

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

The Department of Financial and Professional Regulation is posting these proposed rules in an effort to make the public aware of possible changes that may have an impact on the profession.

The general public may submit written comments to the Department during the first 45 day public comment period. Any suggested changes will be considered by the Department and the appropriate Board.

These proposed rules were published in the April 9, 2010 *Illinois Register*. The 45 day comment period will end May 24, 2010.

Please submit written comments to Craig Cellini as stated in the attached notice.

THESE PROPOSED RULES ARE NOT IN EFFECT AT THIS TIME AND THE ADOPTED RULES MAY DIFFER FROM THOSE ORIGINALLY PUBLISHED.

- 1) Heading of the Part: Cemetery Oversight Act
- 2) Code Citation: 68 Ill. Adm. Code 1249
- 3)

<u>Section Number:</u>	<u>Proposed Action:</u>
1249.10	New Section
1249.20	New Section
1249.30	New Section
1249.40	New Section
1249.50	New Section
1249.60	New Section
1249.70	New Section
1249.100	New Section
1249.110	New Section
1249.120	New Section
1249.130	New Section
1249.140	New Section
1249.150	New Section
1249.160	New Section
1249.170	New Section
1249.180	New Section
1249.200	New Section

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

1249.210	New Section
1249.220	New Section
1249.230	New Section
1249.300	New Section
1249.310	New Section
1249.320	New Section
1249.330	New Section
1249.400	New Section
1249.410	New Section
1249.420	New Section
1249.430	New Section
1249.440	New Section
1249.450	New Section
1249.460	New Section
1249.470	New Section

- 4) Statutory Authority: Implementing the Cemetery Oversight Act [225 ILCS 411/5-25(5)] and authorized by Section 2105-15 of the Civil Administration Code of Illinois [20 ILCS 2105/2105-15]

- 5) A Complete Description of the Subjects and Issues Involved: The Cemetery Oversight Act, PA 96-863, brought regulation of cemeteries under the authority of the Illinois Department of Financial and Professional Regulation. The Act created tiers for the licensure and registration of cemeteries and license requirements for certain employees working at fully licensed cemeteries. This new Part 1249 shall encompass all aspects of cemetery regulation in Illinois. Significantly, this proposed rulemaking sets forth licensing procedures and standards for cemeteries, cemetery managers, and customer service employees. It also will provide mediation and disciplinary procedures for partially exempt cemeteries. These proposed rules establish care and maintenance standards for cemetery grounds and recordkeeping requirements for entombments, inurnments, and interments. They also create continuing education requirements and a Code of Professional Conduct and Ethics for persons licensed under the Act. Further, these proposed rules establish the fees and administrative procedures required for the enforcement of the Act.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

- 7) Will this rulemaking replace any emergency rulemaking currently in effect? No

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives (if applicable): The provisions related to partially exempt cemeteries would affect municipal cemeteries.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Department of Financial and Professional Regulation
Attention: Craig Cellini
320 West Washington, 3rd Floor
Springfield, IL 62786

217/785-0813 FAX: 217/557-4451

All written comments received within 45 days after this issue of the *Illinois Register* will be considered.

- 13) Initial Regulatory Flexibility Analysis:
- A) Types of small businesses, small municipalities and not for profit corporations affected: Cemetery owners, municipal cemeteries, cemetery associations, and their employees.
- B) Reporting, bookkeeping or other procedures required for compliance: Cemeteries licensed under the Act must file an annual report, details of which are contained in these rules. Copies of records of trust funds must be maintained in Illinois. Further, licensed cemeteries must provide a Worker's Statement to the Department for all of its employees and/or keep a copy of the Department's letter acknowledging the Statement. Licensed cemetery managers and customer service employees are required to maintain documents related to their licensure, such as continuing education certificates.
- C) Types of professional skills necessary for compliance: Licensure or partial exemption under the Cemetery Oversight Act.

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

- 14) Regulatory Agenda on which this rulemaking was summarized: Public Act 96-863, which created the Cemetery Oversight Act, from which these proposed rules are promulgated, was signed into law on January 19, 2010. Therefore, this rulemaking was not fully anticipated in time for inclusion on any previous Regulatory Agendas.

The full text of the Proposed Rules begins on the next page:

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

TITLE 68: PROFESSIONS AND OCCUPATIONS

CHAPTER VII: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

PART 1249

CEMETERY OVERSIGHT ACT

SUBPART A: GENERAL PROVISIONS

Section

1249.10	Definitions
1249.20	Fees
1249.30	Renewal
1249.40	Inactive Status
1249.50	Restoration
1249.60	Cemetery Records and the Cemetery Oversight Database
1249.70	Granting Variances

SUBPART B: CEMETERY AUTHORITIES AND ASSOCIATIONS

Section

1249.100	Application for Full Exempt Status
1249.110	Application for Partial Exempt Status
1249.120	Application for Licensure as a Cemetery Authority Not Maintaining a Full or Partial Exemption
1249.130	Bond, Letter of Credit, Self-Insurance and Liability Insurance Requirement
1249.140	Change of Ownership
1249.150	Cemetery Association Vacancies
1249.160	Trust Funds
1249.170	Sufficient Financial Resources
1249.180	Signage and Consumer Brochure

SUBPART C: CEMETERY MANAGERS, CUSTOMER SERVICE EMPLOYEES AND WORKERS

Section

1249.200	Application
1249.210	Examination
1249.220	Continuing Education

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

1249.230 Cemetery Worker's Statement

SUBPART D: CEMETERY STANDARDS

Section

1249.300 Code of Professional Conduct and Ethics
1249.310 Care and Maintenance Standards
1249.320 Maps and Plats
1249.330 Professional Standards

SUBPART E: ENFORCEMENT AND DISCIPLINARY PROCEEDINGS

Section

1249.400 Mediation of Complaints against Cemetery Authorities Maintaining a Partial Exemption
1249.410 Violation Citations
1249.420 Opportunity to Cure Violation
1249.430 Cemetery Audits and Examinations
1249.440 Annual Reports
1249.450 Receivership
1249.460 Grants under Cemetery Relief Fund
1249.470 Claim Procedure for Liability Security

AUTHORITY: Implementing the Cemetery Oversight Act [225 ILCS 411] and authorized by Section 2105-15 of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-15].

SOURCE: Adopted at 34 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 1249.10 Definitions

Terms not defined in this Section shall have the same meaning as in the Cemetery Oversight Act. The following definitions are applicable for purposes of this Part:

"Acre" means a United States survey acre of 43,560 square feet.

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

"Act" means the Cemetery Oversight Act [225 ILCS 411].

"Board" means the Cemetery Oversight Board.

"Database" means the Cemetery Oversight Database under Section 20-6 of the Act.

"Care fund security" means the bond, proof of self-insurance, or a letter of credit required under Section 1249.130(c) of this Part and Section 10-20(b) of the Act.

"Department" means the Department of Financial and Professional Regulation.

"Director" means the Director of the Division of Professional Regulation with the authority delegated by the Secretary.

"Division" means the Department of Financial and Professional Regulation-Division of Professional Regulation.

"Liability security" means the liability insurance, proof of self-insurance, or a letter of credit required under Section 1249.130(c) of this Part and Section 10-20(b) of the Act.

"Renewal cycle" means the time period between either application or the last renewal, whichever is more recent, and the next renewal date under Section 1249.30, typically 2 years for licensees and 4 years for cemetery authorities maintaining a full or partial exemption.

