**2006 Massachusetts Code - Chapter 114 — Section 1. Organization of cemetery corporations.**

Section 1. Five or more persons desirous of procuring, establishing and preparing a cemetery, or who are the majority in interest of the proprietors of an existing cemetery, may organize as a corporation, not for profit, in the manner provided in chapter one hundred and seventy-nine; but such corporation shall not sell or impair the right of any proprietor of an existing cemetery.

Section 1A. No person who serves as director, officer or trustee of a nonprofit cemetery qualified as a tax exempt organization under Section 501(c) of the Internal Revenue Code and who is not compensated for such services shall be liable for any act or omission resulting in damages or injury to another if such person was acting in good faith and within the scope of his official functions or duties unless said damage was caused by an act or omission intentionally designed to harm or by any gross negligent act or omission which results in harm to the person.

Nothing in this section shall be construed as affecting or modifying the liability of any person subject to this section for any cause of action arising out of such person’s operation of a motor vehicle.

Nothing in this section shall affect or modify the liability of any person subject to this section for financial misconduct or fraud in the use of the assets of the corporation.

Section 3. Every cemetery corporation created by special charter or organized under general laws shall regularly keep books in which it shall enter all conveyances of burial lots within said cemetery and all instruments of contract relating to conveyances of such lots. Such records, and similar records made by such corporation prior to June second, eighteen hundred and eighty-nine, shall have the same effect as if made in the registry of deeds for the county or district where such cemetery is situated, and no other record shall be necessary.

Section 3A. No cemetery corporation created by special charter or organized under the provisions of section one shall take over ownership of an unoccupied grave unless a minimum of seventy-five years has elapsed after issuance of a license for the grave by the cemetery corporation or its predecessor in interest; and the cemetery corporation cannot locate the license holder or the holder’s successor in interest after making a diligent search. If ownership of the license is ascertained after such a taking occurs, then the cemetery corporation shall pay the fair value of the license at the time of its taking to the owner.

No cemetery corporation created by special charter or organized under the provisions of section one shall reuse an occupied grave except: upon the request and with the consent of a relative or descendant of the decedent occupying the grave, providing no other descendant objects; to provide for the burial of a relative or descendant of the decedent occupying the grave; and if the remains of the decedent occupying the grave will remain in the grave. The municipality where the cemetery is located shall determine, by by-law or ordinance, the method to be used in reusing such occupied graves and may reasonably limit the circumstances under which such reuse can occur.

Section 4. The secretary or clerk of such corporation may give certified copies of all deeds and instruments so recorded, which may be used in evidence in the same manner as copies certified by the register of deeds.

Section 5. Such corporation may hold funds in trust and apply the income thereof to the improvement or embellishment of the cemetery or to the care, preservation or embellishment of any lot or its appurtenances.

Section 5A. No such cemetery corporation shall deny the right to perform burials and the functions incidental thereto to the funeral director designated by the representative of the deceased, provided the deceased is otherwise entitled to interment in said cemetery.

Section 5B. Each such cemetery corporation shall notify, or cause the funeral director designated by the representatives of the deceased to notify, the family of the deceased or the person making funeral arrangements for the deceased of the choice of three options for burial services; services at the gravesite without observation of the lowering of the casket into said gravesite, services at the gravesite with observation of the lowering of the casket into said gravesite, or where available, services within a chapel at the cemetery.

A cemetery corporation which violates any provision of this section shall be punished by a fine of not less than one hundred nor more than five hundred dollars.

Section 6. Such corporation may cremate bodies of the dead, and may provide necessary buildings and appliances therefor and for the disposition of the ashes of the dead on any land within its cemetery which the department of environmental protection determines is suitable therefor, subject to the provisions of section forty-three D, and such buildings and appliances shall be a part of the cemetery and be dedicated to the burial of the dead, and shall be held by said corporations subject to the duties, and with the privileges and immunities, which they now have by law.

Section 9. Cemetery and crematory corporations may, subject to the approval of said department, make by-laws and regulations consistent with law for the reception and cremation of bodies of the dead and for the disposition of the ashes thereof, and shall conduct their business in accordance with such regulations as said department shall establish and furnish in writing to the clerk of the corporation. Violation of any such regulation of said department shall be punished by a fine of not less than twenty nor more than five hundred dollars. Such corporations shall not erect, occupy or use any building for cremation until the location and plans thereof with all details of construction have been submitted to and approved by said department or by a person designated by it, subject to the provisions of section forty-three D.

Section 17. A town shall not alienate or appropriate to any other use than that of a burial ground, any tract of land which has been for more than one hundred years used as a burial place; and no portion of such burial ground shall be taken for public use without special authority from the general court. “Burial place”, as referred to in this section, shall include unmarked burial grounds known or suspected to contain the remains of one or more American Indian.

