

# **GUIDELINES FOR OREGON CEMETERIES**

## **Complying with Oregon Laws & Rules**

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## **MISSION**

The mission of the Board is to protect public health, safety and welfare by fairly and efficiently performing its licensing, inspection and enforcement duties; by promoting professional behavior and standards in all facets of the Oregon death care industry; and, by maintaining constructive relationships with licensees, those they serve and others with an interest in the Board's activities.

## **HISTORY OF CEMETERY CERTIFICATION / LICENSURE**

In October of 1984, Lincoln City funeral director Dale Omsberg was discovered to have grossly neglected and horribly abused a large number of human remains. During the course of investigating the Omsberg case, it was also discovered that the cemetery in which Mr. Omsberg buried a number of bodies did not have records indicating who was buried in the cemetery or when and where bodies were interred.

As a consequence of that tragic incident, the 1985 Legislature radically revised and strengthened Oregon's laws pertaining to death care facilities and the final disposition of human remains. Among other things, the legislation passed in 1985 established the Oregon Mortuary and Cemetery Board (Board) and gave it responsibility for regulating cemeteries and crematories as well as funeral establishments. Also at that time, procedures for tracking human remains through the use of a numbered identification tag which corresponded with the number on the Oregon death certificate were statutorily implemented in ORS Chapter 432.

All operating cemeteries are now required to obtain and maintain Board licensure.

## **LEGAL AUTHORITIES DEFINING CEMETERY TERMS & THE REQUIREMENT FOR LICENSURE:**

ORS 97.010(2): "Cemetery" means any place dedicated to and used, or intended to be used, for the permanent interment of human remains.

ORS 97.010(6): "Columbarium" means a structure or room containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated for cemetery purposes.

ORS 97.010(7): "Interment" means the disposition of human remains by cremation, inurnment, entombment or burial.

ORS 97.010(9): "Inurnment" means placing cremated remains in an urn and depositing it in a niche.

ORS 97.010(14): "Niche" is a recess in a columbarium used, or intended to be used, for the interment of the cremated remains of one or more persons.

ORS 97.010(15): "Cemetery authority" includes cemetery corporation, association, corporation sole or other person or persons owning or controlling cemetery lands or property.

ORS 97.010(17): "Cemetery business," "cemetery businesses" and "cemetery purposes" are used interchangeably and mean any business and purpose requisite or incident to, or necessary for establishing, maintaining, operating, improving or conducting a cemetery, interring human remains, and the care, preservation and embellishment of cemetery property.

ORS 692.010(2): "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes: (a) A burial park, for earth interments; (b) A mausoleum, for crypt interments; or (c) A columbarium, for permanent cinerary interments.

ORS 692.010(6): "Operating cemetery" means a cemetery that: (a) Performs interments; (b) Has fiduciary responsibility for endowment care, general care or special care funds; or (c) Has outstanding preneed service contracts for unperformed services.

ORS 692.025(5): Provides that no person, city, county or other municipal corporation shall conduct the business of an operating cemetery without first receiving a certificate of authority to conduct the business of an operating cemetery under ORS 692.275. \*

\*ORS 97.782: Provides that a cemetery, that is not an operating cemetery, as defined in ORS 692.010, shall be listed with the Oregon Pioneer Cemetery Commission. An owner or any other person or association of individuals that maintains such a pioneer cemetery shall list the pioneer cemetery with the Oregon Pioneer Cemetery Commission on a form provided by the commission. No fee shall be required from a pioneer cemetery for listing. [This legislation was enacted into law in 1999].

OAR 830-011-0000(4): "Certificate of Authority" is a certificate issued to an individual or corporation who is responsible for the operation of either a cemetery or crematory. [The certificate of authority is the actual license to operate].

## **RESPONSIBILITIES OF AN OPERATING CEMETERY**

An operating cemetery has several responsibilities in order to maintain compliance with the legal authorities and regulations within the Board's jurisdiction, which include:

1. Licensing the cemetery and maintaining compliance with applicable statutes and rules. "Principals" of a cemetery owner can change, so it is important to keep the Board informed of any changes in "principals," or ownership. All applicants and principals must consent to a background check [ORS 692.025(7)]. Certificates of Authority are renewed on a biennial basis and fees are established according to the number of interments.

