

CHAPTER 07 - CEMETERY COMMISSION

Codifier's Note: This Chapter, 21 NCAC 07, was transferred from 04 NCAC 05, effective March 1, 2013. See S.L. 2012-120.

SUBCHAPTER 07A - ORGANIZATION

SECTION .0100 - GENERAL INFORMATION

21 NCAC 07A .0101 NAME AND ADDRESS

The North Carolina Cemetery Commission of the Department of Commerce is located in Raleigh, North Carolina. The mailing address for the Cemetery Commission is 1001 Navaho Drive, Suite 100, Raleigh, North Carolina 27609. The office is open to the public Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding scheduled state holidays.

*History Note: Authority G.S. 65-49; 65-51; 150B-10;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. September 1, 2007; May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.*

21 NCAC 07A .0102 GENERAL PURPOSE

The principal purpose of the Cemetery Commission is to regulate and supervise the activities of cemeteries, cemetery management organizations, cemetery sales organizations, cemetery brokers and individual pre-need cemetery salespeople licensed under the laws of North Carolina.

*History Note: Authority G.S. 65-55; 65-57; 65-58; 150B-10;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.*

21 NCAC 07A .0103 AREAS OF RESPONSIBILITY

21 NCAC 07A .0104 FUNCTIONS

*History Note: Authority G.S. 65-49; 65-50; 65-52; 65-53(1); 150B-10;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Repealed Eff. June 1, 2014.*

21 NCAC 07A .0105 EXAMINATIONS

*History Note: Authority G.S. 65-49; 150B-10;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Expired Eff. September 1, 2018, pursuant to G.S. 150B-21.3A.*

21 NCAC 07A .0106 FEES

In addition to the licensing and penalty fees provided by statute to this Commission, the following fees are required:

- (1) Two dollars (\$2.00) per grave space, mausoleum crypt, and niche when interment, entombment or inurnment rights are conveyed;
- (2) Five dollars (\$5.00) per pre-need vault when contracted;
- (3) Five dollars (\$5.00) per each crypt in a bank of below ground crypts or lawn crypt garden when contracted. An additional two dollars (\$2.00) shall be paid for each crypt as provided in Item (1) of this Rule;

- (4) Five dollars (\$5.00) per pre-need memorial when contracted;
- (5) Five dollars (\$5.00) per pre-constructed mausoleum crypt or niche when contracted. An additional two dollars (\$2.00) shall be paid for each crypt or niche as provided in Item (1) of this Rule;
- (6) All at need merchandise, property or services, cash or credit sales, do not require any assessments;
- (7) Five dollars (\$5.00) per pre-need opening and closing of a grave space when contracted.

History Note: Authority G.S. 65-49; 65-54;
 Eff. February 1, 1976;
 Readopted Eff. January 16, 1978;
 Amended Eff. December 1, 1981;
 Temporary Amendment Eff. October 5, 1987, for a period of 180 days to expire on April 2, 1988;
 Amended Eff. June 1, 2014; June 1, 2004; May 3, 1993; March 1, 1988;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07A .0107 CEMETERY LICENSE FEE

The annual cemetery license fee shall be five hundred dollars (\$500.00). This license has an expiration date of June 30 in each year.

History Note: Authority G.S. 65-49; 65-54;
 Eff. March 1, 1988;
 Amended Eff. July 1, 2005;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

SECTION .0200 - STRUCTURE

- 21 NCAC 07A .0201 CEMETERY COMMISSION MEMBERS**
- 21 NCAC 07A .0202 ADMINISTRATOR OF CEMETERY COMMISSION**
- 21 NCAC 07A .0203 CEMETERY COMMISSION EXAMINERS**
- 21 NCAC 07A .0204 CLERICAL STAFF**
- 21 NCAC 07A .0205 MEETINGS**

History Note: Authority G.S. 65-49; 65-50; 65-52; 65-53(1);
 Eff. February 1, 1976;
 Readopted Eff. January 16, 1978;
 Repealed Eff. June 1, 2014.