"Renewal period" means the time during which the Division accepts renewal applications.

"Reporting period" means the preceding calendar year.

"Secretary" means the Secretary of the Department of Financial and Professional Regulation.

Section 1249.20 Fees

- a) Application for Exempt Status Fees

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

- 1) The fee for an application as a cemetery authority seeking a full exemption is \$25.
 - 2) The fee for an application as a cemetery authority seeking a partial exemption is:
 - A) \$75 for cemeteries with fewer than 25 interments, inurnments and entombments during the preceding calendar year;
 - B) \$125 for cemeteries with 25 through 50 interments, inurnments and entombments during the preceding calendar year;
 - C) \$200 for cemeteries with 51 through 100 interments, inurnments and entombments during the preceding calendar year;
 - D) \$350 for cemeteries with 101 through 150 interments, inurnments and entombments during the preceding calendar year; and
 - E) \$500 for cemeteries with over 150 interments, inurnments and entombments during the preceding calendar year.
- b) Application Fees for Licensure as a Cemetery Authority
- 1) The fee for application as a cemetery authority not seeking a full or partial exemption is:
 - A) \$100 for cemeteries with fewer than 25 interments, inurnments and entombments during the preceding calendar year;
 - B) \$150 for cemeteries with 25 through 50 interments, inurnments and entombments during the preceding calendar year;
 - C) \$250 for cemeteries with 51 through 100 interments, inurnments and entombments during the preceding calendar year;
 - D) \$500 for cemeteries with 101 through 150 interments, inurnments and entombments during the preceding calendar year; and
 - E) \$750 for cemeteries with over 150 interments, inurnments and

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

entombments during the preceding calendar year.

- 2) The fee for application as a cemetery manager is:
 - A) \$50 for a cemetery manager working at a cemetery with fewer than 25 interments, inurnments and entombments during the preceding calendar year;
 - B) \$50 for a cemetery manager working at a cemetery with 25 through 50 interments, inurnments and entombments during the preceding calendar year;
 - C) \$75 for a cemetery manager working at a cemetery with 51 through 100 interments, inurnments and entombments during the preceding calendar year;
 - D) \$100 for a cemetery manager working at a cemetery with 101 through 150 interments, inurnments and entombments during the preceding calendar year; and
 - E) \$100 for a cemetery manager working at a cemetery with over 150 interments, inurnments and entombments during the preceding calendar year.

- 3) The fee for application as a cemetery customer service employee is:
 - A) \$50 for a cemetery customer service employee working at a cemetery with fewer than 25 interments, inurnments and entombments during the preceding calendar year;
 - B) \$50 for a cemetery customer service employee working at a cemetery with 25 through 50 interments, inurnments and entombments during the preceding calendar year;
 - C) \$75 for a cemetery customer service employee working at a cemetery with 51 through 100 interments, inurnments and entombments during the preceding calendar year;
 - D) \$100 for a cemetery customer service employee working at a

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

cemetery with 101 through 150 interments, inurnments and entombments during the preceding calendar year; and

- E) \$100 for a cemetery customer service employee working at a cemetery with over 150 interments, inurnments and entombments during the preceding calendar year.
- 4) The fees for application as a cemetery manager or cemetery customer service employee (subsections (b)(2) and (3)) do not include the examination or fingerprint fee. The fees for examination and fingerprinting are as follows:
- A) Examination fees: Cemetery manager or cemetery customer service employee applicants shall pay, either to the Department or to the designated testing service, a fee covering the cost of providing the examination. Failure to appear for the examination on the scheduled date, at the time and place specified, after the applicant's application for examination has been received and acknowledged by the Division or the designated testing service, may result in the forfeiture of the examination fee under the policies of the testing vendor.
 - B) Fingerprint fees: Applicants shall pay the cost of processing charged by and made payable to the designated vendor.
- c) Renewal Fees
- 1) The fee for the renewal of a license as a cemetery authority maintaining a full exemption is \$15.
 - 2) The fee for the renewal of a license as a cemetery authority maintaining a partial exemption is:
 - A) \$75 for cemeteries with fewer than 25 interments, inurnments and entombments during the preceding calendar year;
 - B) \$125 for cemeteries with 25 through 50 interments, inurnments and entombments during the preceding calendar year;
 - C) \$200 for cemeteries with 51 through 100 interments, inurnments

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

and entombments during the preceding calendar year;

- D) \$350 for cemeteries with 101 through 150 interments, inurnments and entombments during the preceding calendar year; and
 - E) \$500 for cemeteries with over 150 interments, inurnments and entombments during the preceding calendar year.
- 3) The fee for the renewal of a license as a cemetery authority not maintaining a full or partial exemption is:
- A) \$100 for cemeteries with fewer than 25 interments, inurnments and entombments during the preceding calendar year;
 - B) \$150 for cemeteries with 25 through 50 interments, inurnments and entombments during the preceding calendar year;
 - C) \$250 for cemeteries with 51 through 100 interments, inurnments and entombments during the preceding calendar year;
 - D) \$500 for cemeteries with 101 through 150 interments, inurnments and entombments during the preceding calendar year; and
 - E) \$750 for cemeteries with over 150 interments, inurnments and entombments during the preceding calendar year.
- 4) The fee for the renewal of a license as a cemetery manager is:
- A) \$50 for a cemetery manager working at a cemetery with fewer than 25 interments, inurnments and entombments during the preceding calendar year;
 - B) \$50 for a cemetery manager working at a cemetery with 25 through 50 interments, inurnments and entombments during the preceding calendar year;
 - C) \$75 for a cemetery manager working at a cemetery with 51 through 100 interments, inurnments and entombments during the preceding calendar year;

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

- D) \$100 for a cemetery manager working at a cemetery with 101 through 150 interments, inurnments and entombments during the preceding calendar year; and
 - E) \$100 for a cemetery manager working at a cemetery with over 150 interments, inurnments and entombments during the preceding calendar year.
- 5) The fee for the renewal of a license as a cemetery customer service employee is:
- A) \$50 for a cemetery customer service employee working at a cemetery with fewer than 25 interments, inurnments and entombments during the preceding calendar year;
 - B) \$50 for a cemetery customer service employee working at a cemetery with 25 through 50 interments, inurnments and entombments during the preceding calendar year;
 - C) \$75 for a cemetery customer service employee working at a cemetery with 51 through 100 interments, inurnments and entombments during the preceding calendar year;
 - D) \$100 for a cemetery customer service employee working at a cemetery with 101 through 150 interments, inurnments and entombments during the preceding calendar year; and
 - E) \$100 for a cemetery customer service employee working at a cemetery with over 150 interments, inurnments and entombments during the preceding calendar year.
- 6) The fees for the renewal of a license as a cemetery manager or cemetery customer service employee (subsections (c)(4) and (5)) do not include the cost of continuing education requirements.
- d) General Fees
- 1) The fee for restoration from inactive status is the current renewal fee. The

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

fee for the restoration of a license other than from inactive status is \$50 plus payment of all lapsed renewal fees.