If a cemetery is conducting "preneed" sales of cemetery goods and services, it must be registered with the Department of Consumer and Business Services and comply with the provisions of ORS 97.923 to 97.949. In addition, any person must first receive a preneed sales certificate of registration from the Board before engaging in preneed sales activity.

2. Performing the duties of sexton when receiving casketed remains for interment.
3. Ensuring placement in the designated grave, crypt or vault within 24 hours after receiving and accepting human remains.
3. Maintaining accurate permanent records, and have them available for Board inspection.
4. Expediently responding to consumer complaints and Board inquiries.

## **CERTIFICATION/LICENSING PROCESS**

If a person or corporation is forming an entirely new cemetery, there are several steps to take prior to the involvement of the Oregon State Mortuary and Cemetery Board. Not all of the steps outlined in ORS 97 apply to cemeteries that have been in existence and may already be surveyed, platted, dedicated, etc. Please note that this information does not constitute legal advice.

For a new cemetery, first check with the appropriate department regarding permits, restrictions, inspections, covenants, land use issues, etc.

The legal initial formative process for a cemetery is outlined in ORS 97.310 through ORS 97.340, and involves:

1. Obtaining approval from the local planning commission.
2. ORS 97.310: Survey and subdivision of land into sections, blocks, plots, venues, walks or other subdivisions and make a good and substantial map or plat showing them with descriptive names or numbers. This is to be done in compliance with ORS 92.010 to 92.190.
3. Filing a map or plat and a declaration of dedication of the land to cemetery purposes in the office of the recording officer of the county in which all or a portion of the property is located.
4. The dedication is complete upon the filing of the map or plat and of the declaration for record, and thereafter the property shall be held, occupied and used exclusively for cemetery purposes [unless the process outlined in ORS 97.440 to remove the dedication is completed].
5. Once the property has been legally dedicated for cemetery purposes, or during that time, the type of cemetery can be determined. Examples are: as a private corporation, a non-profit corporation, a cemetery maintenance district, or a municipal cemetery; and the principals, such as the Board of Directors and manager, can be identified.
6. Establish how will the cemetery be operated/maintained as an endowment cemetery? If this is the case, then all of the provisions of ORS 97.810 must be met, and followed through with depositing funds according to ORS 97.820.

As a non-endowment care cemetery? A non-endowed care cemetery is one that does not deposit in an endowment care fund, the minimum specified in subsection (1) of ORS 97.810.

7. Developing a plan for at need sales of cemetery goods and services. Decide if the cemetery will conduct preneed sales of cemetery goods and services. If the cemetery conducts preneed sales, the provisions of ORS 97.923 to 97.949 apply.
8. Developing the deeds, sales contracts and any other forms used.
9. Developing the cemetery record keeping system.
10. Developing cemetery rules, which are discussed in ORS 97.710.
11. Completing the Board licensing process, outlined in ORS Chapter 692 and Oregon Administrative Rules (OAR) 830. A copy of these legal authorities are included with this information.

#### **DETERMINING WHETHER A CEMETERY IS AN OPERATING CEMETERY**

A cemetery authority may be notified by the Board that their cemetery appears to be an operating cemetery, or a cemetery authority wants to know if their cemetery is an operating cemetery. In either case, the Board has a questionnaire available for the cemetery authority to complete which will provide the Board with the necessary information to determine whether a cemetery is operating and must be certificated/licensed.

If the cemetery in question is determined to be "operating;" a new operating cemetery is being established; or an existing cemetery is changing ownership, the following licensing procedure applies:

## **REQUESTING A CEMETERY APPLICATION FOR A CERTIFICATE OF AUTHORITY TO OPERATE (LICENSE)**

All applications are available on the Board website: [www.oregon.gov/MortCem](http://www.oregon.gov/MortCem) or you may contact the Board office and an application will be mailed to you. The cemetery application must be submitted (including the principal forms) with the appropriate fees as follows:

The application fee is \$100.00 if the cemetery performs five or fewer interments annually. The \$100.00 includes the fee for the first principal. For any other principals, an additional \$50 fee is required. All principals named on the application are required to submit a completed Principal Form to the Board office along with the cemetery application. Please note that the cost of the background investigation is included in this principal fee.