SUBCHAPTER 07B - RULE-MAKING: DECLARATORY RULINGS AND CONTESTED CASES

SECTION .0100 - RULE-MAKING AND DECLARATORY RULINGS

21 NCAC 07B .0101 PETITIONS

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the Cemetery Commission shall address a petition to:

North Carolina Cemetery Commission
 1001 Navaho Drive, Suite 100
 Raleigh, North Carolina 27609.

(b) The petition shall contain the following information:

- (1) a draft of the proposed rule;
- (2) reason for proposal;
- (3) effect on existing rules or orders;
- (4) data supporting the proposal;
- (5) names of those most likely to be affected by the proposed rule, with addresses if reasonably known;

- (6) name(s) and address(es) of petitioner(s);
 - (7) a description as to how the petitioner(s) is (are) directly affected by the proposed rule.
- (c) The Cemetery Commission shall determine, based on a study of the facts stated in the petition, whether the public interest will be served by granting the petition. It shall consider all the contents of the submitted petition, plus any additional information it deems relevant.

History Note: Authority G.S. 65-49; 150B-20;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. September 1, 2007; May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07B .0102 NOTICE

- (a) Any person or agency desiring to be placed on the mailing list for Cemetery Commission rule-making notices may file a request, in writing, furnishing names and mailing addresses to:
- North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.
- (b) In addition to notices sent to persons requesting them, notice of the rule-making proceedings will be sent to the North Carolina Cemetery Association and to all state-licensed cemeteries.

History Note: Authority G.S. 65-49; 150B-21.2;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. September 1, 2007; May 3, 1993; August 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07B .0103 HEARINGS

- (a) Unless otherwise stated in the particular notice of text, hearings before the North Carolina Cemetery Commission shall be held at the offices of the North Carolina Department of Commerce in Raleigh, North Carolina.
- (b) Any person wishing to make an oral presentation may submit a written copy of the presentation to the administrator prior to or at the hearing.
- (c) A request to make an oral presentation must contain a brief summary of the individual's views with respect thereto, and a statement of the length of time the individual wants to speak. Presentations may not exceed 15 minutes.
- (d) Upon receipt of a request to make an oral presentation, the Administrator of the Cemetery Commission shall acknowledge receipt of the request, and inform the requesting person of the imposition of any limitations deemed necessary to the end that a full and effective public hearing on the proposed rule may be held.
- (e) Written submissions, except when otherwise stated in the particular notice of text must be sent to:
- North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

Submission must clearly state the rule(s) or proposed rule(s) to which the comments are addressed.

- (f) Upon receipt of written comments, the Administrator of the Cemetery Commission shall make prompt acknowledgement including a statement that the comments therein will be considered fully by the Cemetery Commission.
- (g) The chairman of the commission, or his designate, shall have complete control of the hearing proceedings, including extension of any time requirements, recognition of speakers, time allotments for presentation, direction of the flow of the discussion, and the time management of the hearing. The chairman, or his designate, at all times, shall take care that each person participating in the hearing is given a fair opportunity to present views, data and comments.
- (h) Any interested person desiring a statement of the principal reason(s) for and against the adoption of a rule by the Cemetery Commission and the factors that led to the overruling of the consideration urged for or against its adoption may submit a request addressed to:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

History Note: Authority G.S. 65-49; 150B-21.2;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. September 1, 2007; May 3, 1993; August 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07B .0104 TEMPORARY RULES

The North Carolina Cemetery Commission may issue temporary rules in the circumstances described in G.S. 150B-13. A temporary rule shall continue in effect for the period specified in the rule, which in no event shall be in excess of 180 days.

History Note: Authority G.S. 65-49; 150B-13;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. August 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07B .0105 DECLARATORY RULINGS

(a) The Cemetery Commission shall have the sole power to make declaratory rulings. All requests for declaratory rulings shall be written and mailed to:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

(b) All requests for a declaratory ruling must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which petition relates;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;
- (4) a statement of whether an oral hearing is desired, and if so the reasons for such an oral hearing.