- 2) The fee for the issuance of a duplicate/replacement license or a certificate issued for a change of name or address, other than during the renewal period, is \$20. No fee is required for name and address changes on Division records when no duplicate license is issued.
 - 3) The fee for a certification of a licensee's regulatory history for any purpose is \$20.
 - 4) The fee to have the scoring of an examination administered by the Division reviewed and verified is \$20, plus any fee charged by the testing service.
 - 5) The fee for a roster of licensees or cemetery workers shall be the actual cost of producing the roster.
- e) The cost of mediation and investigation under Section 25-3 of the Act shall be the actual cost per hour.
- f) Fee Waiver or Reduction Request
- 1) A cemetery authority may apply for a reduction or waiver of any fee based on extreme financial hardship or risk of cemetery abandonment. To apply, the cemetery shall produce its most recent balance sheet, bank statement, and any other evidence that the Division requires that bears on the cemetery authority's financial status. A cemetery authority applying for a fee reduction or waiver must do so with the good faith belief that a fee reduction or waiver is necessary to avoid extreme financial hardship or cemetery abandonment. Extreme financial hardship may include falling below the minimal requirements for maintaining sufficient financial resources under Section 1249.170.
 - 2) Cemetery Personnel
 - A) A cemetery manager or customer service employee may apply for a reduction or waiver of any fee based on extreme financial hardship or risk of abandoning his or her position at the cemetery.

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

To apply, the applicant or licensee shall produce:

- i) a signed statement from the cemetery authority stating that the cemetery authority is not able or willing to pay the fee on behalf of the applicant or licensee;
 - ii) a signed statement by the applicant or licensee stating that a fee reduction or waiver is necessary to avoid extreme financial hardship or abandoning his or her position at the cemetery; and
 - iii) any other evidence that the Division requires that bears on the applicant's or licensee's financial status.
- B) A cemetery manager or customer service employee applying for a fee reduction or waiver must do so with the good faith belief that a fee reduction is necessary to avoid extreme financial hardship or abandonment of his or her position at the cemetery.
- 3) A cemetery authority, cemetery manager or customer service employee tendering a bad faith or frivolous application for a fee reduction or waiver may be subject to disciplinary action for making a material misstatement in furnishing information to the Division under Section 25-10(a)(1) of the Act.
- g) Transition Fee
- 1) The fees required by Section 75-55(c) of the Act shall be submitted to the Department along with the form supplied by the Division.
 - 2) The Department shall issue a fine of \$5 per day for each day beyond the due date required by the Act or form that any fee required by Section 75-55(c) is not tendered to the Department. Any fine imposed for a failure to submit a timely transition fee shall be paid within 60 days after the effective date of the order imposing the fine unless the time is extended, the fine is reduced, or the fine is otherwise waived at the discretion of the Department.

Section 1249.30 Renewal

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

- a) Beginning with the August 2012 renewal, every license issued under the Act shall expire on August 31 every 2 years. Beginning with the August 2014 renewal, every registration as a full exempt or partial exempt cemetery authority issued under the Act shall expire on August 31 every 4 years. The holder of a license may renew his or her license during the month preceding the expiration date by paying the required fee set forth in Section 1249.20 and, for cemetery authorities, providing proof of care fund security and liability security according to Section 1249.130 of this Part and Section 10-20(b) of the Act.
- b) It is the responsibility of each licensee to notify the Division of any change of address. Failure to receive a renewal form from the Division shall not constitute an excuse for failure to renew one's license or to pay the renewal fee. Practicing on an expired license is unlicensed practice and subject to discipline under Section 25-10 of the Act.
- c) No cemetery authority shall, after the expiration of a cemetery manager or customer service employee license, permit the holder of the expired license to do any work requiring licensure.

Section 1249.40 Inactive Status

- a) Cemetery manager or customer service employee licensees who notify the Division, on forms provided by the Division, may place their licenses on inactive status and shall be excused from paying renewal fees until they notify the Division in writing of the intention to resume active practice.
- b) Licensees seeking restoration from inactive status shall do so in accordance with Sections 1249.20(d)(1) and 1249.50.

Section 1249.50 Restoration

- a) Cemetery manager and customer service employee licensees seeking restoration of a license after it has expired or been placed on inactive status for more than 5 years shall file an application, on forms supplied by the Division, together with the following:
 - 1) The restoration fees specified in Section 1249.20(d)(1). When restoring a license from inactive status, a licensee is required to pay the current

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

renewal fee set forth in Section 1249.20;

- 2) Proof of completion of the required number of continuing education (CE) hours for one renewal cycle as specified in Section 1249.220. Acceptable proof of completion shall be in the form of certificates of attendance provided by approved sponsors of CE programs; and
 - 3) One of the following:
 - A) Sworn evidence of active practice in another jurisdiction. The evidence shall include a statement from the appropriate board or licensing authority in the other jurisdiction that the licensee was authorized to practice during the term of the active practice or, if the profession is not licensed in the other jurisdiction, a statement from the licensee's employer;
 - B) Sworn statement that the license expired or was placed on inactive status while the licensee was engaged in federal service on active duty with the Army of the United States, the United States Navy, the Marine Corps, the Air Force, the Coast Guard, or the State Militia called into the service or training of the United States of America and that the sworn statement is received by the Division within 2 years after the licensee's termination of service other than by dishonorable discharge;
 - C) Sworn statement that the license expired or was placed on inactive status while the licensee was training or being educated under the supervision of the United States prior to induction into the military service and that the sworn statement is received by the Division within 2 years after the licensee's completion of the training or education or termination of training or education other than by dishonorable discharge; or
 - D) Evidence of passage of the exam specified in Section 1249.210 or of other education or experience acceptable to the Division of the licensee's fitness to have the license restored.
- b) A licensee seeking restoration of a license that has expired or been on inactive status for less than 5 years, or has been placed in nonrenewed status for failure to

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

comply with CE requirements, shall file an application on forms provided by the Division, together with the following:

- 1) The restoration fees specified in Section 1249.20(d)(1). When restoring a license from inactive status, a person is required to pay the current renewal fee set forth in Section 1249.20; and
 - 2) Proof of completion of the required number of CE hours for one renewal cycle as specified in Section 1249.220. Acceptable proof of completion shall be in the form of certificates of attendance provided by approved sponsors of CE programs.
- c) Any person seeking restoration of a license within 2 years after discharge from military service other than by dishonorable discharge will be required to pay only the current renewal fee and will not be required to submit proof of meeting the CE requirements.
- d) When the accuracy of any submitted documentation, or the relevance or sufficiency of the course work or experience, is questioned by the Division because of lack of information, discrepancies, or conflicts in information given, or a need for clarification, the licensee seeking restoration of a license will be requested to:
- 1) Provide information as may be necessary; and/or
 - 2) Appear for an interview before the Division to explain the relevance or sufficiency, clarify information, or clear up any discrepancies or conflicts in information.