### **OR**

The application fee is \$150.00 if the cemetery performs more than five interments per year. The \$150.00 includes the fee for the first principal. For any other principals, an additional \$50 fee is required. All principals named on the application are required to submit a completed Principal Form to the Board office along with the cemetery application. Please note that the cost of the background investigation is included in this principal fee.

Please call the Board Licensing Specialist, 971-673-1507, if you have questions about the number of principals associated with your proposed facility.

## **WHAT IS A PRINCIPAL?**

OAR 830-011-0000 provides the following definition of a principal:

(32) "Principal." Principal means those persons who have controlling authority over the licensed facility, including but not limited to:

- (a) Managers or other persons who have decision making authority and whose primary duties include control over the operation of the licensed facility;
- (b) Officers or directors who have some degree of responsibility for the operation of the licensed facility;
- (c) Stock holders or corporations who own or control ten percent or more of the licensed facility by owning or controlling ten percent or more of the voting stock; and
- (d) Partners.

830-040-0000 (3) When a person, firm, partnership or corporation applies to the Board for a funeral establishment license, immediate disposition company license, or certificate of authority to operate a cemetery or crematorium, the name shall contain the identification of the activity, business or profession of funeral, immediate disposition, cemetery or crematory service as set forth in ORS Chapter 692 and the rules adopted thereto. This identified name shall be the registered name with the Board and shall also be utilized as the advertised name of the funeral, immediate disposition company, cemetery or crematory establishment.

(4) Applications for all licensed facilities shall specify the names of all principals. If the principal is a corporation, the application shall include the names of all principals of that corporation.

(5) When there is a change in any principal of the licensed facility, the licensee shall provide the Board with the name of the new principal(s) on a form provided by the Board within 30 days of the change. If the new principal is a corporation, the licensee shall provide the names of the principals of that corporation to the Board on a form provided by the Board.

## **BUSINESS NAME**

Applicants must provide a copy of their business registration with the Secretary of State Corporation Division; and/or their assumed business name.

OAR 830-040-0030 provides that each licensed facility shall be registered with the State Mortuary and Cemetery Board by its true corporate, firm or individual name. In addition, one assumed business name, as registered with the Corporation Commission, may be used by such licensed facility, and shall be promptly reported to the Board.

OAR 830-040-0000 (2) & (3) provides that no licensed facility shall be advertised or operated without the appropriate license or certification or be held out under any name which could be termed misleading. When a person, firm, partnership or corporation applies to the Board for a certificate of authority to operate a cemetery, the name shall contain the identification of the activity, business or profession set forth in ORS Chapter 692 and the rules adopted thereto. This identified name shall be the registered name with the Board and shall also be utilized as the advertised name of the cemetery.

In a change of ownership where an assumed business name or names held by the former owner are going to be maintained by the new owner, please notify the Board when the former owner has surrendered the rights to the associated name or names and provide a copy of the registration to the Board office.

## **INSPECTION OF CEMETERY NECESSARY FOR CERTIFICATION/LICENSURE**

Once the application is processed, background investigations have been completed, paperwork has been reviewed and corrected if necessary and any other issues resolved, a location and record inspection will be scheduled with an inspector.

If available, the following documents may be faxed to the Board Compliance Manager for review prior to the location and record inspection:

- a. Declaration of dedication
- b. Cemetery Map
- c. Copy of the deed
- d. Copy of Cemetery Rules
- e. Copy of pre-need sales contracts, if applicable
- f. At need contracts
- g. Price lists

Inspection scheduling is based on the availability of an investigator/inspector and will generally be initiated through the compliance manager. New licensing and change of ownerships usually get Board staff priority, but due to time constraints, coordination of scheduling may take up to four weeks. It is helpful to inform the compliance manager or the assigned inspector at the onset of the initial application process or by the time the paperwork review process is underway, of the targeted goal date for licensing a new cemetery or the anticipated date of closing for a change of ownership. This way, a tentative date for an inspection can be planned in advance. Maintaining strong communication with the investigator/inspector, and/or the compliance manager during the entire process is beneficial to all parties.