(c) Whenever the Cemetery Commission believes for good cause that the issuance of a declaratory ruling is undesirable, it may refuse to do so. When good cause for refusing to issue a declaratory ruling is deemed to exist, the Cemetery Commission shall notify the petitioner of its decision in writing, stating reasons for the denial of a declaratory ruling.

(d) For purposes of Paragraph (c) of this Rule, the Cemetery Commission shall not issue a declaratory ruling:

- (1) where there has been a similar controlling factual determination in a contested case, or
- (2) where the issue is pending in a current contested case, or
- (3) where the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina.

(e) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedures as may be appropriate in a particular case.

History Note: Authority G.S. 65-49; 150B-4;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. October 1, 2007; May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

SECTION .0200 - CONTESTED CASES

21 NCAC 07B .0201 CEMETERY COMMISSION HEARINGS
21 NCAC 07B .0202 REQUEST FOR HEARING
21 NCAC 07B .0203 NOTICE

History Note: Authority G.S. 65-49; 150B-23; 150B-37;
 Eff. February 1, 1976;
 Readopted Eff. January 16, 1978;
 Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

21 NCAC 07B .0204 WRITTEN ANSWERS TO NOTICE
21 NCAC 07B .0205 WAIVER

History Note: Authority G.S. 65-49; 150B-23; 150B-25(b);
 Eff. February 1, 1976;
 Readopted Eff. January 16, 1978;
 Repealed Eff. August 1, 1988.

21 NCAC 07B .0206 DEPOSITIONS

History Note: Authority G.S. 65-49; 150B-28;
 Eff. February 1, 1976;
 Readopted Eff. January 16, 1978;
 Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

21 NCAC 07B .0207 DISCOVERY

History Note: Authority G.S. 65-49; 150B-28;
 Eff. February 1, 1976;
 Readopted Eff. January 16, 1978;
 Repealed Eff. August 1, 1988.

SUBCHAPTER 07C – LICENSING

SECTION .0100 – CEMETERIES

21 NCAC 07C .0101 APPLICATION AND FILING FEE

Any legal entity wishing to establish and operate a cemetery company, as defined in G.S. 65-48(5) must first obtain a license from this commission. The legal entity shall file written application with the commission on the Commission's Application for Certificate of Authority. This form provides a space for the name of the corporation and cemetery, the names of directors and officers of the corporation, the mailing address of the corporation and the address of the cemetery. A filing fee of one thousand dollars (\$1,000.00) must accompany the application. The application form is available by contacting:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

History Note: Authority G.S. 65-48(5); 65-49; 65-55;
 Eff. February 1, 1976;
 Readopted Eff. January 16, 1978;
 Amended Eff. July 1, 2005; May 3, 1993;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18,
 2018.

21 NCAC 07C .0102 CEMETERY COMPANY LICENSE

- (a) Upon proper application for a cemetery company license and where it appears after investigation that the criteria set forth in G.S. 65-55(c) and G.S. 65-55(f) have been met, the Commission shall issue said license to the applicant, provided that the required license fee has been paid and that not more than one year has elapsed between the time the proposed cemetery company receives the authority to organize and the time it requests its license.
- (b) Any cemetery company that does not renew its license by January 1, after its expiration on July 1, shall not be allowed renewal privileges. If the cemetery company wishes to obtain a license it must apply for a new license and fulfill all requirements as if they were applying for a new license.
- (c) A designated general manager under G.S. 65-55(c)(4) shall have had at least one year's experience in a management position in a cemetery licensed under the North Carolina Cemetery Act or its equivalent as determined by the Commission on an individual basis.

History Note: Authority G.S. 65-49; 65-54; 65-55;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. March 1, 1984; December 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07C .0103 CHANGE OF CONTROL

(a) Any entity wishing to purchase or acquire control of an existing cemetery company shall first make written application to the Cemetery Commission on the Commission's Application for Change of Control. This form provides space for the name and address of the present and proposed owner, along with the name of the corporation and the name of the cemetery. This form may be obtained by writing to the Commission at the address in Rule 21 NCAC 07A .0101.

