

## **Chapter 289**

# **CEMETERIES**

### **289:1 Definitions. –**

In this chapter, unless the context clearly requires otherwise:

- I. "Burial ground" means a private family or religious institution's cemetery, mausoleum, or columbarium on private property and not available for use by the public. For purposes of this paragraph, the term "family" shall mean members of the immediate family and any individuals related by blood or marriage or civil union to members of the immediate family.
- II. "Burial space" means a lot in any cemetery, mausoleum, or columbarium as designed and intended for the interment of a human body, bodies, or remains, but presently not used for such purpose.
- III. "Cemetery" means any cemetery owned, managed, or controlled by any municipality within this state or owned and managed by any nonprofit cemetery corporation chartered by the state. Mausoleums and columbariums shall be included within the term "cemetery."
- IV. "Cemetery association" means a nonprofit cemetery corporation, the voting members of which are the owners of burial spaces in the cemetery owned and operated by the association.
- V. "Cemetery corporation" means a nonprofit corporation organized for the purpose of operating a cemetery.
- VI. "Cemetery trustees" means town cemetery trustees elected pursuant to the provisions contained in this chapter.
- VII. "Corporate officer" means the elected or appointed managing officer of a nonprofit corporation established to operate a cemetery for public interment.
- VIII. "Owner" means any person or persons owning or possessing the privilege, license, or right of interment in any burial space, as determined under RSA 290:24.

**289:2 Municipality to Provide. –** Every municipality shall provide, or may enter into agreements with adjacent municipalities or nonprofit entities to provide, one or more suitable cemeteries for the interment of deceased persons, which shall be subject to such regulations as the municipality may establish. In the absence of regulations established by vote of the legislative body, the cemetery trustees may establish such regulations pursuant to RSA 289:7, I(a). The operation and maintenance of all cemeteries owned and maintained by the municipality shall be in the charge of the cemetery trustees.

**289:2-a Funds Received From Sale of Cemetery Lots. –** Upon the sale of cemetery lots, the legislative body may, at any annual or special meeting, vote to determine whether funds received from such sale shall be deposited in the general fund of the town as a sale of town property or deposited with the trustees of trust fund for the maintenance of cemeteries under RSA 31:19-a.

### **289:3 Location. –**

All cemeteries and burial grounds shall be laid out in accordance with the following requirements:

- I. No cemetery shall be laid out within 100 feet of any dwelling house, schoolhouse or school lot, store or other place of business without the consent of the owner of the same, nor within 50 feet

of a known source of water or the right of way of any classification of state highway. Existing cemeteries which are not in compliance with the above set-back requirements may be enlarged, provided that no portion of the enlargement is located any closer to the above-listed buildings, water sources or highways than the existing cemetery, and provided further that no such enlargement shall be located within 50 feet of any classification of state highway.

II. Burials on private property, not in an established burial ground, shall comply with local zoning regulations. In the absence of such regulations, such burial sites shall comply with the requirements in paragraph I. The location of the burial site shall be recorded in the deed to the property upon transfer of the property to another person.

III. New construction, excavation, or building in the area of a known burial site or within the boundaries of an established burial ground or cemetery shall comply with local zoning regulations concerning burial sites, burial grounds or cemeteries, whether or not such burial site or burial ground was properly recorded in the deed to the property. In the absence of such regulations, no new construction, excavation, or building shall be conducted within 25 feet of a known burial site or within 25 feet of the boundaries of an established burial ground or cemetery, whether or not such burial site or burial ground was properly recorded in the deed to the property, except when such construction, excavation, or building is necessary for the construction of an essential service, as approved by the governing body of a municipality in concurrence with the cemetery trustees, or in the case of a state highway, by the commissioner of the department of transportation in concurrence with the cemetery trustees.

IV. Nothing in this section shall be construed to conflict with RSA 290, local ordinances, or cemetery rules concerning burials and disinterments of human remains.

**289:4 Maintenance.** – Every municipality shall raise and appropriate sufficient funds, by taxation or otherwise, to provide for the suitable care and maintenance of the municipal public cemeteries within its boundaries which are not otherwise provided for by an alternative funding source. Every municipality may raise and appropriate annually a sufficient sum to provide for the suitable care and maintenance of deserted burial grounds and cemeteries which have been declared abandoned in accordance with RSA 289:19-21.