## **TEMPORARY AUTHORIZATION FOR CERTIFICATION/LICENSURE**

By the time the final inspection is conducted, a cemetery is usually ready for licensing even if minor corrections necessary for compliance are noted during the inspection, if an applicant is a good risk for licensure. A yellow inspection receipt will be issued at the conclusion of the inspection outlining any compliance issues that must be corrected. The receipt will contain a date negotiated for completion or corrective action, as well as a date for written confirmation from the Applicant that compliance has been achieved.

Unless there are extenuating circumstances or the licensing matter must be reviewed and considered by the Board prior to staff granting temporary authorization for licensure (for example, the Board needs to consider whether the Applicant is a good risk for licensure), the yellow inspection receipt will serve as the temporary license until the new license is issued and received. The date of the inspection will be recorded as the effective date of licensure on the new license. It can take up to two weeks to receive a new Board issued cemetery certificate of authority/ license. The Board will then ratify the licensure at the next regularly scheduled bi-monthly meeting.

If the licensing procedure is a change of ownership without extenuating circumstances or requiring review by the Board to determine whether the Applicant is a good risk for licensure, an inspection receipt will be issued at the time of the inspection authorizing the change of ownership pending ratification by the Board at the next regularly scheduled bi-monthly meeting. The former license(s) must be surrendered since licenses are not transferable pursuant to OAR 830-040-0040(3). The licenses may be surrendered at the time of the inspection if through the application, background investigation and inspection process, it has been determined that the prospective new owners have the ability to obtain Board licensure without evaluation by the full Board. Licenses may also be mailed to the Board office. Once written confirmation of closing has been received in the Board office (fax is acceptable) from the purchaser and the non-transferable certificates of authority/licenses surrendered, the new certificate(s) of authority/licenses(s) will be issued with the closing date transaction recorded as the effective date of licensure on the certificate(s) of authority/license(s).

Cemetery licenses shall be posted in a conspicuous location for public viewing pursuant to OAR 830-040-0000(12).

In cases where the Board must review the licensing matter to assess whether an Applicant is a good risk for licensure, the Board may deny a new cemetery application or proposed change of ownership for any of the grounds upon which a license may be denied OAR 830-040-0040(5)(c) & (6)(d). The Board may also deny an application when conditions exist in relation to any principal which constitute grounds for refusing to issue or renew a license or certificate, or for suspension of a license OAR 830-011-0050(2).

It is the responsibility of compliance staff to provide the Board with sufficient information to allow its members to make an informed judgment as to whether or not an applicant is a good risk for licensure. The Board and/or Board staff may require an Applicant to furnish any information and documents necessary to conduct a thorough background investigation.

Board staff is in a completely neutral position when requesting additional information from an Applicant, as well as when requests are made for corrections to paperwork and facilities pertaining to compliance. The process for review of applications provides for neutral, fair and equal treatment of all Applicants. Expedient cooperation by an Applicant is appreciated in responding to requests for additional information and meeting requested deadlines.

Applicants should be aware that OAR 830-050-0050(1) provides that failure to comply with a Board request may be considered grounds for refusal to approve an application; and OAR 830-030-0090(2)(d)(A) and (B) provides that failing to supply the Board with requested documents within the Board's jurisdiction and failing to answer truthfully and completely matters within the Board's jurisdiction, is grounds for Board action. This may include Board denial of applications for licensure.

## **CEMETERY PRENEED SALES REGISTRATION REQUIREMENTS**

Department of Consumer & Business Services (DCBS): (503) 947-7499 - Salem

Once a cemetery is licensed by the Board, if it intends to sell preneed \* cemetery good and services which are not delivered at the time of purchase, [thus requiring the money to be trusted in a financial institution], the cemetery must register as a certified provider with the Department of Consumer and Business Services as required by ORS 97.933 and comply with the reporting requirements outlined in ORS 97.933(3)(a).