Section 28. The owner of any right, title or interest in or to a lot, tomb or monument in any cemetery owned or controlled by any company or association or by any town, may convey or devise the same to such company, association or municipality in trust for the purpose of its preservation as a memorial or as a burial place for the bodies of the owner and his descendants or relatives, or of such other persons as may be specified in the instrument creating the trust, or upon such other trust as may be created by the instrument and accepted by the grantee or devisee; but no such instrument shall be construed to take away the right of the heirs of the owner of a lot or tomb to be buried therein, unless the instrument contains an express provision to that effect. Any such grantee or devisee may accept any such grant, gift or devise, and if it accepts the same shall forever carry out and observe the terms of the instrument by which the grant, gift or devise was made. After the making of a conveyance or the taking effect of a devise and its acceptance by the cemetery authorities, the grantor of the lot, tomb or monument or of any interest therein, or the heirs and assigns of the grantor or devisor thereof, shall have no control over it except such as may be reserved in the instrument.

Section 29. Lots in cemeteries incorporated under section one, tombs in public cemeteries in cities and lots and tombs in public cemeteries in towns, shall be held indivisible, and upon the decease of a proprietor of such lot the title thereto shall vest in the heirs at law or devisees of the deceased subject to the following limitations and conditions: If the deceased leaves a spouse and children, they shall have the possession, care and control of said lot or tomb in common during the life of such surviving spouse. If the deceased leaves a spouse and no children, said spouse shall have possession, care and control of such lots or tombs during life. If the deceased leaves children and no spouse, they shall have in common the possession, care and control of such lots or tombs during their joint lives, and the survivor of them during his life. The persons in possession, care and control of such lots or tombs may erect a monument and make other permanent improvements thereon. The surviving spouse shall have a right of permanent interment for his own body in such lot or tomb, but it may be removed therefrom to some other family lot or tomb with the consent of the heirs. If two or more persons are entitled to the possession, care and control of such lot or tomb, they shall designate in writing to the clerk of the corporation, or if it is a tomb or lot in a public cemetery, to the board of cemetery commissioners, if any, or to the town clerk, which of their number shall represent the lot; and in default of such designation, the board of trustees or directors of the corporation, the board of cemetery commissioners, if any, or the board of health if such lots or tombs are in public cemeteries in towns, shall enter of record which of said persons shall represent the lot during such default. The surviving spouse may release his right in such lot, but no conveyance or devise by any other person shall deprive him of such right.

Section 31. If in a will no express disposition or other mention is made of a cemetery lot owned by the testator at his decease, and wherein he or any member of his family is buried, the ownership of the lot shall not pass from his lawful heirs by any residuary or other general clause of the will, but shall descend to his heirs, as if he had died intestate.

Section 42A. No cemetery exempted from taxation under the provisions of section five of chapter fifty-nine shall be closed for visitations between the hours of eight o’clock antemeridian and sunset, except during the months of June, July, August and September when such cemeteries shall remain open until the hour of seven o’clock postmeridian; provided, however, that the provisions of this section shall not apply on Saturdays if the cemetery is owned or used exclusively by a religious denomination which observes the Sabbath on Saturday. It shall be deemed to be a violation of this section if entrance to or exit from any such cemetery by motor vehicle is prevented during said hours, if said cemetery has accessible roads for motor vehicles; provided, however, that access by motor vehicle may be prevented on the second Sunday in May, the last Monday in May, and on Easter Sunday. Whoever willfully violates this section shall be punished by a fine of not more than one hundred dollars.

Section 43A. No cemetery established on or after July first, nineteen hundred and thirty-six, shall be owned, maintained or operated except by a municipality or other political subdivision of the commonwealth, a church, a religious or charitable society, or by a cemetery association incorporated as provided in section one, nor shall such a cemetery be maintained or operated for the purpose of private profit or gain, directly or indirectly, to any director, officer or member of the cemetery association or other agency owning, maintaining and operating the same. A cemetery lawfully established prior to said date may continue to be owned, maintained and operated under the form of organization adopted therefor.

Section 43B. The sale of cemetery lots and plots, or the sale of crypts in a community mausoleum or niches in a columbarium, for speculative purposes, or the conveyance of any portion of a cemetery already dedicated to burial purposes as security for debt, is hereby prohibited, and every such conveyance shall be void and of no effect. Whoever makes or attempts to make a sale or conveyance contrary to the provisions of this section shall be subject to the penalty provided by section forty-three N.

Section 43C. The proceeds of the sales of lots and plots in a cemetery shall, except as hereinafter provided, be applied solely to the improvement and maintenance of the cemetery and the avenues, paths and structures situated therein, for the purchase of additional cemetery land, and for the accumulation of a permanent care and improvement fund. If any indebtedness of a fixed amount is incurred in the purchase of lands for such cemetery, or in making any improvement therein, a sum not exceeding fifty per cent of the gross receipts from the sale of burial lots and plots may be applied to the liquidation of such indebtedness. All moneys received from the sale of personal property and surplus real estate of a cemetery shall be applied first to the liquidation of any fixed indebtedness incurred by it on account of the purchase or improvement of the lands dedicated to cemetery purposes, and any residue remaining after the liquidation of such indebtedness shall be deposited in the permanent care and improvement fund of the cemetery. The provisions of this section shall not apply to any cemetery established prior to July first, nineteen hundred and thirty-six, or to any cemetery owned, maintained and operated by a church or religious society.