered for the Adopt a Cemetery Program will be accomplished exclusively through the local County or municipality Coordinators who will be able to submit recommendations effective January 1, 2016.

The Administrative Director, in partnership with the MCHFCC will develop program criteria, rules, forms, guidelines, and submission procedures to be followed by local County or municipality Coordinators in referring cemeteries to the adoption list. The Administrative Director will work with the Maryland Office of the Attorney General to resolve any and all legal and liability issues associated with this program.

The Administrative Director will create and maintain an electronic database of cemeteries throughout the State that are ready and available for adoption by January 1, 2016. Access to the adoption list will be made available to the public via the Maryland Archives website along with directions on how to place a cemetery on the adoption list.

Colleges, universities and high schools seeking to adopt a cemetery from the cemetery adoption list will be given highest priority for access to a Cemetery Preservation Grant when funds are available.

Organizations applying to adopt a cemetery from the Cemetery Adoption List will be given priority consideration for a Cemetery Preservation Grant when the fund is active.

The Administrative Director will take steps to market and publicize this program to the public, including the corporate community, in an effort to promote cemetery adoptions.

The Administrative Director and the MCHFCC will be responsible for studying possible tax incentives to encourage participation, especially corporate, in the Adopt a Cemetery Program and will submit a report with recommendations to the General Assembly by no later than October 1, 2014.

G. Feasibility Studies

An effort will be made to build partnerships between the Maryland Cemetery Heritage Fund and the following organizations: 1) the Maryland State Department of Education, and 2) the Maryland Department of Higher Education.

A feasibility study will be conducted by the State Superintendent of Schools to examine the possibility that each middle school and high school in Maryland “adopt” a cemetery (from the Adopt a Cemetery Program after it is launched in January, 2016). The study will examine existing middle to high school curricula to determine the potential for making curriculum changes to interface with the use of an “adopted” cemetery as a practicum experience to achieve educational objectives and for the awarding of both academic credit and Community Service credit hours (via the Student Service Learning Hours Program). The study will examine the economic impact of such a program, the feasibility of schools being able to adopt a cemetery and the ability of those schools to absorb associated costs within current budget realities. The report will be completed with findings and recommendations submitted to the General Assembly no later than October 1, 2014.

A study will be conducted by the Maryland Department of Higher Education that will examine the feasibility of each college and university within the State higher education system to “adopt” a cemetery (from the Adopt a Cemetery Program, after it is launched in January, 2016). The study will determine the potential value of establishing a practicum learning site for the study of history, archeology, horticulture, biology and other relevant subjects. The study will measure the benefit of using a cemetery as a learning site as a practicum experience to achieve educational objectives and for the awarding of academic credit. The study will examine the economic impact of such a program, the feasibility of schools being able to adopt a cemetery and the ability of those schools to absorb associated costs within current budget realities. The report will be completed with findings and recommendations submitted to the General Assembly by no later than October 1, 2014.

A feasibility study will be conducted by the Maryland Motor Vehicle Administration to examine the possibility of creating a Maryland Cemetery Heritage license plate modeled after the Chesapeake Bay license plate program as an additional revenue source for funding the Maryland Cemetery Heritage Fund. The final report on this study will be submitted to the General Assembly by no later than October 1, 2012.

A feasibility study will be conducted by the Maryland Archives to explore the possibility of making “neglected cemeteries” and/or cemeteries that have suffered devastating vandalism eligible for Cemetery Preservation Grants and the Adopt a Cemetery program. This study will examine the potential demand and the economic impact of making such a change in the statute. The study will be completed and submitted to the General Assembly by October 1, 2014.

A feasibility study will be conducted by the Maryland Archives, the Maryland Department of Planning/Maryland Historical Trust and the Department of Public Safety and Correctional

Services to explore the possibility of establishing a permanent “formal inmate cemetery preservation program”. The study will be completed and submitted with recommendations to the General Assembly by October 1, 2014.

A feasibility study will be conducted by the Maryland Archives and the Maryland Department of Planning/Maryland Historical Trust that will develop a standard definition for “historic cemetery” to be used and applied by local cemetery Coordinators (by no later than October 2012) and will identify and list potential grant sources, both private and governmental that would offer funding to assist with the restoration and ongoing care and maintenance of “historic” abandoned or neglected cemeteries (by no later than October 1, 2014). The study will also create a complete list of existing abandoned cemeteries that meet the definitional requirement of being an “historic cemetery”. The final study report will be completed and submitted with findings to the General Assembly by October 1, 2016.

A feasibility study will be conducted by the department of Natural Resources to identify and establish a registry of all abandoned and neglected cemeteries located on state owned property overseen by the Department of Natural Resources. In addition to establishing a registry, the Department will provide information to the appropriate County or municipal Coordinator of cemeteries located on state owned land that fall within a given county or municipality.

A feasibility study will be conducted by the Maryland Archives and the Maryland Department of Planning to identify and develop a “model” set of zoning codes designed to increase protection of existing cemeteries (abandoned, neglected and active) from development and other intrusions. The focus of this effort is to develop a model set of zoning codes that ensure preservation and eliminate or mitigate existing loopholes in current law. The study will specifically consider the Dorchester County Code and the Howard County Code as potential models to be copied by other jurisdictions. A final report with recommendations will be submitted to the General Assembly by October 1, 2013.

A study will be conducted by the Maryland Cemetery Heritage Fund Coordinating Committee, located under the Maryland Archives, to explore the feasibility of including Pet Cemeteries under the Maryland Cemetery Heritage Program. The final study report will be completed and submitted with findings to the General Assembly by October 1, 2012.

A study will be conducted by the Advisory Council on Cemetery Operations on Perpetual Care Trust funds. The study will evaluate the adequacy and effectiveness of existing requirements and practices in establishing and maintaining perpetual care funds. The purpose of the study is to determine if existing practices provide adequate protection to ensure that existing active cemeteries do not become abandoned or neglected when the operational life of the cemetery comes to an end. The study will adopt a preventative approach and will specifically seek out scientific opinion to determine a “best practices model” for managing, growing and maintaining cemetery perpetual care trust accounts. A final report with recommendations for statutory changes will be submitted to the General Assembly by October 1, 2011.

H. Internship Program

The Administrative Director in the office of the Maryland Archives will be responsible for developing an “internship” program for college students as part of a partnership program with the Maryland Department of Higher Education. Students will gain practical experience in their respective fields of study, have an opportunity to earn academic credit and help in the effort to address the problem of abandoned cemeteries.

Each college/university within the Maryland state college/university system would have the option to adopt at least one abandoned cemetery and be responsible for it. The college/university system will develop an integrated curriculum that provides practical experience for students to earn academic credit using an abandoned cemetery as a learning site in the areas of archeology, history, anthropology, etc. Areas of study will be identified that would benefit from the practicum experience. The college/university would award academic credit.

The college/university would be charged with the responsibility of restoring and then maintaining the abandoned cemetery using student and school resources and assistance from the Maryland Cemetery Heritage Fund.

I. Miscellaneous

Consideration needs to be given as to whether or not to build in an “adjustment for inflation” mechanism into this proposal for the Cemetery Preservation

Appendix 4. Legislative Proposal on Preconstruction Sales of Mausoleum Crypts

As developed by the Advisory Council on Cemetery Operations and the Office of Cemetery Oversight; reprinted with the permission of the Office of Cemetery Oversight

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5-7A-01

(A) IN THIS SUBTITLE, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “COLUMBARIUM” MEANS A BUILDING OR ABOVE GROUND STRUCTURE THAT IS AFFIXED TO LAND AND INTENDED TO BE USED AS A PERMANENT REPOSITORY FOR CREMATED HUMAN REMAINS.

(C) “COLUMBARIUM NICHE” MEANS A SPACE WITHIN A COLUMBARIUM INTENDED TO BE USED FOR THE ENTOMBMENT OF CREMATED HUMAN REMAINS OF ONE OR MORE DECEASED PERSONS.

(D) “CRYPT” MEANS A CHAMBER OF SUFFICIENT SIZE TO INTER HUMAN REMAINS.

(E) (1) “LAWN CRYPT” MEANS AN INTERMENT SPACE IN PREPLACED CHAMBERS, EITHER SIDE BY SIDE OR MULTIPLE DEPTH, COVERED BY EARTH OR SOD.

(2) “LAWN CRYPT” INCLUDES:
(I) A GARDEN CRYPT; AND
(II) A TURF TOP CRYPT.

(F) “MAUSOLEUM” MEANS A COMMUNITY TYPE STRUCTURE OR A ROOM OR SPACE IN A BUILDING OR OTHER ABOVE GROUND STRUCTURE THAT IS AFFIXED TO LAND AND INTENDED TO BE USED AS A PERMANENT REPOSITORY FOR HUMAN REMAINS IN CRYPTS OR NICHEs.

(G) “MAUSOLEUM CRYPT” MEANS A SPACE IN A MAUSOLEUM INTENDED TO BE USED FOR THE ENTOMBMENT OF HUMAN REMAINS.

(H) “MAUSOLEUM NICHE” MEANS A SPACE IN A MAUSOLEUM INTENDED TO BE USED FOR THE ENTOMBMENT OF THE CREMATED REMAINS OF ONE OR MORE DECEASED PERSONS.