(b) This form must be accompanied by a five hundred dollar (\$500.00) filing fee. The Commission also requires the following:

- (1) an examination by the Commission's inspectors to establish compliance with trust fund requirements, with the actual cost of the examination to be paid by the applicant;
- (2) a signed certificate assuming liabilities of the existing cemetery company;
- (3) a financial statement of the existing cemetery company showing net worth;
- (4) certification by title insurance policy or by certificate of an attorney-at-law that the cemetery land, subject to appropriate acreage requirements of G.S. 65-55(f)(3), is owned in fee simple, free of all encumbrances;
- (5) a financial statement of the proposed owner, showing the proposed owner's net worth and a statement of the proposed owner's experience in the cemetery business;
- (6) when the applicant's intention is to bond, documentation satisfactory to the Commission establishing that the applicant is and will continue to be in compliance with all laws, rules and regulations relating to bonding and other insurance policies. Such documentation shall include all old bonding policies, all existing bonding policies and written proof of the terms of any future continuance of such bonding policies; and
- (7) a true and correct copy of the most recent survey and, if it exists, recorded plat of the property that is the subject of the applicant's application for change of control.

(c) No one shall take over the operation of a cemetery company in anticipation of a change of control until all necessary information concerning that change of control has been submitted to the Cemetery Commission and until the Commission issues the certificate of approval. No one shall change control of a cemetery company without first obtaining approval of the Cemetery Commission. Once a change of control has been approved by the Cemetery Commission, the change of control must be completed within 90 days of the date of the Cemetery Commission's approval. If the change of control is not completed within 90 days of the date of the Cemetery Commission's approval, then the entity wishing to effect the change of control shall make a new application to the Cemetery Commission in accordance with the provisions of this Rule. Upon completion of the change of control, the entity requesting the change of control shall provide written notice to the Cemetery Commission of the completion. A representative of the buyer and the seller shall be notified by the Commission of and be present at any meeting when the Commission is going to consider the change of control application.

History Note: Authority G.S. 65-49; 65-53(2); 65-53(6); 65-55; 65-59; 65-69;
Eff. February 1, 1976;

Readopted Eff. January 16, 1978;
Amended Eff. June 1, 2014; July 1, 2005; May 3, 1993; March 1, 1990; October 1, 1989; March 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07C .0104 QUALITY SPECIFICATIONS

All cemeteries must file plans and specifications showing minimum quality standards of any vaults, crypts or markers sold.

History Note: Authority G.S. 65-49; 65-53(7);
Eff. September 1, 1979;
Amended Eff. June 1, 2014;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07C .0105 MEETING REQUIREMENT

Any application and all related information for a new cemetery license or a change of control of a cemetery must be received by the administrator of the Commission 30 regular working days before the meeting date the item is to be heard.

History Note: Authority G.S. 65-49; 65-55;
Eff. March 1, 1984;
Amended Eff. July 1, 2005;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

SECTION .0200 - CEMETERY SALES ORGANIZATIONS: MANAGEMENT ORGANIZATIONS AND BROKERS

21 NCAC 07C .0201 APPLICATION AND FILING FEE

(a) Any legal entity wishing to establish and operate a cemetery sales organization, cemetery management organization or a cemetery broker, as each are defined under G. S. 65-48, must first obtain a license from this commission. The legal entity shall file written application with the commission on the Commission's Application for Cemetery Broker, Sales and/or Management Contractor License. This form provides space for applicant's name and address; space is also provided for employment, references and criminal record for an individual, corporate officer or partner, as the case may be. The application form is available by contacting:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

(b) The following documents shall accompany this application:

- (1) If individual, officer or partner has not been licensed as a cemetery salesman for a period of two years, the application shall be accompanied by two letters of recommendation, attesting to the applicant's good character and experience in the cemetery business.
- (2) Corporate applications shall be accompanied by:

(a) certified copy of that portion of the minutes of the corporation wherein the officer named on the application was elected an officer,

(b) certified copy of that portion of the minutes of the corporation wherein the officer named on the application was authorized to file the application on behalf of the corporation.