\*Note: There has been some confusion over what actually constitutes preneed sales. It has come to the Board's attention that some cemetery sales people have unnecessarily registered to sell preneed. The sale and conveyance of interment rights in existing plots, crypts or niches does not constitute preneed sales, even when the sale takes place years in advance of death. If a cemetery and their salespeople sell only existing plots, crypts or niches, facility registration with DCBS [and registration of salespersons with the Board] is not required.

ORS 97.933 provides that a provider, as defined in ORS 97.933, may not engage in prearrangement sales or preconstruction sales unless the provider is certified by the Director of the Department of Consumer and Business Services.

## **BOARD REGISTRATION IS REQUIRED FOR INDIVIDUALS CONDUCTING PRENEED SALES**

All persons who sell preneed cemetery goods and services which involve money being trusted in financial institutions must apply for a preneed sales certificate of registration from the Board. To apply, a person first submits a request for application form (RFA) with \$50. to obtain the application. The completed application is submitted to the Board with an additional \$75. A background investigation is performed on all Applicants. Board staff attempts to issue preneed sales certificates of registration as expeditiously as possible. If a person does not have criminal conviction history which creates a risk for licensure, generally the preneed sales certificate of registration is issued within a couple of days to a week.

ORS 97.931 provides that a salesperson may not engage in prearrangement sales unless the salesperson is registered with the State Mortuary and Cemetery Board or holds a current funeral service practitioner license, embalmer license, funeral service practitioner apprentice registration or embalmer apprentice registration.

OAR 830-011-0070(1): provides that an individual may not engage in prearrangement or preconstruction preneed sales under ORS 97.923 to 97.949 unless the individual is registered as a "preneed salesperson" with the State Mortuary and Cemetery Board. Individuals who are currently licensed as a funeral service practitioner or embalmer or certificated as an apprentice funeral service practitioner or apprentice embalmer need not register separately to sell preneed.

## **CEMETERY PRENEED CONTRACTS & PRENEED SALES PROGRAMS:**

Cemetery preneed contracts must contain the following information:

OAR 830-040-0050 requires the following contract language: This Facility Is Licensed By The Oregon State Mortuary and Cemetery Board

Cemetery preneed programs must contain the following:

OAR 830-030-0100(18) requires that licensees shall include a reasonable period of not less than five days in their preneed programs during which purchasers of preneed goods and services may cancel their purchase contracts.

This rule does not expressly compel disclosure of the 5-day cancellation privilege language on contracts, so, the Board does not require it. However, in order to avoid any misunderstanding or inadvertent violation of this rule as many contracts contain the 3-day federal cancellation notification, the Board strongly recommends that a notice of the 5-day cancellation privilege be included on preneed contracts.

## **OTHER LEGAL AUTHORITIES PERTAINING TO MONEY TRUSTED FOR SALES OF PRENEED GOODS AND SERVICES:**

The laws pertaining to preneed goods and services trusting requirements were formerly located and outlined in ORS 128.400 - 128.440. The statutes specifically regulating deposits of preneed trust money from endowment care cemeteries were formerly outlined in ORS 128.415.

During the 2001 session, the legislature passed major reforms to Oregon's preneed trust laws. The 2001 edition of ORS 97.923 - 97.949 now contains the laws formerly in ORS Chapter 128.

## **SEXTON DUTIES**

The sexton is the person responsible for receiving casketed remains at the cemetery and documenting the act of final disposition with their signature. The duties of the cemetery sexton pertaining to final disposition at the cemetery include:

1. Verifying that human remains are accompanied by a completed permit authorizing final disposition [yellow and green copies of the death certificate] ORS 432.317(6);
2. Verifying that the identifying metal disc is properly secured to the head end of each receptacle containing human remains;
3. Verifying that the number on the disc is the same as the number recorded on the final disposition permit;
4. Signing the yellow and green copies of the permit for final disposition indicating that items 1, 2 and 3 above were completed and recording the date of final disposition. OAR 830-030-0000(3)(5) & ORS 432.317(7); and
5. Sending the yellow copy of the final disposition permit to the county vital records office within ten days of the date of final disposition and maintain the green copy in the permanent cemetery records. ORS 432.317(7).