Section 1249.60 Cemetery Records and the Cemetery Oversight Database

- a) Each cemetery authority not fully exempt under the Act shall answer all questions when prompted by the Database, including information regarding:
- 1) The section, mausoleum or columbarium;
 - 2) The block, wall or room;
 - 3) The lot or row;

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

- 4) The plot, crypt or niche;
 - 5) The term of burial in years, if any;
 - 6) The level or depth in the grave, crypt or niche, if applicable; and
 - 7) The year of interment, inurnment or entombment, as the case may be.
- b) A cemetery authority may only renumber or rename sections, blocks, lots, mausoleums, columbariums or any other sub-category of these areas in its internal recordkeeping system as long as the renumbering:
- 1) Preserves any existing rights to interment, inurnment or entombment; and
 - 2) Does not affect the ability of the cemetery authority, Division or member of the public to locate remains or to find the location of interment, inurnment or entombment rights.
- c) When real-time access to the Database through an Internet connection becomes unavailable due to technical problems with the Database incurred by the database provider, the cemetery manager shall cause a record of the interment, entombment or inurnment to be entered into the Database via telephone by contacting the Database provider. Inability to access the database does not relieve the cemetery authority of the duty to report through other means as provided for by the Database provider or the Division.
- d) When a cemetery manager claims obtaining use of an Internet connection would be an undue hardship, the cemetery manager shall provide a written statement to the Secretary describing the reason for the hardship and requesting the use of an alternative mechanism to report interments, entombments or inurnments. The cemetery manager's written request shall be reviewed by the Secretary and the Secretary may approve or deny the request for an alternative mechanism. If any entries by the cemetery manager are required by the Act before the cemetery manager receives notice of the Secretary's decision regarding the request, the cemetery manager may cause the required record of the interment, entombment or inurnment to be entered into the Database via telephone by contacting the Database provider.

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

- e) Every entry into the Database shall be accompanied by a fee to be determined by and paid to the Database provider.

Section 1249.70 Granting Variances

The Secretary may grant variances from this Part in individual cases when he/she finds that:

- a) The provision from which the variance is granted is not statutorily mandated;
- b) No party will be injured by the granting of the variance; and
- c) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

SUBPART B: CEMETERY AUTHORITIES AND ASSOCIATIONS

Section 1249.100 Application for Full Exempt Status

Applicants for full exemption from licensure as a cemetery authority shall submit:

- a) The applicable fee in Section 1249.20.
- b) A fully completed application, on forms supplied by the Division and signed by the applicant, on which all questions have been answered, including:
 - 1) The cemetery's name, street and city address, and telephone number;
 - 2) The cemetery owner's name, home address, and home telephone number or, if the applicant is a corporation, limited liability company, partnership, or other entity permitted by law, then the name and contact information for each principal, owner, member, officer, and shareholder holding 25% or more of corporate stock;
 - 3) Whether the cemetery falls under the exemption defined in Section 5-20(a)(1) of the Act;
 - 4) Whether the cemetery maintains care funds;
 - 5) The size of the cemetery land in acres;

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

- 6) Whether the cemetery has engaged in any interments, inurnments or entombments within the 10 years preceding the date of application; and
- 7) Any other information that the Division requests.

Section 1249.110 Application for Partial Exempt Status

Applicants for partial exemption from licensure as a cemetery authority shall submit:

- a) The applicable fee in Section 1249.20.
- b) A fully completed application, on forms supplied by the Division and signed by the applicant, on which all questions have been answered, including:
 - 1) The cemetery's name, street and city address, and telephone number;
 - 2) The cemetery owner's name, home address, and home telephone number or, if the applicant is a corporation, limited liability company, partnership, or other entity permitted by law, then the name and contact information for each principal, owner, member, officer, and shareholder holding 25% or more of corporate stock;
 - 3) Whether the cemetery is a public or religious cemetery. Under Section 5-15 of the Act, a religious cemetery that is eligible to apply for partial exempt status is a cemetery owned, operated, controlled or managed by any recognized church, religious society, association or denomination, or by any cemetery authority or any corporation administering, or through which are administered, the temporalities of any recognized church, religious society, association or denomination. A religious society or association includes a not-for-profit entity formed for a religious purpose;
 - 4) Whether the cemetery maintains care funds;
 - 5) The number of interments, inurnments and entombments at the cemetery for each of the two preceding calendar years; and
 - 6) Any other information that the Division requests.

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

Section 1249.120 Application for Licensure as a Cemetery Authority Not Maintaining a Full or Partial Exemption

- a) Applicants for licensure as a cemetery authority not maintaining a full or partial exemption shall submit:
 - 1) A fully completed application, provided by the Division and signed by the applicant, on which all questions have been answered, including:
 - A) The cemetery's name, address, and telephone number; and
 - B) The cemetery owner's name, home address, and home telephone number or, if the applicant is a corporation, limited liability company, partnership, or other entity permitted by law, then the name and contact information for each principal, owner, member, officer and shareholder holding 25% or more of corporate stock;
 - 2) The applicable fee in Section 1249.20;
 - 3) Proof of any required care fund security and/or liability security under Section 1249.130;
 - 4) Proof that the applicant is of good moral character under Section 10-21(a) of the Act. Proof may be an indication on the application that the applicant has not engaged in any conduct or activities that would constitute grounds for discipline under Section 25-10 of the Act. Applicants who answer affirmatively to any question on the personal history portion of the application or who have engaged in activities that would constitute grounds for discipline shall be forwarded to the Enforcement Division of the Division of Professional Regulation for further investigation and action as provided in Article 25 of the Act;
 - 5) Documentation of sufficient financial resources as required by Section 1249.170;
 - 6) If a partnership, a copy of the partnership agreement or, if no agreement exists, a list of partners and each partner's ownership interests; if a corporation, a copy of the Articles of Incorporation as filed with the Illinois Secretary of State; or, if another entity permitted by law, a copy of

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

the relevant document creating the entity; and

- 7) Any other information required by the Division.
- b) Applications for licensure by newly organized cemetery authorities maintaining care funds as of the effective date of this Part shall also be accompanied by evidence of a minimum care fund deposit in an amount of \$2500 per developed acre. A developed acre is any land that is used or offered for use in the cemetery as a burial section, approach area, road, detention or retention pond, and land under any buildings including offices, garages, mausoleums, columbariums, funeral space, crematories and the like. After an amount equal to and in addition to the required minimum care fund deposit has been deposited in trust, the cemetery authority may withhold 50% of all future care funds until it has recovered the amount of the minimum care fund deposit.
- c) Licensure Requirements for Multiple Locations. When a cemetery authority is applying for licensure at more than one location, for each additional location, the cemetery authority shall provide an application fee in accordance with Section 1249.20 and contact information for that separate physical location. If separate care funds, bank accounts, records, or any other applicable information are available for the separate location, then the cemetery shall submit that information as required on the application form. No duplicative information regarding the cemetery authority needs to be included for each additional location.

Section 1249.130 Bond, Letter of Credit, Self-Insurance and Liability Insurance Requirement.

- a) Each cemetery authority that does not claim a full or partial exemption and maintains care funds shall provide care fund security in the form of a fidelity bond, proof of self-insurance, or letter of credit of an amount at least equal to 10% of the value of the care funds for the cemetery for which licensure is being sought, unless the Division waives the requirement pursuant to Section 10-20(b) of the Act. The bond, letter of credit, or proof of self-insurance shall not be in an amount less than \$1,000; the first \$15,000 of the care funds shall not be considered in computing the amount of the bond, letter of credit, or self-insurance. A licensee may aggregate the forms of care fund security to meet the requirements that are provided in this subsection.
- b) A cemetery authority claiming exemption from providing the care fund security

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

pursuant to Section 10-20(b) of the Act shall provide a sworn statement attesting to possession of the care funds from the entity authorized to do a trust business under the Corporate Fiduciary Act [205 ILCS 620] or the investment company holding the care funds. If care funds are invested with an investment company or trust business after the care fund security has been obtained and submitted to the Division, all the care fund securities covering the amounts transferred to a investment company or trust business may be returned to the cemetery authority or cancelled after 60 days notice to the Division, which shall include the sworn statement required by this subsection.