(I) “PRECONSTRUCTION CONTRACT OF SALE” MEANS A WRITTEN INSTRUMENT UNDER WHICH MAUSOLEUM CRYPTS OR NICHEs, COLUMBARIUM NICHEs OR LAWN CRYPTS ARE TO BE CONSTRUCTED AND FURNISHED BY THE SELLER AT A FUTURE DATE.

(J) "PRECONSTRUCTION TRUST FUND" MEANS A TRUST ESTABLISHED UNDER THIS SUBTITLE FOR THE PURPOSE OF ADMINISTERING PROCEEDS FROM THE SALES OF UNDEVELOPED

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MAUSOLEUM, COLUMBARIUM, OR LAWN CRYPT SPACES AND ANY INCOME DERIVED FROM INVESTING THE MONEY IN THE TRUST FUND.

(K) "PRECONSTRUCTION TRUSTEE" MEANS THE TRUSTEE OF A PRECONSTRUCTION TRUST FUND.

(L) "SELLER" MEANS A REGISTERED CEMETERIAN, REGISTERED SELLER OR ANY OTHER PERSON WHO SELLS MAUSOLEUM, COLUMBARIUM OR LAWN CRYPT SPACE PRIOR TO CONSTRUCTION OF THE SPACE.

(M) "SPECIFIC FUNDS" MEANS MONEY THAT IS IDENTIFIED TO A SPECIFIC PRECONSTRUCTION CONTRACT OF SALE.

5-7A-02

THIS SUBTITLE DOES NOT APPLY TO PRIVATE MAUSOLEUMS, PRIVATE COLUMBARIA OR MAUSOLEUMS, COLUMBARIA OR LAWN CRYPTS COMPLETED PRIOR TO BEING OFFERED FOR SALE.

5-7A-03

THIS SUBTITLE APPLIES ONLY TO PRECONSTRUCTION CONTRACTS OF SALE MADE ON OR AFTER OCTOBER 1, 2008.

5-7A-04

AT LEAST 30 DAYS BEFORE ENGAGING IN THE FIRST CONTRACT FOR SALE OF A MAUSOLEUM CRYPT OR NICHE PROJECT, COLUMBARIUM NICHE PROJECT, OR LAWN CRYPT SPACE PROJECT PRIOR TO THE COMPLETION OF CONSTRUCTION, A SELLER SHALL GIVE WRITTEN NOTICE TO THE OFFICE OF THE COMMENCEMENT OF SUCH PROPOSED SALE ON FORMS PROVIDED BY THE OFFICE.

5-7A-05

A SELLER ENGAGED IN THE SALE OF A RIGHT OF INTERMENT IN A MAUSOLEUM CRYPT OR NICHE, COLUMBARIUM NICHE OR LAWN CRYPT SPACE

PRIOR TO ITS CONSTRUCTION SHALL:

(A) START CONSTRUCTION OF THAT SECTION OF A MAUSOLEUM, COLUMBARIUM, OR LAWN CRYPT IN WHICH SALES ARE BEING MADE.

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WITHIN 4 YEARS AFTER THE DATE OF THE FIRST SUCH SALE; AND

(B) COMPLETE CONSTRUCTION WITHIN 6 YEARS FROM THE DATE OF THE FIRST SALE.

5-7A-06

A DELAY IN THE COMMENCEMENT OR COMPLETION OF CONSTRUCTION OF MAUSOLEUM CRYPTS OR NICHEs, COLUMBARIUM NICHEs, OR LAWN CRYPT SPACES CAUSED BY STRIKE, NATIONAL EMERGENCY, SHORTAGE OF MATERIALS, CIVIL DISORDER, NATURAL DISASTER, OR ANY LIKE OCCURRENCE BEYOND THE CONTROL OF THE SELLER SHALL EXTEND THE TIME OF SUCH COMMENCEMENT OR COMPLETION BY THE LENGTH OF SUCH DELAY.

5-7A-07

(A) A PRECONSTRUCTION CONTRACT OF SALE SHALL CONTAIN;

(1) THE NAME OF THE BUYER;

(2) THE NAME OF THE SELLER;

(3) A DESCRIPTION OF THE MAUSOLEUM, COLUMBARIUM OR LAWN CRYPT SPACE;

(4) THE AMOUNT OF THE BUYER'S FINANCIAL OBLIGATION;
AND

(5) A SUMMARY OF SELLER'S PLANS TO FINANCE THE CONSTRUCTION OF THE UNDEVELOPED MAUSOLEUM, COLUMBARIUM OR LAWN CRYPT SPACE.

(B) (1) A PRECONSTRUCTION CONTRACT OF SALE SHALL BE DATED AND EXECUTED IN DUPLICATE BY THE BUYER AND SELLER.

(2) THE SELLER SHALL GIVE THE BUYER A DUPLICATE ORIGINAL OF

THE PRENEED BURIAL CONTRACT.

(C) (1) IF THE SELLER IMPOSES INTEREST OR A FINANCE CHARGE, THE INTEREST OR FINANCE CHARGE SHALL BE AT A FIXED RATE OR SUM NOT GREATER THAN ALLOWED BY THE PROVISIONS OF TITLE 12 OF THE COMMERCIAL LAW ARTICLE.

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(2) A SELLER MAY SELL A PRECONSTRUCTION CONTRACT TO A COMMERCIAL LENDING INSTITUTION AT THE FINANCING TERMS IN THE CONTRACT IF THE PRECONSTRUCTION CONTRACT SIGNED BY THE ORIGINAL BUYER OF THE MAUSOLEUM, COLUMBARIUM OR LAWN CRYPT SPACE CONTAINS THE FOLLOWING LANGUAGE IN 12 -POINT OR LARGER TYPE:

“NOTICE TO CONSUMERS: THIS CONTRACT OF SALE MAY BE SOLD TO A COMMERCIAL LENDING INSTITUTION. AFTER THE SALE, THE COMMERCIAL LENDING INSTITUTION MAY IMPOSE INTEREST OR A FINANCE CHARGE AT THE RATE SET FORTH IN THE CONTRACT ON THE REMAINING BALANCE DUE.”.

5-7A-08

A PERSON WHO PLANS TO OFFER FOR SALE A RIGHT OF INTERMENT IN A MAUSOLEUM, COLUMBIARIUM OR LAWN CRYPT PRIOR TO ITS CONSTRUCTION SHALL ESTABLISH A PRECONSTRUCTION TRUST FUND AND MAKE THE REQUIRED DEPOSITS TO SUCH PRECONSTRUCTION TRUST FUND.

5-7A-09

(A) THE TOTAL AMOUNT TO BE DEPOSITED IN THE PRECONSTRUCTION TRUST FUND SHALL BE 50% OF THE PRECONSTRUCTION SELLING PRICE , PLUS 100% OF THE INTEREST OR FINANCE CHARGES.

(B) A SELLER SHALL PUT IN TRUST, WITHIN 30 DAYS OF RECEIPT, 50% OF ALL PAYMENTS AND 100% OF ANY INTEREST OR FINANCE CHARGES TO THE SELLER PURSUANT TO A PRECONSTRUCTION CONTRACT OF SALE, OF A MAUSOLEUM CRYPT OR NICHE, COLUMBARIUM NICHE OR LAWN CRYPT SPACE SOLD UNDER THE PRECONSTRUCTION CONTRACT OF SALE AS THE SELLER RECEIVES PAYMENTS FROM THE BUYER.

5-7A-10

(A) EACH TRUST ACCOUNT SHALL BE:

- (1) TITLED "PRECONSTRUCTION TRUST FUND"; AND
- (2) ESTABLISHED BY THE SELLER OF THE

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UNDEVELOPED MAUSOLEUM, COLUMBARIUM OR LAWN CRYPT SPACE IN THE SELLER'S NAME.

(B) A TRUSTEE APPOINTED UNDER THIS SUBTITLE MUST BE:

- (1) A NATIONAL BANKING ASSOCIATION, AS DEFINED IN THE FINANCIAL INSTITUTIONS ARTICLE;
- (2) A BANKING INSTITUTION, AS DEFINED IN THE FINANCIAL INSTITUTIONS ARTICLE;
- (3) ANY OTHER FINANCIAL INSTITUTION ALLOWED BY LAW TO ENGAGE IN THE TRUST BUSINESS; OR
- (4) A PERSON WHO PROVIDES A FIDELITY BOND FROM A RECOGNIZED BONDING INSTITUTION IN AN AMOUNT EQUAL TO THE TRUST FUND AND INURING TO THE BENEFIT OF THE PRECONSTRUCTION TRUST FUND OF THE SELLER OR THE PRECONSTRUCTION BUYERS, OR BOTH.

THE FIDELITY BOND UNDER SUBSECTION (B)(4) OF THIS SECTION SHALL BE SUBJECT TO THE APPROVAL OF THE DIRECTOR.

IF A FIDELITY BOND IS POSTED UNDER SUBSECTION (B)(4) OF THIS SECTION, THE DIRECTOR SHALL RECEIVE 60 DAYS' WRITTEN NOTICE FROM THE SELLER IN THE EVENT OF CANCELLATION. ON OR BEFORE THE CANCELLATION DATE, THE SELLER SHALL COMPLY WITH THE PRECONSTRUCTION TRUST FUND REQUIREMENTS OF THIS SUBTITLE OR POST ANOTHER FIDELITY BOND UNDER THIS SUBTITLE.

(C) A SELLER MAY:

- (1) COMMINGLE MONEY FROM 2 OR MORE PRECONSTRUCTION CONTRACTS; AND

(2) ESTABLISH MORE THAN 1 TRUST ACCOUNT.