No casketed human remains should be accepted at the cemetery for the follow reasons:

- a) Without an identification tag.
- b) If the identification tag number doesn't match the number on the death certificate/permit for final disposition.
- c) If the permit for final disposition does not contain written authorization for final disposition of the body from the physician who certifies the cause of death as provided in ORS 432.307, or oral authorization from the physician or licensed health professional authorized to give such consent on behalf of the physician, that he/she will certify the cause of death. ORS 432.317(2).

If final disposition occurs at a crematory, the green copy of the death certificate will remain at the crematory because it is the permit for all methods of final disposition [burial, cremation, shipping remains out of state]. It is not a requirement for cemeteries to have a copy of the permit in their records, many cemeteries request that a copy of the green copy of the death certificate/permit for final disposition accompany cremated remains if they are to be interred at the cemetery.

## INTERMENT OF CASKETED HUMAN REMAINS WITHIN 24 HOURS

OAR 830-040-0000(10) provides that after human remains have been released to the cemetery, they shall be placed in their designated grave, crypt or vault within 24 hours after taking possession of the remains unless exigent circumstances exist. In cases where exigent circumstances exist, the cemetery authority shall notify both the funeral service practitioner responsible for the arrangements and the office of the Board. The funeral service practitioner responsible for the arrangements for the decedent shall notify the family of such exigent circumstances.

## PERMANENT RECORDS

All cemeteries are required to record the same minimum information in their permanent records. OAR 830-040-0000(13) provides that the cemetery authority shall keep the Board office informed of the location of their permanent records. These records shall be made available for random inspections by the Board at any reasonable time.

The following minimum information is required to be kept in the permanent records for each decedent:

- |    |   |  |
|----|---|--|
| 1. | Name of the Decedent  | OAR 830-040-0000(6)(a) & ORS 97.720(1) |
| 2. | Metal ID tag number   | OAR 830-040-0000(6)(a)                 |
| 3. | Date of death   | OAR 830-040-0000(6)(b)                 |
| 4. | Purchaser and relationship to Decedent  | OAR 830-040-0000(6)(c)                 |
| 5. | The exact location of interment by crypt or niche; or grave, lot and plot                                 | OAR 830-040-0000(6)(d)                 |
| 6. | The name of the funeral establishment (FSP) or cemetery personnel responsible for making the arrangements | OAR 830-040-0000(6)(e) & ORS 97.720(1) |
| 7. | Date of interment   | ORS 97.720(1)                          |

The Board does not regulate how records are organized or maintained. Most of the minimum information is already on the green copy of the death certificate, which must be kept in the permanent records for the cemetery. If the purchaser and their relationship to the decedent, the exact location of interment and the date of interment were included in the file with the green copy of the death certificate, the cumulative information would meet the minimum cemetery permanent record keeping requirements.

In addition to these minimum permanent records, a cemetery, mausoleum or columbarium is required to have the following:

- |    |  |                  |
|----|--|------------------|
| 1. | Descriptive Map or Plat  | ORS 97.310(1)(b) |
| 2. | A record of ownership of graves, crypts or niches  | ORS 97.720(1)    |
| 3. | Records of all interments  | ORS 97.720(1)    |
| 4. | Cemetery rules available   | ORS 97.710(3)    |
| 5. | Contract language on contracts. As of January 1, 1998, all contracts used by the cemetery shall contain the following contract language. OAR 830-040-0005: |                  |

*This Facility is Licensed by the Oregon Mortuary and Cemetery Board*

## **CEMETERY RULES**

Cemeteries have the latitude to develop rules for the operation of their business as outlined in ORS 97.710 below. The Board does not regulate these rules, but they must be available in printed or typewritten form at the cemetery office for review by any person.

ORS 97.710 Power of cemetery to make rules and regulations - 2001 Edition.

(1) The cemetery authority may make and enforce rules and regulations for:

- (a) The use, care, control, management, restriction and protection of its cemetery;
- (b) Restricting and limiting the use of all property within its cemetery;
- (c) Regulating the uniformity, class and kind of all markers, monuments and other structures within its cemetery;
- (d) Prohibiting the erection of monuments, markers or other structures in or upon any portion of its property;
- (e) Regulating or preventing the erection of monuments, effigies and structures within any portion of the cemetery grounds and for the removal thereof;
- (f) Regulating the care or preventing the introduction of plants or shrubs within such grounds;
- (g) Preventing the interment in any part thereof of a body not entitled to interment therein;
- (h) Preventing the use of burial plots for purposes violative of its restrictions;
- (i) Regulating the conduct of persons and preventing improper assemblages therein; and
- (j) All other purposes deemed necessary by the cemetery authority for the proper conduct of its business and the protection and safeguarding of the premises and the principles, plans and ideals on which the cemetery was organized.