- c) In addition to the required care fund security, each cemetery authority that does not claim a full or partial exemption as defined in the Act shall provide proof of liability security for claims against it based upon acts, errors or omissions. The liability security shall have a total amount of coverage not less than \$100,000 during the reporting period. A licensee may aggregate the forms of liability security to meet the requirements that are provided in this subsection.
- d) Any cemetery authority that seeks approval as a self-insurer in order to fulfill obligations under the Act, whether self-insurance is used independently or as a means of aggregating the requisite level of protection, shall include in its licensure application a current financial statement. In order to qualify as a self-insurer, the cemetery authority must show in its application and future annual reports that it has, at all times while self-insured, capital reserves in excess of all other reserves and other liabilities at least in the amount required in subsection (c). The self-insurance shall be evidenced by a statement specifically setting forth the liabilities and responsibilities of the company in accordance with this Part.
- e) All records or a copy of the records regarding the securities described in this Section must be located in Illinois.

Section 1249.140 Change of Ownership

- a) When the business changes ownership, a new application shall be filed with the Division in accordance with Section 1249.100, 1249.110, or 1249.120.
- b) Change of ownership is defined as, but not limited to:
 - 1) Whenever a person comes to obtain 51% ownership of the cemetery authority after initial licensure; or

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

- 2) Change in the legal form under which the controlling entity is organized.
- c) When the federal government, the State of Illinois, or any county, city, village, incorporated town, township, multi-township, public cemetery district, or other municipal or political subdivision or instrumentality takes over a cemetery or cemetery authority, the care fund and care fund expenditures continue to be subject to the provisions of the Act, and the care funds must be exclusively used for the care and maintenance of the cemetery in accordance with the Act.

Section 1249.150 Cemetery Association Vacancies

- a) If the remaining trustees in a cemetery association are unable to nominate a trustee from the county where the cemetery is located, the President of the cemetery association shall notify the Division in writing of the vacancy within the cemetery association no later than 30 days after the vacancy occurs.
- b) The Division shall fill the vacancy by appointing a suitable person to fill the vacancy. The appointment must cause the resulting cemetery association to meet the following requirements:
 - 1) At least two-thirds of the trustees of the cemetery association shall reside within 15 miles of the cemetery.
 - 2) The remaining trustees of the cemetery association must either have an interest in the cemetery association through interments, inurnments or entombments of family members in that cemetery or be residents of the State of Illinois.

Section 1249.160 Trust Funds

A licensed cemetery authority may continue to be the trustee of up to \$500,000 of care funds that have been deposited into its trust fund, but the cemetery authority must retain an independent trustee for any amount of care funds held in trust in excess of that \$500,000. All records or a copy of the records regarding the trust funds described in this Section must be located in Illinois.

Section 1249.170 Sufficient Financial Resources

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

In determining whether an applicant or licensed cemetery authority has sufficient financial resources to operate as a cemetery, the Division may consider factors including, but not limited to, the following:

- a) Whether the applicant or licensed cemetery authority has liabilities greater than the assets available;
- b) Whether the applicant or licensed cemetery authority has been found to have provided inadequate care and maintenance of a cemetery;
- c) Whether the applicant or licensed cemetery authority has demonstrated that it is likely to be unable to care for the cemetery in the near future, based on the current economic condition of the cemetery; and/or
- d) The degree to which the applicant or licensed cemetery authority provides for the maintenance and preservation of the common grounds and structures.

Section 1249.180 Signage and Consumer Brochure

- a) Every licensed cemetery authority and cemetery authority maintaining a partial exemption must conspicuously post the sign required by Section 20-30 of the Act and provided by the Division (contains the Division's consumer hotline number, information on how to file a complaint, and any other information the Division deems appropriate). The sign shall be posted in each office where the cemetery authority conducts business with consumers and in each office where the cemetery authority makes contact with the public. If transactions with consumers or contact with the public occurs in a residence or office that is used primarily for business unrelated to the death care industry, the sign must be in clear view of the cemetery consumer or member of the public when that individual is present. The sign will be available to download on the Division's website and must be printed by the cemetery authority in color.
- b) Every licensed cemetery authority and cemetery authority maintaining a partial exemption must make available for potential consumers and visitors of the cemetery the consumer brochure provided by the Division that contains the Division's consumer hotline number, information on how to file a complaint, and any other information the Division deems appropriate. The brochure will be available to download on the Division's website.

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

SUBPART C: CEMETERY MANAGERS, CUSTOMER SERVICE EMPLOYEES AND WORKERS

Section 1249.200 Application

An applicant for licensure as a cemetery manager or customer service employee under the Act shall file a completed application, on forms supplied by the Division, with the applicable fee from Section 1249.20. The application shall include the following:

- a) Social Security Number;
- b) Address of residence;
- c) Proof of successful completion of high school. Proof of successful completion of the General Education Development (GED) tests, or possession of a High School Equivalency Diploma (HSED) shall be considered the equivalent of a High School Diploma;
- d) Proof of successful completion of the examination authorized by the Division for cemetery manager;
- e) One of the following:
 - 1) Verification of electronic fingerprint processing from the Illinois Department of State Police or one of the Illinois State Police approved vendors. Applicants shall contact one of the approved vendors for fingerprint processing;
 - 2) Out-of-state residents unable to utilize the Illinois State Police fingerprint process may submit to one of the Illinois State Police approved vendors one fingerprint card issued by the Illinois State Police, accompanied by the fee specified by the vendor;
 - 3) Verification, on forms provided by the Division, of proof of retirement as a peace officer within 12 months prior to application in lieu of fingerprints. A peace officer is defined as any person who, by virtue of his/her office or public employment, is vested by law with a primary duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; officers, agents or

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

employees of the federal government commissioned by federal statute to make arrests for violations of federal criminal laws shall be considered peace officers. The verification shall be signed by the applicant's employer; or

- 4) A signed fingerprint waiver form provided by the Division; and
- f) Any other information required by the Division.

Section 1249.210 Examination

- a) The examination for licensure as a cemetery manager or customer service employee shall be developed and administered by a testing vendor designated by the Division.
- b) Applicants must personally take and pass a written examination authorized by the Division as sufficient to demonstrate the applicant's knowledge of cemetery management or cemetery customer service practices.
- c) The Division shall receive verification of the successful completion of the examination. The passing score shall be the passing score established by the testing vendor. Verification shall be received directly from the testing vendor.
- d) An examination fee shall be paid by the applicant to the designated testing service for each examination or any part retaken.
- e) The provisions of this Section shall apply to all applicants upon adoption without regard to where an applicant is in the application process.