(D) (1) A TRUST ACCOUNT ESTABLISHED UNDER THIS SUBTITLE SHALL BE A SINGLE PURPOSE TRUST.

(2) MONEY IN THE TRUST ACCOUNT IS NOT AVAILABLE TO A CREDITOR AS AN ASSET OF THE SELLER

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(E) MONEY IN THE PRECONSTRUCTION TRUST ACCOUNT MAY BE WITHDRAWN ONLY ON THE COMBINED SIGNATURES OF:

(1) 2 OFFICERS OF A CORPORATE SELLER; OR

(2) AT LEAST 2 INDIVIDUALS AUTHORIZED TO WITHDRAW MONEY FOR AN UNINCORPORATED SELLER.

5-7A-11

(A) IN THIS SECTION, "SELLER'S ACCOUNT" MEANS:

(1) THE TOTAL OF SPECIFIC FUNDS, INCLUDING INTEREST OR FINANCE CHARGES DEPOSITED FROM ALL PRECONSTRUCTION CONTRACTS OF A SELLER COMMINGLED IN A SINGLE FUND; AND

(2) ANY INCOME DERIVED FROM INVESTING THE MONEY IN THE FUND.

(B) TRUST ACCOUNTS SHALL BE ADMINISTERED AS THIS SUBTITLE PROVIDES.

(C) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, A TRUSTEE APPOINTED UNDER THIS SUBTITLE IS SUBJECT TO THE LAW THAT IS GENERALLY APPLICABLE TO TRUSTEES.

(2) IF A TRUSTEE APPOINTED UNDER THIS SUBTITLE IS NOT LOCATED IN THE STATE, THE AGREEMENT BETWEEN THE SELLER AND THE TRUSTEE EXPRESSLY SHALL INCORPORATE THIS SUBTITLE.

(D) A TRUSTEE;

(1) MAY RELY ON ALL CERTIFICATIONS MADE UNDER OR
REQUIRED BY THIS SUBTITLE; AND

(2) IS NOT LIABLE TO ANY PERSON FOR THAT RELIANCE.

(E) (1) A TRUSTEE MAY INVEST MONEY OF A TRUST ACCOUNT IN

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ANY SECURITY THAT IS A LAWFUL INVESTMENT FOR A FIDUCIARY, INCLUDING
A TIME DEPOSIT OR CERTIFICATE OF DEPOSIT ISSUED BY THE TRUSTEE.

(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, TO ENSURE
THAT MONEY IN THE TRUST ACCOUNT IS ADEQUATE, THE TRUST INCOME
SHALL:

(I)) REMAIN IN THE TRUST ACCOUNT;

(II) BE REINVESTED AND COMPOUNDED; AND

(III) BE DISBURSED ONLY FOR PAYMENT OF
APPROPRIATE TRUSTEE'S FEES, COMMISSIONS, AND OTHER COSTS OF THE
TRUST ACCOUNT.

(F) (1) A SELLER, ON WRITTEN NOTICE TO THE TRUSTEE AND IN
ACCORDANCE WITH THE AGREEMENT BETWEEN THEM, MAY TRANSFER THE
SELLER'S ACCOUNT TO ANOTHER TRUSTEE.

(2) A TRUSTEE, ON WRITTEN NOTICE TO THE SELLER AND IN
ACCORDANCE WITH THE AGREEMENT BETWEEN THEM, MAY TRANSFER THE
SELLER'S ACCOUNT TO ANOTHER TRUSTEE.

5-7A-12

(A) THE TRUSTEE MAY NOT DISBURSE SPECIFIC FUNDS UNTIL THE
MAUSOLEUM CRYPT OR NICHE, COLUMBARIUM NICHE OR LAWN CRYPT SPACE
HAS BEEN CONSTRUCTED AS PROVIDED IN THE PRECONSTRUCTION CONTRACT
OF SALE.

(B) ON PERFORMANCE OF A PRECONSTRUCTION CONTRACT OF SALE:

(1) THE SELLER SHALL CERTIFY TO THE TRUSTEE:

(I) DELIVERY OF THE MAUSOLEUM CRYPT OR NICHE, COLUMBARIUM NICHE, OR LAWN CRYPT SPACE; AND

(II) THE AMOUNT OF SPECIFIC FUNDS IN THE TRUST ACCOUNT, INCLUDING INTEREST OR FINANCE CHARGES AND ACCRUED INCOME; AND

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(2) THE TRUSTEE SHALL THEN PAY TO THE SELLER THE SPECIFIC FUNDS, INTEREST OR FINANCE CHARGES AND ACCRUED INCOME.

(C)(1) IF A PRECONSTRUCTION CONTRACT OF SALE PROVIDES, FOR 2 OR MORE INDIVIDUALS, PRECONSTRUCTION MAUSOLEUM CRYPTS OR NICHES, COLUMBARIUM NICHES, OR LAWN CRYPT SPACES TO WHICH THE TRUST REQUIREMENTS OF THIS SUBTITLE APPLY, A SELLER MAY DESIGNATE IN THE SELLER'S RECORDS THE CONSIDERATION PAID FOR EACH INDIVIDUAL.

(2) ON PERFORMANCE OF THAT PART OF THE PRECONSTRUCTION CONTRACT OF SALE IDENTIFIED TO A PARTICULAR INDIVIDUAL:

(I) THE SELLER SHALL CERTIFY TO THE TRUSTEE:

1. DELIVERY OF THE MAUSOLEUM CRYPT OR NICHE, COLUMBARIUM NICHE, OR LAWN CRYPT SPACE; AND

2. THE AMOUNT OF THE SPECIFIC FUNDS, INCLUDING INTEREST OR FINANCE CHARGES, APPLICABLE TO THAT PART OF THE PRECONSTRUCTION CONTRACT OF SALE; AND

(II) THE TRUSTEE SHALL THEN PAY TO THE SELLER THOSE SPECIFIC FUNDS, INTEREST OR FINANCE CHARGES AND ACCRUED INCOME APPLICABLE TO THAT PART OF THE PRECONSTRUCTION CONTRACT OF SALE.

5-7A-13

(A) IF CONSTRUCTION OF A MAUSOLEUM CRYPT OR NICHE, COUMBARIUM NICHE, OR LAWN CRYPT SPACE IS NOT COMMENCED OR COMPLETED WITHIN THE TIMES SPECIFIED IN SECTION 5-7A-05, ANY BUYER MAY CANCEL THE PRECONSTRUCTION CONTRACT OF SALE, IN WRITING; AND

(B) UPON CANCELLATION, THE BUYER SHALL BE ENTITLED TO:

(1) A REFUND OF ALL MONIES DEPOSITED INTO THE PRECONSTRUCTION TRUST FUND FOR THE PURCHASE OF SUCH SPACE,

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(2) AN AMOUNT OF MONEY NECESSARY TO PROVIDE THE BUYER WITH A REFUND OF 100% OF THE MONEY PAID FOR THE SPACE UNDER THE PRECONSTRUCTION CONTRACT OF SALE;

(3) ANY ACCRUED INTEREST OR FINANCE CHARGES DEPOSITED INTO THE PRECONSTRUCTION TRUST FUND BASED ON THE PRECONSTRUCTION CONTRACT OF SALE; AND

(4) ANY ACCRUED INCOME ON THE MONIES PAID INTO THE PRECONSTRUCTION TRUST FUND BASED ON THE PRECONSTRUCTION CONTRACT OF SALE.

(C) IN THE EVENT OF A CANCELLATION OF THE PRECONSTRUCTION CONTRACT OF SALE IN ACCORDANCE WITH SUBTITLE (A) OF THIS SECTION:

(1) THE SELLER SHALL CERTIFY TO THE TRUSTEE:

(I) THE CANCELLATION OF THE PRECONSTRUCTION CONTRACT OF SALE;

(II) THE AMOUNT OF THE SPECIFIC FUNDS APPLICABLE TO THE PRECONSTRUCTION CONTRACT OF SALE; AND

(III) THE NAME AND ADDRESS OF THE BUYER.

(2) THE TRUSTEE SHALL PAY TO THE BUYER THE SPECIFIC FUNDS, PLUS INTEREST OR FINANCE CHARGES AND INCOME ACCRUED ON THOSE FUNDS; AND

(3) IN ADDITION TO THE REFUNDS PAID BY THE TRUSTEE, THE SELLER SHALL PAY TO THE BUYER AN AMOUNT OF MONEY NECESSARY TO PROVIDE THE BUYER WITH A REFUND OF 100% OF THE MONEY PAID UNDER THE PRECONSTRUCTION CONTRACT, EXCLUSIVE OF INTEREST OR FINANCE CHARGES AND INCOME ACCRUED ON THE AMOUNT HELD IN THE PRECONSTRUCTION TRUST FUND.

(D) IN THE EVENT THE BUYER FAILS TO PROVIDE WRITTEN NOTICE OF CANCELLATION IN ACCORDANCE WITH SUBTITLE (A) OF THIS SECTION AND DEFAULTS ON A PRECONSTRUCTION CONTRACT OF SALE AND, AS A

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RESULT THE SELLER TERMINATES THE PRECONSTRUCTION CONTRACT OF SALE:

(1) THE SELLER SHALL CERTIFY TO THE TRUSTEE:

(I) THE DEFAULT AND TERMINATION OF THE PRECONSTRUCTION CONTRACT OF SALE;

(II) THE AMOUNT OF THE SPECIFIC FUNDS INCLUDING INTEREST OR FINANCE CHARGES AND ACCRUED INCOME; AND

(III) THE REASONABLE EXPENSES OF THE SELLER; AND

(2) THE TRUSTEE SHALL THEN PAY:

(I) TO THE BUYER, THOSE SPECIFIC FUNDS PLUS INTEREST OR FINANCE CHARGES AND ACCRUED INCOME, LESS THE REASONABLE EXPENSES OF THE SELLER; AND

(II) TO THE SELLER, THE REASONABLE EXPENSES OF THE SELLER.