**289:5 Cemetery Records.** – The corporate officer or designee of a cemetery corporation or town cemetery trustees charged with the responsibility of operation and administration of any cemetery under their control shall keep a record of every burial showing the date of burial and name of the person buried, when these particulars can be obtained, and the lot, plot, or part of such plot or lot, in which the burial was made. Such records shall also be kept of every private burial site within a municipality by the owner of the land containing the burial site, and a copy of the information shall be supplied to the cemetery trustees who will maintain the municipal records of such sites. A copy of such record, duly certified, shall be furnished to any person on demand and payment of a fee established in compliance with RSA 91-A:4. The location of each cemetery and private burial site may be annotated on the municipal tax map.

## **Cemetery Trustees**

**289:6 Cemetery Trustees.** –

I. Every municipality shall elect a board of cemetery trustees consisting of 3 members, unless a town at an annual or special town meeting votes that the board shall consist of 5 members. In the

initial election of cemetery trustees, they shall be elected by ballot at an annual town meeting. One shall be elected for a one-year term, one for a 2-year term and one for a 3-year term. In towns with a board of 5 trustees the 2 additional trustees shall be appointed by the selectmen, one for one year and one for 2 years. Subsequent trustees shall be elected by ballot at the annual town meeting to replace those whose terms expire. The term of each trustee shall be 3 years. Vacancies shall be filled by the selectmen for the remainder of the term. The board may recommend to the appointing authority the names of no more than 2 persons who may serve as alternate members on the board. The alternate members shall be appointed to one-year terms. In cities the trustees shall be chosen and hold their office for such term as shall be provided by city ordinance. Trustees shall organize by electing one of their number chairperson and another bookkeeper, who shall keep the records and books of the trustees, and shall issue vouchers as necessary for funds to be expended. The chairperson and the bookkeeper may be the same member.

II. Any town that has the town manager form of government may vote to not have cemetery trustees by delegating all of the duties and responsibilities of cemetery trustees to the town manager, as specified in RSA 289. This option may be adopted by a vote of the town meeting. The warrant article question to be voted shall be: "Shall we discontinue the board of cemetery trustees by delegating their duties and responsibilities to the town manager?" If the majority votes in the affirmative, then the discontinuance shall take effect 90 days after adoption.

II-a. (a) Any town, with a traditional town meeting form of government, may adopt by a vote of the town meeting to have the board of selectmen serve for the term of elected office as the cemetery trustees. The warrant article to be voted shall be:

"Shall we delegate the duties and responsibilities of the cemetery trustees to the board of selectmen?"

(b) If the majority vote in the affirmative then the delegation shall take effect 90 days after adoption and shall continue until rescinded by vote of the town meeting.

III. At any subsequent town meeting, the town may vote to reinstate the board of cemetery trustees. A new board of cemetery trustees shall be elected at the town meeting next following the vote to reinstate the board of cemetery trustees.

IV. Any town that has a municipal charter form of government may specify in its charter the procedure to be utilized for the election or appointment of cemetery trustees. Such procedure shall be adopted under the provisions of RSA 49-B.

### **289:7 Powers and Duties. –**

I. Except in those municipalities in which other provisions have been made by a general or special act of the legislature, all cemetery trustees in the state shall:

(a) Adopt bylaws and regulations for their transaction of business and for the establishment and management of all municipal cemeteries within their responsibility.

(b) Prepare an annual budget indicating what support and maintenance of the municipal public cemeteries will be required out of public funds for submission to the appropriate agency of the municipality. A separate budget request shall be submitted for planning and establishment of a new public cemetery and for capital improvements or expansion of an existing public cemetery.

(c) Expend all moneys raised and appropriated by the municipality for cemetery purposes. Such funds shall be maintained in the general fund and paid in the same manner that funds of other municipal departments are paid.

(d) Expend income from all trust funds for cemetery purposes in accordance with the conditions

of each donation or bequest accepted by the municipality. Such trust funds shall be held in the custody and under the management of the trustees of trust funds. The trust income shall be transferred to the cemetery trustees by the trustees of trust funds in response to vouchers executed by the cemetery trustees, if the requested funds are available. Such trust fund income shall not be commingled with the moneys raised and appropriated by the municipality.

(e) Prepare deeds of cemetery lots for the governing body to sign.

II. Cemetery trustees may appoint a cemetery custodian or sexton who shall not be a trustee and who shall be responsible to the cemetery trustees for supervising work done in the cemeteries.

**289:8 Enforcement.** – Any person designated as a cemetery trustee failing to comply with the provisions of RSA 289:7 shall be guilty of a violation. Any other person who violates this chapter or any regulation established under the authority of this chapter shall be guilty of a violation.