Section 1249.220 Continuing Education

- a) Continuing Education Hour Requirements
 - 1) Every cemetery manager renewal applicant shall complete the following hours of continuing education (CE) relevant to the practice of managing a cemetery:
 - A) If working at a cemetery deemed by the Division as falling under Section 1249.20(b)(1)(A) or (B) on its application or under Section

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

1249.20(c)(3)(A) or (B) on its last renewal, whichever was more recent, then 6 hours during the first 2 renewal cycles and 4 hours for each renewal cycle thereafter;

- B) If working at a cemetery deemed by the Division as falling under Section 1249.20(b)(1)(C) on its application or under Section 1249.20(c)(3)(C) on its last renewal, whichever was more recent, then 8 hours during first 2 renewal cycles and 6 hours thereafter;
 - C) If working at a cemetery deemed by the Division as falling under Section 1249.20(b)(1)(D) on its application or under Section 1249.20(c)(3)(D) on its last renewal, whichever was more recent, then 10 hours during first 2 renewal cycles and 8 hours thereafter; and
 - D) If working at a cemetery deemed by the Division as falling under Section 1249.20(b)(1)(E) on its application or under Section 1249.20(c)(3)(E) on its last renewal, whichever was more recent, then 12 hours during first 2 renewal cycles and 10 hours thereafter.
- 2) Every customer service employee renewal applicant shall complete the following hours of (CE) relevant to the practice of providing customer service at a cemetery:
- A) If working at a cemetery deemed by the Division as falling under Section 1249.20(b)(1)(A) or (B) on its application or under Section 1249.20(c)(3)(A) or (B) on its last renewal, whichever was more recent, then 4 hours during first 2 renewal cycles and 2 hours for each renewal cycle thereafter;
 - B) If working at a cemetery deemed by the Division as falling under Section 1249.20(b)(1)(C) on its application or under Section 1249.20(c)(3)(C) on its last renewal, whichever was more recent, then 6 hours during first 2 renewal cycles and 4 hours thereafter;
 - C) If working at a cemetery deemed by the Division as falling under Section 1249.20(b)(1)(D) on its application or under Section 1249.20(c)(3)(D) on its last renewal, whichever was more recent, then 8 hours during first 2 renewal cycles and 6 hours thereafter;

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

and

- D) If working at a cemetery deemed by the Division as falling under Section 1249.20(b)(1)(E) on its application or under Section 1249.20(c)(3)(E) on its last renewal, whichever was more recent, then 10 hours during first 2 renewal cycles and 8 hours thereafter.
 - 3) The Division shall conduct random audits to verify compliance with this Section.
 - 4) Cemetery managers and customer service employees licensed in Illinois but residing and practicing in other states must comply with the CE requirements set forth in this Section unless the license is placed on inactive status under Section 1249.40.
- b) CE credit may be earned as follows:
- 1) Verified attendance at or participation in a program given by a sponsor as set forth in subsection (c)(1).
 - 2) For a maximum of half of the required CE hours per renewal cycle:
 - A) Personal preparation of an educational presentation pertaining to cemetery management and/or the practice of providing customer service at a cemetery that is orally delivered before a recognized professional cemetery organization;
 - B) Writing of educational articles pertaining to cemetery management and/or the practice of providing customer service at a cemetery and having them published in recognized cemetery industry journals, trade publications, newsletters, or other publications approved by the Division;
 - C) Completion of self-study courses taken through an accredited college or university or an approved sponsor. Self-study courses designed for CE credit must include an examination that tests the skills of the licensee and is of sufficient depth that answers are not readily apparent and have not been provided to the licensee. Sponsors have the obligation to craft examinations in ways to

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

prevent candidates from obtaining unearned credit; and/or

- D) A licensee who serves as an instructor, speaker or discussion leader of an approved course will be allowed CE course credit for actual presentation time, plus actual preparation time of up to 2 hours for each hour of presentation. Preparation time shall not be allowed for repetitious presentations of the same course and will only be allowed for additional study or research.
 - 3) The CE hours used to satisfy the CE requirements for renewal of an applicable license held in another jurisdiction shall be applied to fulfillment of the CE requirements for renewal of the applicant's Illinois license, upon approval by the Division.
 - 4) A CE hour means a minimum of 50 minutes of actual continuing education spent by a licensee in actual attendance at and completion of an approved CE activity. A CE program shall not be presented during a dinner or social function. The dinner or social function must be concluded before the CE program commences or be held after the CE program is completed. If the program involves one or more hours of education, credit may be issued in one-half hour increments.
 - 5) Credit will not be given for activities that are not included in this subsection (b).
- c) CE Sponsors and Programs
- 1) Sponsor, as used in this Section, shall mean any school, college or university, State agency or any other person, firm or association that has been approved and authorized by the Division to coordinate and present CE courses and programs in conjunction with this Section.
 - 2) A sponsor shall file a sponsor application that certifies the following:
 - A) That all courses and programs offered by the sponsor for CE credit will comply with the criteria in subsection (c)(3) and all other criteria in this Section;
 - B) That the sponsor will be responsible for verifying attendance at

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

each course or program and will provide a certificate of completion as set forth in subsection (c)(5); and

- C) That, upon request by the Division, the sponsor will submit evidence necessary to establish compliance with this Section. The evidence shall be required when the Division has reason to believe that there is not full compliance with the Code and this Part and that this information is necessary to ensure compliance.
- 3) All courses and programs shall:
- A) Contain materials that contribute to the advancement, extension and enhancement of professional skills and knowledge in the practice of cemetery management and/or providing customer service at a cemetery. The course content shall be designed to focus on such advancement and enhancement of professional skills and knowledge;
 - B) Specify the course objectives, course content and teaching methods;
 - C) Be developed and presented by persons with education and/or experience in the subject matter of the program;
 - D) Specify the number of CE hours that may be applied to fulfilling the Illinois CE requirements for license renewal; and
 - E) Include some mechanism through which participants evaluate the overall quality and content of the program.
- 4) All programs given by sponsors should be open to all licensees and not be limited to the members of a single organization or group.
- 5) Certificate of Attendance or Participation. It shall be the responsibility of the sponsor to provide each participant in an approved program or course with a certificate of attendance or participation that shall contain the following information:
- A) The name and address of the sponsor;

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

- B) The name and license number of the participant;
 - C) A brief statement of the subject matter;
 - D) The number of CE hours awarded in each program;
 - E) The date and place of the program; and
 - F) The signature of the sponsor.
- 6) The certificate of attendance shall be distributed following the educational program or otherwise be provided to the attendee by the sponsor, by such means as mailing the certificate or summary of attendance.
 - 7) The sponsor shall maintain course materials and attendance records containing all information in subsection (c)(5) for not less than 5 years, except for the signature of the sponsor.
 - 8) The sponsor shall be responsible for assuring that no participant shall receive CE credit for time not actually spent attending the program.
 - 9) If it is determined after a hearing before the Division that a sponsor has failed to comply with the foregoing requirements, the Division shall thereafter refuse to accept for CE credit attendance at any of the sponsor's CE activities until such time as the Division receives assurances of compliance with this Section.
 - 10) Notwithstanding any other provision of this Section, the Division may evaluate any sponsor of any CE program at any time.
 - 11) The Division shall maintain a list of all approved CE sponsors.
- d) Certification of Compliance with CE Requirements
- 1) Each renewal applicant shall certify, on the renewal application, full compliance with the CE requirements set forth in subsection (a).
 - 2) The Division may require additional evidence demonstrating compliance

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

with the CE requirements. It is the responsibility of each renewal applicant to retain or otherwise produce evidence of compliance. The additional evidence will be required for the Division's random audit described in subsection (a)(3) of this Section.

e) Waiver of CE Requirements

- 1) Any renewal applicant seeking renewal of a license without having fully complied with these CE requirements shall file with the Division a renewal application, the required renewal fee, a statement setting forth the facts concerning the non-compliance, and a request for waiver of the CE requirements on the basis of the facts. If the Division finds from the affidavit or from any other evidence submitted that extreme hardship has been shown, the Division shall waive enforcement of CE requirements for that renewal cycle.
- 2) Extreme hardship shall be determined on an individual basis by the Division and be defined as an inability to devote sufficient hours to fulfilling the CE requirements during the applicable renewal cycle because of:
 - A) Full-time service in the Armed Forces of the United States during a substantial part of the renewal cycle;
 - B) An incapacitating illness, documented by a currently licensed physician;
 - C) A physical inability to travel to the sites of approved programs documented by a currently licensed physician; or
 - D) Other similar extenuating circumstances (i.e., family illness, prolonged hospitalization or advanced age).
- 3) Any renewal applicant who, prior to the expiration date of the license, submits a request for a waiver pursuant to the provisions of this subsection (e) shall be deemed to be in good standing until the Division's final decision on the application has been made.
- 4) Any applicant who submits a request for waiver that is denied may then

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

request his or her license be placed on inactive status. The applicant shall comply with the CE requirements prior to restoration of the license from inactive status in accordance with Section 1249.50 of this Part.