5-7A-14

(A) A PERSON SELLING A RIGHT OF INTERMENT IN MAUSOLEUM CRYPTS OR NICHEs, COLUMBARIUM NICHEs OR LAWN CRYPT SPACES PRIOR TO CONSTRUCTION SHALL PROVIDE FACILITIES FOR TEMPORARY INTERMENT OR ENTOMBMENT FOR BUYERS OR BENEFICIARIES OF PRECONSTRUCTION CONTRACTS OF SALE WHO DIE PRIOR TO COMPLETION OF THE SPACE.

(B) TEMPORARY ENTOMBMENT FACILITIES WILL BE CONSTRUCTED OF PERMANENT MATERIALS, BE COMPARABLE TO THE SPACE DESCRIBED IN THE

PRECONSTRUCTION CONTRACT OF SALE AND BE LANDSCAPED TO THE EXTENT CUSTOMARY IN THAT COMMUNITY.

(C) THE HEIRS, ASSIGNS OR PERSONAL REPRESENTATIVE OF A BUYER OR BENEFICIARY MAY NOT BE REQUIRED TO ACCEPT TEMPORARY UNDERGROUND INTERMENT SPACE WHERE THE CONTRACT OF SALE PROVIDES FOR AN ABOVE GROUND MAUSOLEUM CRYPT OR NICHE OR COLUMBARIUM NICHE.

(D) IN THE EVENT THAT;

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(1) TEMPORARY FACILITIES AS DESCRIBED IN THIS SUBSECTION ARE NOT MADE AVAILABLE UPON THE DEATH OF A BUYER OR BENEFICIARY, OR

(2) THE HEIRS, ASSIGNS OR PERSONAL REPRESENTATIVE OF A BUYER OR BENEFICIARY REFUSE TO ACCEPT TEMPORARY UNDERGROUND INTERMENT SPACE WHERE THE PRECONSTRUCTION CONTRACT OF SALE PROVIDES FOR AN ABOVE GROUND MAUSOLEUM CRYPT OR NICHE OR COLUMBARIUM NICHE,

THE HEIRS, ASSIGNS OR PERSONAL REPRESENTATIVE OF A BUYER OR BENEFICIARY MAY DEMAND CANCELLATION OF THE PRECONSTRUCTION CONTRACT, IN WRITING, AND ARE ENTITLED TO:

(1) A REFUND OF ALL MONIES DEPOSITED INTO THE PRECONSTRUCTION TRUST FUND FOR THE PURCHASE OF SUCH SPACE;

(2) AN AMOUNT OF MONEY NECESSARY TO PROVIDE THE PURCHASER WITH A REFUND OF 100% OF THE MONEY PAID FOR THE SPACE UNDER THE PRECONSTRUCTION CONTRACT OF SALE;

(3) ANY ACCRUED INTEREST OR FINANCE CHARGES DEPOSITED INTO THE PRECONSTRUCTION TRUST FUND BASED ON THE PRECONSTRUCTION CONTRACT OF SALE; AND

(4) ANY ACCRUED INCOME ON THE MONIES PAID INTO THE PRECONSTRUCTION TRUST FUND BASED ON THE PRECONSTRUCTION CONTRACT OF SALE.

(E) IN THE EVENT OF A CANCELLATION OF THE PRECONSTRUCTION CONTRACT OF SALE IN ACCORDANCE WITH SUBTITLE (D) OF THIS SECTION:

(1) THE SELLER SHALL CERTIFY TO THE TRUSTEE:

(I) THE CANCELLATION OF THE PRECONSTRUCTION CONTRACT OF SALE;

(II) THE AMOUNT OF THE SPECIFIC FUNDS, INTEREST OR FINANCE CHARGES AND ACCRUED INCOME APPLICABLE TO THE PRECONSTRUCTION CONTRACT OF SALE; AND

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(III) THE NAME AND ADDRESS OF THE HEIRS, ASSIGNS OR PERSONAL REPRESENTATIVE OF THE BUYER OR BENEFICIARY.

(2) THE TRUSTEE SHALL PAY TO THE HEIRS, ASSIGNS OR PERSONAL REPRESENTATIVE OF THE BUYER OR BENEFICIARY, THE SPECIFIC FUNDS, PLUS INTEREST OR FINANCE CHARGES AND INCOME ACCRUED ON THOSE FUNDS; AND

(3) IN ADDITION TO THE REFUND PAID BY THE TRUSTEE, THE SELLER SHALL PAY TO THE HEIRS, ASSIGNS OR PERSONAL REPRESENTATIVE OF THE BUYER OR BENEFICIARY AN AMOUNT OF MONEY NECESSARY TO PROVIDE THE BUYER WITH A REFUND OF 100% OF THE MONEY PAID UNDER THE PRECONSTRUCTION CONTRACT, EXCLUSIVE OF INTEREST OR FINANCE CHARGES AND INCOME ACCRUED ON THE AMOUNT HELD IN THE PRECONSTRUCTION TRUST FUND.

(F) IN THE EVENT THE PURCHASER FAILS TO PROVIDE WRITTEN NOTICE OF CANCELLATION IN ACCORDANCE WITH SUBTITLE (D) OF THIS SECTION AND DEFAULTS ON A PRECONSTRUCTION CONTRACT OF SALE AND, AS A RESULT THE SELLER TERMINATES THE PRECONSTRUCTION CONTRACT OF SALE;

(1) THE SELLER SHALL CERTIFY TO THE TRUSTEE:

(I) THE DEFAULT AND TERMINATION OF THE PRECONSTRUCTION CONTRACT OF SALE;

(II) THE AMOUNT OF THE SPECIFIC FUNDS INCLUDING

INTEREST OR FINANCE CHARGES AND ACCRUED INCOME; AND

(III) THE REASONABLE EXPENSES OF THE SELLER; AND

(2) THE TRUSTEE SHALL THEN PAY:

(I) TO THE HEIRS, ASSIGNS OR PERSONAL REPRESENTATIVE OF THE BUYER, OR BENEFICIARY THOSE SPECIFIC FUNDS PLUS INTEREST OR FINANCE CHARGES AND ACCRUED INCOME, LESS THE REASONABLE EXPENSES OF THE SELLER; AND

(II) TO THE SELLER, THE REASONABLE EXPENSES OF THE SELLER.

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5-7A-15

(A) (1) EACH SELLER OF A RIGHT OF INTERMENT IN A MAUSOLEUM CRYPT OF NICHE, COLUMBARIUM NICHE, OR LAWN CRYPT SPACE UNDER A PRECONSTRUCTION CONTRACT OF SALE SHALL KEEP DETAILED RECORDS OF ALL PRECONSTRUCTION SALES AND MONEY RECEIVED.

(2) THE RECORDS OF EACH SELLER OF A PRECONSTRUCTION CONTRACT OF SALE AND OF EACH TRUSTEE APPOINTED BY THE SELLER ARE SUBJECT TO EXAMINATION BY:

(I) THE DIRECTOR;

(II) THE ATTORNEY GENERAL OR AN AUTHORIZED REPRESENTATIVE OF THE ATTORNEY GENERAL; AND

(III) THE STATE'S ATTORNEY FOR THE COUNTY WHERE THE SELLER DOES BUSINESS OR WHERE THE MAUSOLEUM CRYPT OR NICHE, COLUMBARIUM NICHE, OR LAWN CRYPT SPACE IS TO BE CONSTRUCTED.

(B) (1) EACH SELLER SHALL SUBMIT A REPORT TO THE DIRECTOR WITHIN 120 DAYS AFTER THE CLOSE OF EACH CALENDAR OR OTHER FISCAL YEAR CHOSEN BY THE SELLER.

(2) THE REPORT SHALL:

(I) BE ON THE FORM THAT THE DIRECTOR REQUIRES;

(II) BE CERTIFIED AS TO CORRECTNESS BY A CERTIFIED PUBLIC ACCOUNTANT RETAINED BY THE SELLER;

(III) BE ACCOMPANIED BY A TRUSTEE'S SUMMARY STATEMENT OF ASSETS;

(IV) BE ACCOMPANIED BY A FEE OF \$50; AND

(V) INCLUDE:

1. THE NAME OF THE SELLER;

2. EACH LOCATION OF THE SELLER SUBJECT TO THE

REVISED DRAFT
12/18/07

TRUST REQUIREMENTS OF THIS SUBTITLE;

3. THE AMOUNT OF MONEY THAT THE SELLER RECEIVED DURING THAT YEAR THAT IS SUBJECT TO THE TRUST REQUIREMENTS OF THIS SUBTITLE;

4. THE AMOUNT OF MONEY ACTUALLY DEPOSITED INTO TRUST ACCOUNTS IN THAT YEAR;

5. THE AMOUNT OF MONEY REQUIRED TO BE DISBURSED FROM THE TRUST ACCOUNTS IN THAT YEAR;

6. THE AMOUNT OF MONEY ACTUALLY DISBURSED FROM THE TRUST ACCOUNTS IN THAT YEAR; AND

7. THE NAME AND ADDRESS OF THE TRUSTEE.

(3) (I) A SELLER UNDER A PRECONSTRUCTION CONTRACT OF SALE THAT SELLS ITS BUSINESS, FILES A PETITION IN BANKRUPTCY, OR CEASES TO OPERATE SHALL PROVIDE WRITTEN NOTICE WITHIN 15 DAYS:

1. TO THE DIRECTOR, DETAILING THE CHANGES AND THE ARRANGEMENTS THE SELLER HAS MADE FOR CARRYING OUT THE PRECONSTRUCTION CONTRACTS OF SALE AND THE DISBURSEMENT OF ANY MONEYS HELD IN AN ESCROW OR TRUST ACCOUNT;

2. TO EACH BUYER UNDER A PRECONSTRUCTION CONTRACT OF SALE, ADVISING THE BUYER OF THE BUYER'S OPTIONS UNDER

STATE LAW IN REGARD TO THE PRECONSTRUCTION CONTRACT OF SALE.