- (3) All brokerage, sales or management contracts.

(c) Application filing fees are six hundred dollars (\$600.00) for sales and management organizations, and four hundred dollars (\$400.00) for brokers.

History Note: Authority G.S. 65-49; 65-57;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;

Amended Eff. August 1, 2005; May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07C .0202 LICENSE FEES

The annual license fee for sales organizations, management organizations, and brokers is five hundred (\$500.00). These licenses have an expiration date of June 30 in each year.

History Note: Authority G.S. 65-49; 65-57;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. July 1, 2005;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

SECTION .0300 - INDIVIDUAL PRE-NEED SALESPEOPLE

21 NCAC 07C .0301 APPLICATION AND FILING FEE

Any person who offers to sell pre-need grave spaces, mausoleum crypts, niches, memorials, vaults or any other pre-need cemetery merchandise or services that are authorized for any cemetery, cemetery sales groups or cemetery management groups must first obtain a license from the commission. Applications for a license must be filed with the Commission on the Application for Persons Selling Pre-need Cemetery Property together with a fee in the amount of one hundred dollars (\$100.00), fifty dollars (\$50.00) of which shall constitute an application fee and fifty dollars (\$50.00) of which shall constitute a two year license fee. The form provides space for applicant's name, cemetery name, past address, previous employment and criminal record. The application form is available by contacting:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

This license has an expiration date of June 30 of its expiration year, and is not transferable from the cemetery to which it is issued.

History Note: Authority G.S. 65-49; 65-58;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. December 1, 2007; July 1, 2005; May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07C .0302 LICENSE

History Note: Authority G.S. 65-49; 65-58;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Expired Eff. September 1, 2018, pursuant to G.S. 150B-21.3A.

21 NCAC 07C .0303 DISPLAY

Each salesperson licensed by the Commission shall display his or her license in the office of each cemetery he or she represents. If extra copies are needed, a fee of one dollar and fifty cents (\$1.50) shall be charged for each duplicate license. Duplicate copies may be obtained by contacting:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

History Note: Authority G.S. 65-49; 65-58; 150B-19;
Eff. February 1, 1976;

Readopted Eff. January 16, 1978;
Amended Eff. September 1, 2007; May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07C .0304 CEMETERY OWNER

A cemetery owner who sells pre-need cemetery property and merchandise as classified in G. S. 65-58 of the laws of North Carolina must obtain a sales license as stated under G.S. 65-58.

History Note: Authority G.S. 65-49; 65-58;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07C .0305 TRAINEE

At least one licensed salesperson must be present at the time that any pre-need property is sold and that any trainee, when accompanied by a licensed salesperson, is not required to be licensed.

History Note: Authority G.S. 65-49;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07C .0306 REFUND

If a licensed salesperson terminates his employment with a cemetery, no refund shall be allowed. If a sales license applicant terminates employment with a cemetery after offering to make or making a preneed sale but before receiving a license, no refund will be paid.

History Note: Authority G.S. 65-49; 65-58;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. December 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07C .0307 RENEWAL

Before July 1 of the license expiration year, each licensed salesperson shall pay a license renewal fee of fifty dollars (\$50.00) per license for a two-year renewal. Any individual preneed salesperson that does not renew the license by January 1 after its expiration on July 1 shall be denied renewal privileges. If the person wishes a license the person must apply for a new license.

History Note: Authority G.S. 65-49; 65-58;
Eff. December 1, 1981;
Amended Eff. December 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07C .0308 CONTRACT IDENTIFICATION

Each contract for the sale of interment rights, merchandise and services shall contain the name and license number of the salesperson witnessing the signature of the purchaser on the contract.