Section 1249.230 Cemetery Worker's Statement

Each cemetery authority shall collect a worker's statement from each cemetery worker as required by Section 10-22 of the Act. On receipt of the worker's statement by the Division, the Division shall send an acknowledgement to the cemetery authority and a copy to the cemetery worker. As with any other correspondence, a cemetery authority must maintain the acknowledgement in the worker's file. If a cemetery worker tenders a copy of an acknowledgement and the worker's statement to a cemetery authority, the cemetery authority is not required to provide the worker's statement to the Division. Only one statement per cemetery worker shall be submitted to the Division by the first cemetery authority that employs or contracts with the cemetery worker.

SUBPART D: CEMETERY STANDARDS

Section 1249.300 Code of Professional Conduct and Ethics

Licensees shall:

- a) Refrain from committing any action that would violate Section 25-10 of the Act;
- b) Be aware of applicable federal and State laws and regulations, adhere to those laws and regulations, and be able to explain them to families in an understandable manner;
- c) Treat all deceased persons with proper care and dignity, honoring their religious, ethnic and personal beliefs;
- d) Protect all confidential information;
- e) Carry out all aspects of service in a competent and respectful manner;
- f) Fulfill all written and verbal agreements and contracts;
- g) Provide honest, factual and complete information regarding all aspects of the services offered and provided;

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

- h) Not engage in advertising that is false, misleading or otherwise prohibited by law;
- i) Not discriminate against any person because of race, creed, marital status, sex, national origin, sexual orientation, or color. A cemetery authority operating any cemetery may designate parts of cemeteries or burial grounds for the specific use of persons whose religious code requires isolation;
- j) To have clear and specific cemetery rules and regulations, subject to other applicable law, including the Act and this Part and to apply them equally to all families served;
- k) Report all violations of the Act and this Part to the Division.

Section 1249.310 Care and Maintenance Standards

Section 20-5(a) of the Act requires cemetery authorities to provide reasonable maintenance of the cemetery. When determining what constitutes reasonable maintenance, the Division shall take into consideration the size and financial resources of the cemetery and the care and maintenance standards of the locality in which the cemetery exists. In accordance with Section 1249.420 of this Part, cemetery authorities shall have an opportunity to cure any violations of the care and maintenance standards required by the Act.

Section 1249.320 Maps and Plats

- a) The overall map of the cemetery must delineate all lots or plots, blocks, sections, avenues, walks, alleys and paths and their respective designations. The map must be filed at the cemetery's on site office or, if it does not maintain an on site office, at its principal place of business. A cemetery manager's certificate, which shall be kept with the map, shall be a signed and dated statement acknowledging, accepting and adopting the map. The map must be legible and accurate. If the map does not meet these requirements, the Division may order a cemetery authority to create a new map.
- b) When ordering a new plat, which must comply with the Illinois Professional Land Surveyor Act of 1989, the Division shall consider whether the cemetery authority would experience an undue hardship, as a result of obtaining a new plat, that would cause extreme financial hardship or cemetery abandonment. Extreme financial hardship may include falling below the minimal requirements for

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

maintaining sufficient financial resources under Section 1249.170.

Section 1249.330 Professional Standards

- a) Dishonorable, Unethical or Unprofessional Conduct
 - 1) In determining what constitutes dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public, the Division shall consider whether the questioned activities:
 - A) Violate ethical standards of the profession, including the standards set by the Code of Professional Conduct and Ethics found in Section 1249.300 of this Part;
 - B) Caused actual harm to any consumer or member of the public; or
 - C) Are reasonably likely to cause harm to any consumer or member of the public in the future.
 - 2) Dishonorable, unethical or unprofessional conduct includes, but is not limited to:
 - A) Disclosing financial or other confidential information regarding the deceased or the person providing for the burial;
 - B) Discrimination based on race, color, sex, sexual orientation, age, religion, national origin, or other characteristics protected by applicable laws.
 - C) Intentionally or recklessly not providing adequate protection in upholding the sanctity of handling and disposition of human remains;
 - D) Intentionally or recklessly misrepresenting any laws concerning burial or funeral regulations; and
 - E) Defrauding or deceiving the consumer by misrepresenting goods or services sold.

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

- b) Professional Incompetence
 - 1) In determining what constitutes professional incompetence, the Division shall consider whether the questioned activities:
 - A) Violate standards of the profession or rules, regulations or laws governing the cemetery or profession;
 - B) Caused actual harm to any consumer or member of the public; or
 - C) Are reasonably likely to cause harm to any consumer or member of the public in the future.
 - 2) Professional incompetence includes, but is not limited to:
 - A) Negligent failure to keep accurate and complete records, including failure to include all prices or goods/services in the contract or failure to give a receipt for full or partial payment;
 - B) Negligently misrepresenting rules, regulations or laws governing the cemetery or profession; or
 - C) Negligently misrepresenting goods or services sold.

SUBPART E: ENFORCEMENT AND DISCIPLINARY PROCEEDINGS

Section 1249.400 Mediation of Complaints against Cemetery Authorities Maintaining a Partial Exemption

- a) After the Division receives a complaint against a cemetery authority maintaining a partial exemption and determines the complaint has a reasonable basis, the Division shall inform the cemetery authority of the complaint in writing.
- b) Within 30 days after receiving a written notice of complaint from the Division, the cemetery authority shall tender a written response to the complainant. A copy of the written response shall also be delivered to the Division. If the complaint involved an alleged violation of Section 20-5 of the Act, the 30 day period for written response shall include the opportunity to cure the violation under Section 1249.420.

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

- c) If the cemetery authority claims the complaint is resolved or the alleged violation of Section 20-5 of the Act has been cured following the delivery of the written response, the Division shall verify the resolution. If the written response fails to resolve the complaint, the Division shall attempt to resolve the complaint telephonically with the parties involved.
- d) If the complaint is not resolved telephonically, a representative of the cemetery authority and the complainant shall make themselves available for face-to-face mediation. A Division representative appointed by the Secretary shall act as the mediator according to accepted standards of alternative dispute resolution. The fee for the mediation specified in Section 1249.20(e) shall be paid for by the cemetery authority if the mediator determines that the complaint is not frivolous. The cost of mediation of complaints deem frivolous by the Division shall be borne by the Division.