(II) NOTHING IN THIS PARAGRAPH EXEMPTS A SELLER UNDER A PRECONSTRUCTION CONTRACT OF SALE THAT SELLS ITS BUSINESS, FILES A PETITION IN BANKRUPTCY, OR CEASES TO OPERATE FROM FILING THE ANNUAL REPORT REQUIRED UNDER THIS SECTION.

(4) THE DIRECTOR MAY REQUIRE A SELLER OF A PRECONSTRUCTION CONTRACT TO CORRECT ANY UNDERFUNDING, INCLUDING INTEREST, DUE TO A PRECONSTRUCTION TRUST FUND.

(C) THE DIRECTOR MAY ADOPT REGULATIONS:

(1) TO ADMINISTER SUBTITLE (B) OF THIS SECTION; AND
REVISED DRAFT
12/18/07

(2) FOR DETERMINING WHETHER SELLERS OF PRECONSTRUCTION CONTRACTS OF SALE ARE COMPLYING WITH THIS SUBTITLE.

5-7A-16

(A) IF THE DIRECTOR FINDS THAT A SELLER HAS VIOLATED THIS SUBTITLE OR A REGULATION ADOPTED UNDER THIS SUBTITLE, THE DIRECTOR MAY REFER THE MATTER TO:

(1) THE ATTORNEY GENERAL FOR CIVIL ENFORCEMENT; OR

(2) THE APPROPRIATE STATE'S ATTORNEY FOR CRIMINAL PROSECUTION.

(B) THE ATTORNEY GENERAL MAY SUE FOR AND A COURT MAY GRANT:

(1) INJUNCTIVE OR OTHER EQUITABLE RELIEF;

(2) IMPOSITION OF A CIVIL PENALTY NOT EXCEEDING \$5,000; OR

(3) BOTH.

5-7A-17

(A) A SELLER MAY NOT FAIL TO DEPOSIT, AS REQUIRED BY THIS

SUBTITLE, MONEY RECEIVED UNDER OR IN CONNECTION WITH A
PRECONSTRUCTION CONTRACT OF SALE.

(B) (1) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
MISDEMEANOR AND, ON CONVICTION, IS SUBJECT TO A FINE NOT
EXCEEDING \$5,000 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

(2) IF A CORPORATION VIOLATES THIS SECTION, EACH OFFICER
RESPONSIBLE FOR THE VIOLATION IS GUILTY OF A MISDEMEANOR AND, ON
CONVICTION, IS SUBJECT TO A FINE NOT EXCEEDING \$5,000 OR
IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.

Appendix 5. Draft Legislation

Bill No.: _____

Requested: _____

Committee: _____

Drafted by: Eastwood

Typed by: Gail

Stored – 10/31/11

Proofread by ☒ _____Checked by ☒ _____By: **Leave Blank**

A BILL ENTITLED

1 AN ACT concerning

2 **Office of Cemetery Oversight – Sunset Extension and Program Evaluation**

3 FOR the purpose of continuing the Office of Cemetery Oversight in accordance with
 4 the provisions of the Maryland Program Evaluation Act (Sunset Law) by
 5 extending to a certain date the termination provisions relating to statutory and
 6 regulatory authority of the Office; exempting private family cemeteries that do
 7 not conduct public sales from certain permitting and registration, perpetual
 8 care, and preneed contract requirements of the Maryland Cemetery Act;
 9 altering the membership of the Advisory Council on Cemetery Operations;
 10 increasing the number of times the Advisory Council is required to convene each
 11 year; authorizing the Director of the Office of Cemetery Oversight or the
 12 Director's designee to confer with the Advisory Council or with individual
 13 members of the Council on complaint processing and resolution; requiring the
 14 Director to include certain information regarding the number of registrants and
 15 permit holders in a certain annual report; requiring the Director to provide a
 16 copy of certain annual reports to each member of the Advisory Council;
 17 requiring the Director, at certain times, to deliver to each member of the
 18 Advisory Council certain paperwork; requiring the Advisory Council to respond
 19 to issues raised in certain annual reports and develop a plan to study ongoing
 20 issues; authorizing a certain registration to be transferred under certain
 21 circumstances; requiring a certain annual report to include certain information
 22 on the number of inquiries received by the Office; requiring an applicant for a

 EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 permit to submit certain documentation to the Director; requiring a certain
 2 disclosure to be made in a certain manner; repealing an exemption for certain
 3 cemeteries from certain provisions of law relating to perpetual care
 4 requirements; requiring the Office to provide a report on the implementation of
 5 certain recommendations to certain committees of the General Assembly on or
 6 before a certain date; requiring the Advisory Council to develop a plan for
 7 consumer outreach, study recordkeeping practices for cemeteries in a certain
 8 manner, and develop a legislative proposal on recordkeeping practices;
 9 requiring the Director and the Advisory Council to develop certain orientation
 10 materials and study the issue of the increasing rate of cremations and its effect
 11 on the Office's finances; requiring the Director and a committee formed of
 12 members of the Advisory Council to update the Office newsletter and develop a
 13 certain plan for updating the newsletter; making stylistic and technical
 14 changes; providing for a delayed effective date for certain provisions of this Act;
 15 and generally relating to the Office of Cemetery Oversight and the operation of
 16 cemeteries and burial goods businesses in the State.

17 BY repealing and reenacting, with amendments,

18 Article – Business Regulation

19 Section 5–102(a), 5–201(c), 5–204(b), (i), and (l), 5–305(b), 5–311(h), 5–404,
 20 5–602(a), 5–702(a), 5–801, and 5–1002

21 Annotated Code of Maryland

22 (2010 Replacement Volume and 2011 Supplement)

23 BY adding to

24 Article – Business Regulation

25 Section 5–204(m) and 5–204.1

26 Annotated Code of Maryland

27 (2010 Replacement Volume and 2011 Supplement)

28 BY repealing and reenacting, with amendments,

29 Article – Business Regulation

30 Section 5–602(a)

31 Annotated Code of Maryland

32 (2010 Replacement Volume and 2011 Supplement)

33 (As enacted by Section 1 of this Act)

34 BY repealing and reenacting, without amendments,

Article – State Government
Section 8–403(a)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 8–403(b)(10)
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
MARYLAND, That the Laws of Maryland read as follows:

Article – Business Regulation

5–102.

(a) The registration and permitting provisions of this title do not apply to:

(1) a person that owns and operates a bona fide religious–nonprofit
cemetery in this State;

(2) a cemetery owned by a not for profit organization created before
1900 by an act of the General Assembly;

(3) a county, city, or municipal corporation that owns and operates a
cemetery in the State; [or]

(4) a veterans’ cemetery operated by the State; **OR**

**(5) A PRIVATE FAMILY CEMETERY THAT DOES NOT CONDUCT
PUBLIC SALES.**

5–201.

(c) (1) The Secretary shall appoint an Advisory Council on Cemetery
Operations.

(2) The Advisory Council consists of [eleven] **12** members.

(3) Of the [eleven] **12** members of the **ADVISORY** Council:

(i) three shall be registered cemeterians representing the for-profit cemetery industry;

(ii) one shall be a registered cemeterian representing a nonprofit cemetery;

(iii) one shall be a registered seller from a monument company;

(iv) one shall be a representative from a religious cemetery;

[and]

(v) **ONE SHALL BE A REPRESENTATIVE FROM A CREMATORY; AND**

~~[(v)]~~ (vi) five shall be consumer members.

(4) The Advisory Council shall be convened at least [once] **FOUR TIMES** a year to give advice to the Secretary and the Director.

(5) In addition to the [annual meeting] **REQUIRED MEETINGS**, the Advisory Council may meet as necessary.

5-204.

(b) (1) Upon receipt of a written complaint, or at the discretion of the Director, the Director or the Director's designee may conduct an investigation and an inspection of the records and site of a registered cemeterian, registered crematory operator, registered seller, permit holder, or any other person subject to the registration or permit provisions of this title.