History Note: Authority G.S. 65-49; 65-58;
Eff. December 1, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

SUBCHAPTER 07D - TRUST FUNDS

SECTION .0100 - MAINTENANCE AND CARE FUNDS (PERPETUAL CARE FUNDS)

21 NCAC 07D .0101 REPORT

- (a) Each licensed cemetery shall make a report of deposits to the perpetual care fund by the last day of each month.
- (b) The report of deposits shall be made on a form provided by the Commission, the Report of Grave Spaces for the Month of _____, that shall include:
- (1) the deed numbers, listed in numerical order;
 - (2) the date of deed;
 - (3) the date of contract;
 - (4) the purchaser;
 - (5) the sale price;
 - (6) the lot number;
 - (7) the section; and
 - (8) the number of spaces deeded and amount due trust fund.
- (c) This form may be obtained from and shall be returned to:
North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

*History Note: Authority G.S. 65-49; 65-64;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. September 1, 2017; September 1, 2007; May 3, 1993; September 1, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.*

21 NCAC 07D .0102 LOCATION OF FUND

No person will be allowed to withdraw or transfer all or any portion of the corpus of the care and maintenance trust funds of any cemetery to any depository outside the State of North Carolina. Also the Commission will not approve the creation of a new perpetual care trust fund as called for under Chapter 65-55 of the General Statutes unless same is deposited with a trustee in the State of North Carolina.

*History Note: Authority G.S. 65-49; 65-55; 65-61;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.*

21 NCAC 07D .0103 TRANSFER OF FUNDS

Any cemetery which desires to transfer their trust agreement must provide:

- (1) copy of new proposed perpetual care trust fund agreement,
- (2) a financial statement of the depository where the funds will be held, and
- (3) as much information as possible about proposed new trustee.

*History Note: Authority G.S. 65-61;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.*

21 NCAC 07D .0104 FINE FOR LATE DEPOSITS

Any fine levied under G.S. 65-64(a) shall be one dollar (\$1.00) a day for each grave space, niche, and mausoleum crypt a deposit is delinquent on subject to a maximum fine of one hundred per cent of the amount that was or is late to the care and maintenance trust fund.

- (1) The first time a delinquency is found the cemetery will receive a 20 day notice in writing to cure the violation regardless of whether or not the delinquency was corrected before an examination by this Commission. The fine will start on the 21st day after notice of the violation if the money has not been deposited.
- (2) Once a cemetery has received one 20 day notice, the fine for any later delinquency will begin running on the first day of delinquency. No notice of delinquency need be sent before a fine is incurred, and the fine may reach the maximum amount of one hundred percent of the amount that was or is owed or deposited late to the care and maintenance trust fund before the delinquency is discovered.
- (3) A cemetery which has not been notified of or fined for a delinquency within the last five years will receive a new 20 day notice in the event of any delinquency.
- (4) In the event a delinquency is found in a cemetery's care and maintenance trust fund and the cemetery does not make up the deposit, if still owed, and/or the fine within 20 days after notice from the Commission that a fine is due, then the Commission will take immediate steps to revoke the cemetery's license.
- (5) It is the intent and policy of this Commission to levy a fine only for substantial, flagrant, or repeated late or delinquent deposits.

History Note: Authority G.S. 65-49; 65-54(a);
Eff. December 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07D .0105 DEPOSIT FOR MULTIPLE BURIALS

Each interment, entombment or inurnment right shall require a deposit to the care and maintenance trust fund.

History Note: Authority G.S. 65-49; 65-63;
Eff. September 1, 1983;
Amended Eff. June 1, 2014;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07D .0106 CONTRACT DISCLAIMER

Each contract for the sale of a grave space, mausoleum niche or crypt shall state that the amount deposited in a perpetual care trust fund from the proceeds of the sale are for the perpetual care of the grave space, mausoleum niche or crypt only and does not include deposits which may be subsequently required for perpetual care of monuments, markers or other merchandise.

History Note: Authority G.S. 65-49;
Eff. April 1, 1987;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07D .0107 EXCESS FUNDS

If a cemetery collects Care and Maintenance Trust Funds in excess of the mandatory trust fund amount, the excess must be deposited into the trust fund by the last day of the following month. Excess funds may not be withdrawn from the trust fund or used to offset past or future deposits.