Section 1249.410 Violation Citations

- a) In lieu of the disciplinary procedures contained in Section 25-10 of the Act, the Division may dispose of any violation designated in this Section by issuing a citation to the subject within six months after the Division receives notice of the violation.
- b) The following are violations that may result in a monetary penalty through the citation process:
 - 1) Failure to notify the Division within 14 days after any change of address in accordance with Section 5-15 of the Act;
 - 2) Failure to maintain the cemetery in accordance with Section 20-5 of the Act;
 - 3) Failure to comply with the vehicle traffic control procedures under Section 20-8 of the Act;
 - 4) Failure to display a license in violation of Section 20-20 of the Act; or
 - 5) Failure of a licensee to respond to a written request within 10 days in violation of Section 25-10(a)(8) of the Act.

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

Section 1249.420 Opportunity to Cure Violation

- a) A cemetery authority accused of violating Section 20-5 of the Act shall have a reasonable opportunity to cure the violation. The cemetery authority shall have 10 business days from receipt of notice to cure the violation.
- b) If a cemetery authority cannot cure the violation in the time allotted by subsection (a), the cemetery authority may request a time extension in order to cure the violation. The request for an extension shall be made in writing to the Division and must be postmarked within the time allotted to cure in subsection (a). The request shall outline all reasons for the extension and an estimated date by which the cure will be accomplished. The Division may approve or deny the extension. If the extension is denied, the cemetery authority must cure the violation within the time allotted by subsection (a) from the date of receipt of the Division’s extension denial.

Section 1249.430 Cemetery Audits and Examinations

- a) The cost of cemetery examination shall be borne by the cemetery authority as required by Section 15-40(a) of the Act. The charge made by the Division for the cemetery examination shall be based upon the total amount of care funds held by the cemetery authority as of the end of the calendar year for which a report is required by Section 20-25 of the Act and shall be in accordance with the following schedule:

less than \$10,000.....	no charge
\$10,000 or more but less than \$25,000.....	\$25
\$25,000 or more but less than 50,000.....	\$50
\$50,000 or more but less than \$100,000.....	\$75
\$100,000 or more but less than \$250,000.....	\$100
\$250,000 or more but less than \$500,000.....	\$150
\$500,000 or more but less than \$1,000,000.....	\$175
\$1,000,000 or more but less than \$5,000,000.....	\$200
\$5,000,000 or more but less than \$10,000,000.....	\$250
\$10,000,000 or more but less than \$25,000,000.....	\$300
\$25,000,000 or more.....	\$350

- b) Prior to ordering an additional audit or examination under Section 15-40(b) of the

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

Act, the Division shall request the licensed cemetery authority to respond and comment upon the factors identified by the Division as warranting the subsequent examination or audit. The licensee shall have 30 days to provide a response to the Division. If the Division decides to proceed with the additional examination or audit, the licensee shall bear the full cost of that examination or audit, up to a maximum of \$7,500. The Division may elect to pay for the examination or audit and receive reimbursement from the licensee. Payment of the costs of the examination or audit by a licensee shall be a condition of receiving or maintaining a license under this Act.

Section 1249.440 Annual Reports

- a) Every licensed cemetery authority shall prepare a written report as provided for in Section 20-25 of the Act showing:
 - 1) The amount of the principal of the care funds held in trust by the care funds trustee at the beginning of the reporting period, and all moneys or property received during the reporting period: through the sale of a lot, grave, crypt or niche; under the terms of the contract authorized by the Act; as a gift, grant, legacy, payment or other contribution made either prior to or subsequent to March 1, 2010; and under any contract or conveyance made prior to or subsequent to March 1, 2010;
 - 2) The securities in which the care funds are invested and the cash on hand as of the date of the report;
 - 3) The income received from the care funds during the reporting period;
 - 4) The expenditures made during the reporting period from received income; and
 - 5) The number of interments, entombments and inurnments made during the reporting period.
- b) When any of the care funds of a licensee are held by an independent trustee, the report filed by the licensee shall contain a certificate signed by the care funds trustee certifying the truthfulness of the statements in the report as to:
 - 1) The total amount of principal of the care funds held by the trustee;

ILLINOIS REGISTER

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

- 2) The securities in which the care funds are invested and the cash on hand as of the date of the report; and
- 3) The income received from the care funds during the reporting period.
- c) Annual reports must be received by the Division on or before April 15 of each year. The Division may grant extensions for the filing of the annual report upon the reasonable written request of the licensee. A request for an extension must be delivered to the Division by April 1. If the Division denies the extension request, the licensee shall have 2 weeks from the date of notice of denial to tender the annual report.
- d) The Division shall issue a fine of \$25 per day for each day beyond April 15 that the report is not filed. Any fine imposed for a failure to submit a timely report shall be paid within 60 days after the effective date of the order imposing the fine, unless the time is extended, the fine is reduced, or the fine is otherwise waived at the discretion of the Division.
- e) The annual report shall be made under oath and shall be in the form furnished by the Division. Each report shall be accompanied by a check or money order in the amount of \$25, payable to the Illinois Department of Financial and Professional Regulation, or by credit card if the report is submitted to the Department through its electronic filing system.
- f) If any annual report shows that the amount of the care funds held in trust at the end of the reporting period has increased over the amount in the preceding annual report, then the care fund security that is designated by the Act for the benefit of the care funds shall be increased to the amount required by Section 1249.130. The increased care fund security shall accompany the report. Each annual report shall also provide the liability security required by the Act. No report shall be accepted by the Division unless accompanied by the proof of care fund and liability security required by Section 10-20(b) of the Act, except when the filing of the care fund security is excused by the Division pursuant to Section 10-20(b) of the Act and Section 1249.130.

Section 1249.450 Receivership

- a) When a cemetery authority is suspended or revoked, an unlicensed person has

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

NOTICE OF PROPOSED RULES

conducted activities requiring cemetery authority licensure under the Act, or the cemetery authority is winding up the business for dissolution, the Division, through the Attorney General, may petition the circuit courts of this State for appointment of a receiver to administer the care funds of the licensee or unlicensed person or to operate the cemetery. The Director shall appoint a receiver who shall, under the Director's direction, for the purpose of receivership, take possession of and title to the books, records and assets of the cemetery authority. The Director shall require of the receiver such security as he or she deems proper. The receiver may operate the cemetery until the Director determines that the business is dissolved or possession should be restored to the licensee.

- b) In the case of dissolution, upon the order of a circuit court, the receiver may sell or compound any bad or doubtful debt and may sell the personal property of the cemetery on terms approved by the court. The receiver shall succeed to whatever rights or remedies the unsecured creditors of the cemetery may have against the owners, operators, stockholders, directors, members, managers or officers arising out of their claims against the cemetery. Nothing shall prevent creditors from filing their claims in the liquidation proceeding.
- c) All expenses of the receivership, including reasonable receiver's and attorney's fees approved by the Director, and all expenses of any preliminary or other examinations into the condition of the cemetery or receivership, and all expenses incident to the possession and control of any property or records of the cemetery incurred by the Division shall be paid out of the assets of the cemetery. The foregoing expenses shall be paid prior to and ahead of all claims.

Section 1249.460 Grants under Cemetery Relief Fund

Units of local government and not-for-profit organizations, including, but not limited to, not-for-profit cemetery authorities, may apply to the Division on forms provided by the Division for grants to clean up cemeteries that have been abandoned or neglected or that are otherwise in need of additional care.

Section 1249.470 Claim Procedure for Liability Security

Any party entitled to compensation may: for liability insurance, use the appropriate forms provided by the insurer; for letter of credit, use the appropriate method for compensation by the issuer; and, for self-insurance, receive compensation directly from the cemetery authority.