(2) **THE DIRECTOR OR THE DIRECTOR'S DESIGNEE MAY CONFER WITH THE ADVISORY COUNCIL OR WITH INDIVIDUAL MEMBERS OF THE ADVISORY COUNCIL ON COMPLAINT PROCESSING AND RESOLUTION.**

(i) (1) For each fiscal year, the Director shall maintain a list of:

(i) all registrants and permit holders;

(ii) all for-profit cemeteries and nonreligious-nonprofit cemeteries associated with a registrant or permit holder; and

(iii) all bona fide religious-nonprofit cemeteries, veterans' cemeteries, and local government-owned cemeteries that have filed a statement or report required under §§ 5-405, 5-606, and 5-710 of this title.

(2) All lists maintained by the Director shall be open to inspection by any person.

(3) BASED ON THE LIST MAINTAINED BY THE DIRECTOR UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION, THE DIRECTOR SHALL INCLUDE IN THE ANNUAL REPORT TO THE GENERAL ASSEMBLY REQUIRED UNDER SUBSECTION (L)(3) OF THIS SECTION THE FOLLOWING INFORMATION AS OF JUNE 30 OF THE YEAR THAT IS THE SUBJECT OF THE REPORT:

(I) THE TOTAL NUMBER OF REGISTRANTS AND PERMIT HOLDERS; AND

(II) THE NUMBER OF REGISTRANTS AND PERMIT HOLDERS FOR EACH LICENSING CATEGORY.

(l) (1) Beginning with a report due on December 1, 2008, the Director shall conduct an inventory of all known burial sites in the State and shall update the inventory and report every 5 years to the General Assembly, in accordance with § 2-1246 of the State Government Article, on the number of for-profit cemeteries, nonreligious-nonprofit cemeteries, bona fide religious-nonprofit cemeteries, veterans' cemeteries, and local government-owned cemeteries.

(2) Beginning December 1, 2008, the Director shall annually assess the rate of compliance with the registration, permit, and reporting requirements of this title by comparing the lists required under subsection (i)(1)(ii) and (iii) of this

section with the most recent inventory of all known burial sites conducted under paragraph (1) of this subsection.

(3) Beginning with a report due on January 31, 2009, for fiscal year 2008, the Director shall report annually to the General Assembly, in accordance with § 2-1246 of the State Government Article, on the implementation of an action plan, if appropriate, to address any noncompliance issues identified by the assessment required under paragraph (2) of this subsection.

(4) THE DIRECTOR SHALL PROVIDE A COPY OF THE ANNUAL REPORT REQUIRED UNDER PARAGRAPH (3) OF THIS SUBSECTION TO EACH MEMBER OF THE ADVISORY COUNCIL.

(M) AT THE TIME OF APPOINTMENT OF NEW MEMBERS AND BEFORE REAPPOINTMENT OF EXISTING MEMBERS OF THE ADVISORY COUNCIL, THE DIRECTOR SHALL DELIVER TO EACH MEMBER THE PAPERWORK NECESSARY TO DISCLOSE ANY INTEREST OR EMPLOYMENT HELD BY THE MEMBER AT THE TIME OF APPOINTMENT AS REQUIRED BY THE MARYLAND PUBLIC ETHICS LAW.

5-204.1.

THE ADVISORY COUNCIL SHALL RESPOND TO ISSUES RAISED BY THE DIRECTOR IN THE ANNUAL REPORT REQUIRED UNDER § 5-204 OF THIS SUBTITLE AND § 5-311 OF THIS TITLE AND DEVELOP A PLAN TO STUDY ONGOING ISSUES DURING THE YEAR FOLLOWING THE ISSUANCE OF THE REPORT.

5-305.

(b) A registration issued by the Director under this title [is not transferable]:

(1) MAY NOT BE TRANSFERRED FROM ONE INDIVIDUAL TO ANOTHER; BUT

(2) MAY BE TRANSFERRED FOR THE SAME INDIVIDUAL FROM ONE CEMETERY TO ANOTHER.

5-311.

1 (h) (1) The Director shall adopt guidelines that establish a schedule for
2 the prompt and timely processing and resolution of each complaint made to the
3 Director.

4 (2) Beginning December 31, 1998, and on or before December 31 of
5 each year thereafter, the Director shall report, subject to § 2-1246 of the State
6 Government Article, to the General Assembly on:

7 (i) the number of complaints resolved within the schedule
8 adopted under paragraph (1) of this subsection;

9 (ii) the number of complaints **AND THE NUMBER OF**
10 **INQUIRIES** received under subsection (c)(2) of this section by the type of registrant,
11 permit holder, or exemption from the registration and permit requirements of this
12 title;

13 (iii) the number of complaints **AND THE NUMBER OF**
14 **INQUIRIES** received under subsection (c)(2) of this section by persons subject to, but
15 not in compliance with, the registration and permit requirements of this title;

16 (iv) the nature of complaints **AND INQUIRIES** received under
17 subsection (c)(2) of this section, including whether complaints are related to the illegal
18 recycling of graves;

19 **(V) THE TYPE OF PURCHASE, FOCUS OF DISSATISFACTION,**
20 **AND TYPE OF RESOLUTION FOR BOTH COMPLAINTS AND INQUIRIES;**

21 ~~[(v)]~~ **(VI)** whether complaints reported under item (i) of this
22 paragraph were resolved through negotiation, binding arbitration, or another method;
23 and

24 ~~[(vi)]~~ **(VII)** any disciplinary or enforcement actions taken against
25 a registrant, permit holder, or a person subject to, but not in compliance with, the
26 registration and permit requirements of this title.

1 **(3) THE DIRECTOR SHALL PROVIDE A COPY OF THE ANNUAL**
2 **REPORT REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION TO EACH**
3 **MEMBER OF THE ADVISORY COUNCIL.**

4 5-404.

5 An applicant for a permit shall submit to the Director:

6 (1) an application on the form that the Director provides; [and]

7 (2) an application fee as set by the Director; AND

8 **(3) DOCUMENTATION SHOWING THE NUMBER OF SALES**
9 **CONTRACTS SUBJECT TO THE SALES CONTRACT FEE ENTERED INTO WITHIN THE**
10 **BUSINESS' LAST TWO FISCAL YEARS.**

11 5-602.

12 (a) This subtitle does not apply to a cemetery that:

13 (1) has less than 1 acre available for burial; or

14 (2) is owned and operated by:

15 (i) a county;

16 (ii) a municipal corporation;

17 (iii) a church;

18 (iv) a synagogue;

19 (v) a religious organization;

20 (vi) a not for profit organization created before 1900 by an act of
21 the General Assembly; [or]

22 **(VII) A FAMILY AND DOES NOT CONDUCT PUBLIC SALES; OR**

1 [(vii)] (VIII) a State veterans agency.

2 5–702.

3 (a) This subtitle does not apply to:

4 (1) the sale of burial space; [or]

5 (2) a preneed contract made by an individual in connection with
6 practicing funeral direction or practicing mortuary science, as those practices are
7 defined in and regulated by the Health Occupations Article; OR

8 **(3) THE PRENEED SALE OF BURIAL GOODS OR SERVICES BY A**
9 **PRIVATE FAMILY CEMETERY THAT DOES NOT CONDUCT PUBLIC SALES OF**
10 **BURIAL GOODS OR SERVICES.**

11 5–801.

12 (a) At the time of entering into a contract with a consumer for the sale of
13 burial goods or services, registrants, permit holders, or any other person subject to the
14 provisions of this title shall make the following written disclosures:

15 (1) the itemized cost for each service performed under the contract;

16 (2) a list of services incidental to burial that are not covered by the
17 contract;

18 (3) a statement regarding the cemetery's policy on the use of
19 independent monument companies; and

20 (4) the name, address, and telephone number for the State Office of
21 Cemetery Oversight.

22 (b) **(1) The disclosures REQUIRED UNDER SUBSECTION (A)(1), (2), AND**
23 **(3) OF THIS SECTION** shall be conspicuously incorporated in the contract in 12–point
24 type.

1 **(2) THE DISCLOSURE REQUIRED UNDER SUBSECTION (A)(4) OF**
2 **THIS SECTION SHALL BE ON A FORM SEPARATE FROM THE CONTRACT AND MUST**
3 **BE SEPARATELY SIGNED AND DATED BY THE CONSUMER.**

4 (c) The disclosure must be signed and dated by the consumer.

5 (d) The consumer must be provided with a copy of the contract **AND A COPY**
6 **OF THE FORM REQUIRED UNDER SUBSECTION (B)(2) OF THIS SECTION** at the
7 time of purchasing the burial goods or services.

8 (e) The disclosure shall occur:

9 (1) not later than the first scheduled face-to-face contact with the
10 purchaser or party representing the purchaser; or

11 (2) if no face-to-face contact occurs, at the time of the execution of the
12 contract by the purchaser or party representing the purchaser.

13 (f) The Director [may], by regulation, **MAY** prescribe the form and wording
14 of the disclosure.

15 (g) If the purchase by the consumer includes a cemetery plot, the registered
16 cemeterian, permit holder, or any other person subject to the provisions of this title
17 shall provide the consumer with a copy of a location survey, performed by a licensed
18 land surveyor, which indicates the location of the purchased plot within the cemetery,
19 or by any other means approved by the Director.

20 (h) Registrants, permit holders, or any other person subject to the provisions
21 of this title shall provide each buyer or prospective buyer with a general price list for
22 the buyer or prospective buyer to keep which shall include:

23 (1) specific prices for:

24 (i) ground opening and closing;

25 (ii) extra depth interment;

26 (iii) interment of cremated remains; and

(iv) mausoleum entombment; and

(2) general price ranges for burial space or burial goods.

5–1002.