**289:9 Use of Trust Funds.** – Cemetery corporations and the trust fund trustees of municipalities may take and hold funds in trust, and may apply the income of the trust to the improvement, watering, or embellishment of the cemetery, or to the care, preservation, or embellishment of any lot or its appurtenances.

**289:10 Investments.** – Cemetery corporations holding funds in trust as provided in RSA 289:9 may establish, maintain, and operate common trust funds as provided in RSA 31:27-30.

**289:11 Accounting.** – Whenever any cemetery corporation shall take and hold trust funds according to the provisions of RSA 289:9, such corporation shall keep in its books an account of all funds received and held by it in the same manner as required of municipalities, and the account of any such fund shall be open to inspection by any person having an interest in the proper administration of the trust.

**289:12 Reports.** – A copy of the annual financial report of such corporations shall be filed with the attorney general, unless otherwise required by law to file such a report with any town, city, county, or state agency.

**289:13 Cemetery Association Termination.** – Any cemetery laid out by an individual or corporation and located within the municipality, in which all lots have been sold and for the care of which trust funds are held by the municipality, may be deeded to the municipality with no implied financial liability to the municipality for the maintenance of the cemetery over and above the trust fund income, provided the municipality votes to accept such cemetery transfer.

Municipalities may raise and appropriate additional funds for the care of such cemeteries. Upon the transfer of the title to the cemetery, the municipal cemetery trustees shall have the sole management responsibility for the cemetery.

**289:14 Right of Way to Private Burial Ground.** – Any person wishing to have a temporary right of entry over private land in order to enter a private burial ground enclosure to which there is no public right of way may apply in writing to the selectmen of a town or the mayor of a city stating the reason for such request, which may include the maintenance, repair, and preservation of the burial ground, and the period of time for which such right is to be

exercised. The applicant shall also notify in writing the owner or occupier of the land over which the right of way is desired and obtain the written permission of the owner. The selectmen or mayor, in the exercise of discretion and in consultation with the cemetery trustees, may issue a permit for such temporary right of entry designating the particular place where the land may be crossed. The owner or occupier of the land may recommend the place of crossing which, if reasonable, shall be the place designated by the selectmen or mayor. The person exercising the right of entry shall complete the work on the cemetery and restore the right of way to its original condition, if it is disturbed.

**289:14-a Maintenance, Repair, and Preservation of Burial Grounds. –**

I. Any person or organization interested in caring for a burial ground which has not been maintained and the owner of which is unknown, or whose present address is unknown, may petition the selectmen, town council, mayor, or cemetery trustees for permission to clean, maintain, restore, and preserve that burial ground at the person's or organization's own expense. Upon approval of this petition on any conditions deemed appropriate, including the permission of the owner of the surrounding property, the selectmen, town council, mayor, or cemetery trustees shall require the person or organization to place an advertisement in a local newspaper providing notice that the burial ground is to be entered and that work is to be done, and notifying persons with a property interest in this burial ground who have objections to come forward by a date certain.

II. A petition under paragraph I may be granted notwithstanding the fact that the burial ground has not been declared abandoned pursuant to the procedure in RSA 289:20.

III. Any city, town, or public body shall be immune from civil liability in any action brought on the basis of any act or omission by any person who voluntarily and without compensation undertakes to maintain or to repair any burying ground.

IV. No private landowner permitting access over his or her property to a burial ground for the purpose of voluntary maintenance or repair of the burial ground shall be held civilly liable for any breach of duty resulting in injury to the person or damage to the property of those seeking to repair or maintain the cemetery.

V. After approval and notice required under RSA 635:6, II, any marker, gate, or other material removed for repair shall be stored and kept safely in a manner determined by the selectmen, town council, mayor, or cemetery trustees. Upon approval of the selectmen, town council, mayor, or cemetery trustees, a marker, gate, or other material deemed to be at risk of irreparable damage or loss may be placed permanently in a safe facility and the fact of its removal or replacement made visible in the cemetery or in public records.

**289:14-b Historic Burial Grounds and Cemeteries. –** Historic burial grounds and cemeteries, including their markers, walls, gates, and other associated and identifying features and artifacts, are meaningful to the history, historic landscape, cultural, religious, craft and architectural traditions of the state; were established prior to January 1, 1950; and are consistent with the definitions of "burial ground" and "cemetery" established in RSA 289:1. Cemetery trustees may, in cooperation with non-governmental organizations, provide information relative to the location of historic burial grounds and cemeteries to such organizations for the inclusion in their online and other databases accessible for public use.