History Note: Authority G.S. 65-49; 65-64;
Eff. May 3, 1993;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07D .0108 WITHDRAWALS FROM PERPETUAL CARE TRUST FUNDS

(a) For purposes of this Rule, the following definitions shall apply:

- (1) "corpus amount" means the sum of:
 - (A) the amount of all deposits made to a trust fund at the inception of the trust fund; and
 - (B) the aggregate amount of all deposits made to the trust fund after the inception of the trust fund.
- (2) "deposits" means the deposits to trust funds required by G.S. 65-64.
- (3) "income" means interest income, dividend income, or any amount of capital gain income to the extent allowed to be withdrawn by the Commission pursuant to this Rule.
- (4) "total market value" means the total market value of the assets in the trust fund, as reflected in the records of the trustee.
- (5) "trust fund" means a care and maintenance trust fund required by G.S. 65-61 or perpetual care trust fund required by G.S. 65-63.

(b) Without the prior written approval of the Commission pursuant to G.S. 65-61, no amounts from a trust fund may be withdrawn from the trust fund if either:

- (1) at the time of the withdrawal, the total market value of the trust fund is less than the corpus amount; or
- (2) immediately after the withdrawal is made, the total market value of the trust fund would be less than the corpus amount.

*History Note: Authority G.S. 65-49; 65-61;
Eff. April 1, 2020.*

SECTION .0200 - PRE-NEED CEMETERY MERCHANDISE: PRE-CONSTRUCTED MAUSOLEUMS AND BELOW GROUND CRYPTS TRUST FUNDS

21 NCAC 07D .0201 REPORT

Each licensed cemetery shall make a report of deposits to the pre-need cemetery merchandise and pre-constructed mausoleum and below ground crypt trust fund to be completed and mailed to the office in Raleigh by the last day of each month. The form to be used is the "Monthly Report and Deposit Record for Pre-need Cemetery Merchandise, Pre-Constructed Mausoleums and Services Not Delivered." This form provides space for trustee's name, fund account number and the name of the savings institution used. It also provides space for the name of the purchaser, date of the contract, number of the contract, the full sales price, the total amount required, the amount deposited, and the total amount deposited to date. Copies of this form may be obtained from and must be returned to:

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

*History Note: Authority G.S. 65-49;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. September 1, 2007; May 3, 1993; September 1, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.*

21 NCAC 07D .0202 DELIVERY

(a) The Commission shall not consider vaults and crypts delivered unless installed or stored on the cemetery premises or stored off premises by a supplier.

(b) The Commission shall not consider markers, bases and vases delivered unless installed or stored at the cemetery or, if stored off premises by a supplier, there shall be no additional charge for delivery or freight, unless specified in bold print in the contract. If vaults, crypts or other merchandise are stored off premises, the cemetery company must submit to the Cemetery Commission not less than annually a report by a certified public accountant of each item which has been purchased through a licensed North Carolina cemetery company that, as of the date of the report, is

in storage and thus, the property of the customer and not the supplier. If vaults, crypts or other merchandise are stored at the cemetery, the cemetery company must submit to the Cemetery Commission not less than annually a report by an accountant of each item that, as of the date of the report, is in storage and thus, the property of the customer and not the supplier.

History Note: Authority G.S. 65-49; 65-60.1(c); 65-66;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. June 1, 2014; December 1, 2008; May 3, 1993; July 1, 1988; April 1, 1987;
September 1, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07D .0203 TRUST ACCOUNTS

- (a) Withdrawal requests made pursuant to G.S. 65-66(b)(4) shall be made no more than once per month.
- (b) The corporate trustee or financial institution shall make full disclosure of the amount in the trust account available to the Commission within two business days upon request.
- (c) Interest earned on trust accounts may be used to fund future deposits or, with written prior approval of the Commission, withdrawn.

History Note: Authority G.S. 65-49; 65-66(b)(4);
Eff. September 1, 1979;
Amended Eff. June 1, 2014; May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. August 18, 2018.

21 NCAC 07D .0204 EXCESS FUNDS

History Note: Authority G.S. 65-49;
Eff. June 23, 1980;
Amended Eff. April 1, 1987;
Repealed Eff. May 3, 1993.