Subject to the evaluation and reestablishment provisions of the Maryland Program Evaluation Act, the Office of Cemetery Oversight, the provisions in this title relating to the Office, and all regulations adopted by the Office shall terminate and be of no effect after July 1, [2013] **2023**.

Article – State Government

8–403.

(a) On or before December 15 of the 2nd year before the evaluation date of a governmental activity or unit, the Legislative Policy Committee, based on a preliminary evaluation, may waive as unnecessary the evaluation required under this section.

(b) Except as otherwise provided in subsection (a) of this section, on or before the evaluation date for the following governmental activities or units, an evaluation shall be made of the following governmental activities or units and the statutes and regulations that relate to the governmental activities or units:

(10) Cemetery Oversight, Office of (§ 5–201 of the Business Regulation Article: July 1, [2012] **2022**);

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Business Regulation

5–602.

(a) This subtitle does not apply to a cemetery that:

(1) has less than 1 acre available for burial; or

(2) is owned and operated by:

(i) [a county;

(ii) a municipal corporation;

(iii) a church;

(iv) a synagogue;

(v) a religious organization;

(vi) a not for profit organization created before 1900 by an act of the General Assembly;

(vii)] a family and does not conduct public sales; or

[(viii)] (II) a State veterans agency.

SECTION 3. AND BE IT FURTHER ENACTED, That, on or before October 1, 2013, the Office of Cemetery Oversight shall report to the Senate Finance Committee and the House Health and Government Operations Committee, in accordance with § 2–1246 of the State Government Article, on the implementation status of nonstatutory recommendations of the Department of Legislative Services contained in the sunset evaluation report dated October 2011.

SECTION 4. AND BE IT FURTHER ENACTED, That the Advisory Council on Cemetery Operations shall:

(1) develop a plan to improve consumer outreach, including an approach to disseminating the consumer information pamphlet to key locations around the State, such as nursing homes, churches, the offices of estate lawyers, consumer protection agencies of every county, and other locations;

1 (2) study recordkeeping practices for cemeteries in relation both to
2 best practices and for disaster preparedness, including pandemics and natural
3 disasters, with the intention of developing legislation to address this issue;

4 (3) develop a legislative proposal on recordkeeping practices for
5 introduction no later than the 2014 regular session of the General Assembly; and

6 (4) in developing the proposal under item (3) of this section, determine
7 the categories of cemeteries to which any recordkeeping requirements developed
8 should be applied and consider the possibility of phasing in requirements to limit the
9 economic impact on cemeteries.

10 SECTION 5. AND BE IT FURTHER ENACTED, That the Director of the Office
11 of Cemetery Oversight and the Advisory Council on Cemetery Operations shall:

12 (1) collaborate on the development of orientation materials for new
13 members appointed to the Advisory Council, which shall include information on the
14 requirements of the Public Ethics Laws applicable to Advisory Council members;

15 (2) study the issue of the increasing rate of cremations within the
16 death care industry, including whether the rate of cremations will continue to rise at
17 the same rate and the possible effect this trend may have on the Office's finances.

18 SECTION 6. AND BE IT FURTHER ENACTED, That the Director of the Office
19 of Cemetery Oversight and a committee formed of members of the Advisory Council on
20 Cemetery Operations shall update the Office newsletter and develop a plan to ensure
21 that the newsletter continues to be updated on a regular basis.

22 SECTION 7. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
23 take effect July 1, 2013.

24 SECTION 8. AND BE IT FURTHER ENACTED, That, except as provided in
25 Section 7 of this Act, this Act shall take effect July 1, 2012.

Appendix 6. Written Comments on Behalf of the Office



STATE OF MARYLAND

DLLR

DEPARTMENT OF LABOR, LICENSING AND REGULATION

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
500 North Calvert Street, 3rd Floor
Baltimore, MD 21202-3651
Stanley J. Botts, Commissioner

October 28, 2011

Warren G. Deschenaux, Director
Department of Legislative Services
Office of Policy Analysis
Maryland General Assembly
90 State Circle
Annapolis, MD 21401-1991

Re: Sunset Evaluation - Office of Cemetery Oversight

Dear Mr. Deschenaux:

Pursuant to your letter of October 14, 2011, I am pleased to present this response on behalf of the Department of Labor, Licensing and Regulation and the Office of Cemetery Oversight regarding the draft sunset report forwarded to us for review and comment. We have provided Lindsay Eastwood and Michael Bender with two minor factual corrections. Our substantive response to the draft report is attached, with comments referenced by recommendation number.

The Department appreciates the professional manner in which Ms. Eastwood and Mr. Bender conducted the review. Please feel free to contact me if you have any questions regarding this response.

Sincerely,

Harry Loleas
Deputy Commissioner

cc: Alexander M. Sanchez, Esq., Secretary
Leonard Howie, Assistant Secretary
Stanley J. Botts, Commissioner
Patricia Tress, Acting Director
David Goodman, Chair, Advisory Council on Cemetery Operations
Donni M. Turner, Director of Legislative and Intergovernmental Affairs

TTY USERS, CALL VIA THE MARYLAND RELAY SERVICE
INTERNET: WWW.DLLR.STATE.MD.US • E-MAIL: OP@DLLR.STATE.MD.US

MARTIN O'MALLEY, GOVERNOR • ANTHONY G. BROWN, LT. GOVERNOR • ALEXANDER M. SANCHEZ, SECRETARY



COMMENTS OF
THE DEPARTMENT OF LABOR, LICENSING AND REGULATION AND
THE OFFICE OF CEMETERY OVERSIGHT REGARDING THE SUNSET
EVALUATION OF THE OFFICE BY THE DEPARTMENT OF
LEGISLATIVE SERVICES
NOVEMBER 2011

Recommendation 1: Statute should be amended to continue the Office of Cemetery Oversight and to extend its termination date by 10 years to July 1, 2023. Additionally, uncodified language should be adopted requiring the office to report to the Senate Finance and House Health and Government Operations committees, on or before October 1, 2013, on the implementation status of nonstatutory recommendations made by DLS that are adopted by the committees.

The Department and the Office (OCO) agree that the Office should be continued until July 1, 2023. The Office will report to the Senate Finance and House Health and Government Operations Committees on or before October 1, 2013 on the implementation status of adopted nonstatutory recommendations

Recommendation 2: Statute should be amended to add a representative of crematories as a seventh industry member to the Advisory Council on Cemetery Operations, creating a 12-person council.

The Department and OCO concur that it is appropriate and beneficial for a cremation industry member to serve on the Advisory Council.

Recommendation 3: Statute should be amended to increase the minimum number of advisory council meetings to four meetings per year, and additional meetings should continue to be authorized as necessary. The new director of the office should make every effort to attend advisory council meetings to best receive advice from the council.

The Office of Cemetery Oversight has traditionally had no less than eight Advisory Council meetings per year. The Department has no objection to the recommendation and supports the exercise by the Council of its advisory function. The Council provides advice regarding legislation, regulations, and an array of matters that fall within the regulatory purview of the Office. As the empowered regulator, the Director should duly consider the views of the Council as a whole and as individuals appointed to represent the public or the particular segments of the cemetery industry. The Department will expect the Director to attend meetings of the Council unless there is an unavoidable conflict. The Department also expects the Council to have

meetings that are focused on pertinent issues and concerns relating to the mandate of the OCO.

Recommendation 4: The director should provide a copy of the annual report of the office to the members of the advisory council each year. The advisory council should respond to any issues raised by the director in the report and develop a plan to study any ongoing issues during the following year.

The Department supports such a collaborative effort, including an issue work plan as the issue related workload might require.

Recommendation 5: The director and advisory council should collaborate on the development of orientation materials for new members appointed to the council.

The Office of Cemetery Oversight currently has four vacancies on its Advisory Council and has the possibility of adding a new cremation representative. It is timely therefore to address orientation and entry into service concerns. The Commissioner's Office will act in concert with the Acting Director or a new Director to develop a new member information packet and issue outline. The Director should meet with a new member on an individual basis. OCO based orientation should complement DLLR's heightened efforts to orient new members across the full spectrum of boards and commissions.

Recommendation 6: Members of the advisory council must be adequately informed *prior to their appointment* of the requirements imposed on them by the Public Ethics Law. At the time of appointment, and prior to reappointment, the director should deliver to each member of the council the paperwork necessary to disclose any interest or employment held by the member at the time of appointment. DLLR should also work with the office and other boards and commissions to ensure that all members are regularly apprised of the ethics requirements that continue to apply to them. These requirements should be incorporated into the orientation materials developed by the director and advisory council.

DLLR is already acting to address these concerns on a departmental basis beginning with clarity at the time of appointment. Board training sessions conducted jointly by Counsel to DLLR and the Deputy Commissioner of Occupational and Professional Licensing specifically include a discussion of ethics and conflict of interest issues. A restatement of applicable ethics requirements will be provided prior to reappointment. The Division will consider an annual reminder to all Board Members, Council Members, and Commissioners. OCO efforts in this regard will be consistent with these efforts and the above recommendation.

Recommendation 7: Statute should be amended to require that the disclosure of the name, address, and telephone number of the Office of Cemetery

Oversight be made on a separate form, which must be independently signed and dated by the consumer. Statute should require that the consumer be provided a copy of this form at the time the consumer is provided a copy of the contract.

The use of a separate form for disclosure of OCO information to consumers at the time that a contact copy is provided would likely assist in heightened awareness among consumers using the services of a cemetery or provider of burial goods.