**289:15 Discontinuance.** – Whenever there is a public necessity for the discontinuance of any municipal cemetery and the removal of the remains of persons buried in such cemetery, the cemetery may be discontinued by a 3/4 vote of the legal voters present and voting at any town meeting held for the purpose, or by 3/4 of each board of the city councils present and voting.

**289:16 Reinterment.** – The governing body may, at the expense of the municipality, disinter all the remains of persons buried in such cemetery and reinter the same in the unoccupied part of another cemetery within the municipality, such reinterment to be in the place designated by the nearest surviving relatives of the deceased persons or, in the absence of such surviving relative, by the cemetery trustees. Such removal and reinterment shall be done prudently and with proper care and attention.

**289:17 Removal of Monuments.** – The monuments, gravestones, and other appurtenances attached to the graves shall be carefully removed and properly set up at the place of reinterment with as little injury as the nature of the case will admit. In case of injury to any monument, gravestone, or appurtenance, the damages shall be assessed by the governing body in the same manner and with the same right of appeal as in the case of alteration of the grade of highways.

## **Abandoned Burial Spaces**

### **289:18 Forfeiture Procedures.** –

I. Whenever a burial space or spaces in any cemetery subject to the provisions of this subdivision have remained unused for a period of 50 years, and the owner has not improved such space or spaces by causing a monument, gravestone, or other permanent appurtenance to be placed on the burial space, the person, corporate manager, or cemetery trustees having jurisdiction over such cemetery may institute proceedings for the termination and forfeiture of the rights and interests of such owner. All purchase contracts for burial spaces executed after August 7, 1994, shall include a notice that this procedure may be invoked in the future.

II. Whenever such person, corporate manager, or board of trustees determines that the conditions stated in paragraph I have been met, then they may send to the owner a notice of the intent to terminate and forfeit the owner's rights, served on the owner personally by a competent person or sent by certified mail with return receipt requested to the owner's last known address.

III. When the owner receives the forfeiture notice, the owner may notify the cemetery management of continued intent to use the space, in which case this procedure shall be cancelled, or the owner may return the space to the cemetery and receive in compensation the same amount the owner paid for the space, less any portion of the original purchase price that was specified for inclusion in a perpetual care trust fund.

IV. If no response is received from the owner for 60 days, the cemetery management may advertise in a paper of local distribution for information regarding the present whereabouts of the owner. If information is forth-coming, the notification process shall be repeated using the new address information. If no information is received, the original purchase contract may be voided and the space sold to a new owner. Any owner contacting the cemetery management after the space has been resold shall be reimbursed the amount he originally paid, including the portion set aside for perpetual care.

## Abandoned Burial Grounds

**289:19 Neglected Burial Ground.** – Whenever a burial ground within the boundaries of the town has been neglected for a period of 20 years or more, the municipality may declare it abandoned for purposes of preservation, maintenance or restoration.

**289:20 Procedure.** –

To declare a burial ground abandoned:

I. The municipality shall place an advertisement in at least one newspaper having general distribution in the municipality and surrounding area. The advertisement shall state the intent of the municipality, identifying the burial ground by name, if known, and by names and dates of the oldest stones in the burial ground, with a request for any direct descendent to contact the town selectmen's office, the town manager, or mayor, as applicable. If the burial ground contains no stones with legible inscriptions, the site may be identified by a detailed description of its location.

II. Not less than 60 days nor more than 90 days after the notice of the intent has been published, the notice shall be read at a regularly scheduled selectmen's meeting or in the case of a city, a city council meeting.

III. If any descendants were located and grant permission, or if no descendants were located, then, after a public hearing, the municipality may declare the burial ground abandoned by a majority vote of the selectmen or city councilmen present and voting.

**289:21 Rights and Responsibilities.** – Any burial ground declared abandoned under these provisions shall become a municipal cemetery for management purposes and shall be managed by the cemetery trustees, who shall assume all the authorization and rights of natural lineal descendants.

## Prohibited Conduct

**289:22 Stone Rubbings.** – No person shall make gravestone rubbings in any municipal cemetery or burial ground without first obtaining the written permission of the town selectmen or the mayor of a city or designee. Before granting such permission, the selectmen or mayor will ascertain to the best of their ability that the person making the request knows the proper precautions to be taken and the proper materials to be used for this activity. The town selectmen or city mayor or their designee shall notify the cemetery trustees of the request and its disposition. Any person who violates the provisions of this section shall be guilty of a misdemeanor.

**289:23 Other Unauthorized Acts.** – All other unauthorized conduct under RSA 635:6 and 635:7 regarding the abuse of cemeteries shall be penalized as provided in RSA 635:8.