Recommendation 8: The director and a committee formed of members of the advisory council should update the newsletter and develop a plan to ensure that the newsletter continues to be updated on a regular basis.

The initial Office of Cemetery Oversight newsletter was positively received. The ability of the Division to produce such E-newsletters is dependent on the retention of an outreach coordinator that is jointly funded by special fund regulatory boards. With the hiring of a new coordinator, the OCO newsletter is on a schedule for publication at least semi annually, with a capability for quarterly publication as issues and content availability may require. The Director will periodically request the Council's input for article subject matter as well as authored content, consistent with the procedures used to produce newsletter for the Real Estate Commission, Board of Public Accountancy, and the Joint Design Boards.

Recommendation 9: The advisory council should develop a plan to improve consumer outreach. The plan should include an approach to disseminating the consumer information pamphlet to key locations around the State, such as nursing homes, churches, the offices of estate lawyers, consumer protection agencies of every county, and other locations.

With the assistance of the Advisory Council, the current pamphlet (the Office's Consumer Guide) will be updated and disseminated to key locations around the State as funding permits. The Office, with the Council's involvement, will consider developing additional informational material for consumer outreach purposes.

Recommendation 10: The director should maintain a complete listing of the registration and permit numbers, including the registration and permit counts for each licensing category, and include the counts as of June 30 of that year in the office's annual report submitted to the General Assembly.

A complete listing of registration and permit numbers is available to the Director by requested query of the database at any time. The Division has requested that the DLLR Office of Information Technology create an automatic archival file of record counts for each licensing category for all regulated professions and occupations on a quarterly basis. This would guaranty the existence of a June 30th count for submittal in the annual report.

Recommendation 11: Statute should be amended to specifically exempt family cemeteries that do not conduct public sales from the registration and permit, perpetual care, and preneed burial contract requirements of the Maryland Cemetery Act. If this recommendation is not adopted by the General Assembly, the office should require the owner of a family cemetery to register with the office as a registered cemeterian and ensure compliance of each family cemetery with the perpetual care and preneed burial contract requirements of the Act.

Since the inception of the OCO, the Office has taken the position that there was no intent to regulate family cemeteries where there are no services offered to the public. There has been no complaint related or other demonstrable evidence that there is a need to impose any regulatory burden on family cemeteries. If there is a consensus that the status of family cemeteries under the Maryland Cemetery Act needs to be clarified, DLLR and the OCO support the exemption proposed in this recommendation.

Recommendation 12: Statute should be amended to authorize an individual to transfer a registration from one business to another business without requiring a new registration to be issued by the office. The office should set an appropriate fee for the transfer and promulgate the fee in regulations.

The OCO supports this recommendation

Recommendation 13: The advisory council should study recordkeeping practices for cemeteries in relation both to best practices and for disaster preparedness, including pandemics and natural disasters, with the intention of developing legislation to address this issue. The advisory council should develop a legislative proposal for introduction no later than the 2014 session. In developing the proposal, the council should determine the categories of cemeteries to which any recordkeeping requirements developed should be applied and should consider the possibility of phasing in requirements to limit the economic impact on cemeteries.

DLLR and the OCO will support the Advisory Council in meeting this mandate to study further study recordkeeping practices and develop a legislative proposal for the 2014 session.

Recommendation 14: The Office of Cemetery Oversight should procure a part-time, contractual accountant capable of analyzing regulated cemeteries' perpetual care trust reports for noncompliance with statutory perpetual care requirements.

Two of the three past Directors had fiscal training or backgrounds which allowed them to comfortably review trust account filings. Review by the Director was supplemented by the periodic use of a part time contractual CPA serving the Board of

Public Accountancy. The Department and the Office now concur that a part-time CPA attached to the Office would expedite the review process and provide for consideration of reports by a more highly credentialed reviewer. Accordingly, we support this recommendation.

Recommendation 15: Statute should be amended to require any cemetery, other than a veterans' cemetery operated by the State, that sells or offers to sell to the public a burial lot or burial right in a cemetery at which perpetual care is stated or implied to comply with the perpetual care trust provisions, thereby repealing the exemption from perpetual care trust requirements for a cemetery that is owned and operated by a local government, church, synagogue, religious organization, or nonprofit organization created before 1900 by an act of the General Assembly and currently selling or offering to sell a burial lot or right. Current fees applicable to trust reports should apply to anyone required to submit a perpetual care trust report. Consideration should be given to phasing in these requirements. Requiring the currently exempted cemeteries to adhere to the perpetual care trust requirements on July 1, 2013, with annual trust reports due to the office 120 days after the end of the calendar 2013 is a reasonable timeframe.

At the time that the OCO was established, the General Assembly established a bright line regarding what types of cemeteries would or would not be regulated under the new law. That bright line was reiterated after a thorough discussion in 2005. We can again indicate that there is no pertinent misconduct reported in the small number of complaints registered since the last sunset report involving religious cemeteries. We also recognize that reporting such a history does not immunize the public from any future problems relating to trusting requirements at such cemeteries.

Expansion of the OCO's role would require additional resources to process the reports, handle the deposit of the related fees, respond to the increased inquiries, review the reports, interact with late or non-filers and store the reports. It is not likely that the revenue generated from the \$25 filing fee from the new reports would be sufficient to offset the increased costs. We have earlier agreed that we should deal with trust reports submitted by currently regulated in a more rigorous manner. Accordingly, if the General Assembly chooses to expand the OCO's role, we should treat any submittals from a new class of cemeteries, in a similar fashion.

Recommendation 16: Statute should be amended to specifically authorize the director or the director's designee to confer with the advisory council as a whole or individual members of the council on complaint processing and resolution. Consideration should be given to closing portions of advisory council meetings to allow for more in-depth discussion of complaints.

The existing system for handling and resolving complaints filed with the OCO has provided for the efficient and competent handling of complaints under the direction of

the Director, who is the empowered regulator. The Council has no statutory authority regarding the processing or resolution of individual consumer complaints. The Director may and does seek information from the Council (as a whole and individually), when the insights of consumer members or knowledge of industry members regarding industry standards and practices may be of assistance to the Director in processing or resolving a consumer complaint.

The names of the involved parties in the complaint and detailed information regarding the complaint are not provided to the Council member(s) in order to protect the privacy of the complainant and the permit holder/registrant and to comply with applicable law regarding disclosure to the public of information regarding registrants. The implication of the recommendation could lead Council Members to believe that they are entitled to more information than is legally permissible or that they are entitled to influence the Director's decisions. Neither is the case. OCO Counsel has indicated that there would be no permissible basis for closing Council meetings for the purpose suggested.

DLLR understands the desire and motivation of the Council to assure that complaints are well handled and fairly resolved. The Department commits to working with the new Director to establish a mechanism for greater input for Council Members on the complaint process without invoking the problems arising from disclosures on individual complaints. We respectfully suggest that the statute not be specifically amended as suggested in recommendation 16.

Recommendation 17: The director should modify the second page of the annual complaint report to distinguish the type of purchase, focus of dissatisfaction, and type of resolution for both complaints and inquiries. Additionally, the report should define the types of resolution it lists.

The information included in the annual complaint report was presented in accordance with the specific template requested in the previous Sunset Review. However, the information regarding the type of purchase, focus of dissatisfaction, and type of resolution for both complaints and inquiries is currently being captured and can be easily included on the second page of the report. The OCO will further define the types of resolutions it lists as requested.

Recommendation 18: The director must comply with statutory requirements and develop a schedule and standard for the prompt and timely processing and resolution of each complaint received by the office. Once developed, future annual complaint reports should include the number of complaints resolved within this timeframe.

Complaints received in the Office are processed in a timely fashion. Most complaints are mailed to the cemetery against which the complaint has been registered within 24 to 48 hours upon receipt. A response is due within three weeks. For many reasons, some complaints make take months to resolve. Frequently, the Office has no control

over the duration of an open complaint. In some situations, a grieving complainant may delay making a final decision during the mediation process. The Division will work with the Director to develop the requested benchmarks and standards. While these caveats are noted in this response, the Department can also report that the OCO, by its active use of informal mediation and discussion with the parties has avoided the use of the formal, costly and time consuming administrative hearing process. This yields closure time frames that compare very favorably with other regulatory programs in the Division.

Recommendation 19: Permit renewal forms should be changed to require supporting documentation for the cemetery's reported number of applicable sales contracts

DLLR and the OCO do concur that a system providing for documentation or verification of the number of contracts reported at renewal would be useful to assure the accuracy of submittals and identify instances of underreporting. However, with the number of reported contracts at individual cemeteries ranging as high as 4,000, the documentation of each executed contract could become burdensome for both licensees and the OCO. We believe that a system requesting the reporting of contracts for each month or quarter, would allow the Office to request documentation for a randomly selected month or quarter on a post audit basis. This would allow the OCO to test compliance without having to provide verification of tens of thousands of contracts annually.

Recommendation 20: Uncodified language should be adopted to instruct the director and the advisory council to study the issue of the increasing rate of cremations within the death care industry. Particular attention should be paid to whether the rate of cremations will continue to rise at the same rate and the possible effect this trend may have on the office's finances.

DLLR, OCO, and the Advisory Council share a common view regarding the need to consider the growth of cremation on an ongoing basis as well as the impact of cremation trends on OCO finances. Accordingly, we have no objection to a joint study or periodic reporting on cremation trends to the committees of jurisdiction.