(2) The cemetery authority from time to time may amend, add to, revise, change or modify such rules and regulations.

(3) Such rules and regulations shall be plainly printed or typewritten and maintained, subject to inspection, in the office of the cemetery authority.

## **ENDOWMENT CARE CEMETERIES**

Cemeteries generally have some type of fund or trust for the general maintenance of the cemetery. Just because a cemetery has a maintenance fund where upon the interest earned is used to maintain a cemetery, it doesn't automatically qualify the cemetery as an "endowment care cemetery." A cemetery cannot hold itself out as an "endowment care cemetery" unless it subjects itself to the provisions of ORS 97.810 to 97.865, which are the statutes pertaining to endowment care cemeteries.

Every cemetery authority that operates a cemetery may place its cemetery under endowed care and establish, maintain and operate an endowment care fund. The provisions of this subsection shall not apply to a city or county owned cemetery, unless the city or county has elected to subject itself to ORS 97.810 to 97.865. ORS 97.820(1).

Endowment care cemeteries must deposit money into the endowment care fund in accordance with the minimum requirements established in ORS 97.810(1)(a)(b) & (c). While the statutory minimum is based upon the gross sales price of graves, crypts and niches, nothing in the statute prohibits an endowment care cemetery from depositing more than the minimum or from basing deposits on something beyond graves,

crypts and niches. Endowment care cemeteries must also file reports and pay fees to the Director of the Department of Consumer and Business Services as required by ORS 97.810(3) & (6).

## **ENDOWMENT CARE CEMETERY DEEDS**

Endowment care cemeteries must have the following language on their deeds. ORS 97.810(8):

This Cemetery Is An Endowment Care Cemetery

[This phrase shall be printed in the body of or stamped upon all contracts, certificates of ownership or deeds referring to plots in an endowment care cemetery]

Endowment care means the general care and maintenance of all developed portions of the cemetery and memorials erected thereon.

[This phrase shall be printed in the body of or stamped upon all contracts, certificates of ownership or deeds referring to plots in an endowment care cemetery]

## **OTHER TYPES OF CEMETERY MAINTENANCE FUNDS**

### Non-Profit Corporation Cemetery Owners

ORS 65.860 provides that a nonprofit corporation may through its bylaws, designate that a stated percentage of the money received from the sale of lots and burial space, cremation of bodies, donations or other sources of revenue be established as an irreducible fund. The interest or income from the irreducible fund may be used for the care and embellishment of the grounds, buildings and property. The principal amount remains constant in trust.

### Cemetery Maintenance Districts

ORS 265.140(7) provides that a cemetery maintenance district may set aside, at the discretion of the board of directors, not to exceed one-half of the moneys derived from the sale of cemetery lots and tracts as an irreducible maintenance fund. Any money gift or bequest if so designated in the instrument creating the same, shall be placed and held in the irreducible maintenance fund, and the interest of such fund shall be used in the perpetual upkeep and beautification of the cemetery and lots therein.

### Municipal Cemeteries

ORS 226.510 provides that all cities owning and controlling land or lots used for cemetery purposes may expend, for the purposes of beautifying, caring for and keeping all such lands and premises, public funds as have been included for that purpose in their annual budget.

### Other

In addition, there are many cemeteries which have set up accounts or invested money for the maintenance of the cemetery in a variety of ways such as savings accounts, bonds or mutual funds.

## **ADVERTISING**

Not all cemeteries elect to advertise. If advertising, the following legal authorities apply:

OAR 830-040-0050(1) provides that each licensed facility advertising through any media, including but not limited to telephone books, newspapers, direct mail, bill boards, etc., shall include either the licensed facility's registered name, or its assumed business name and physical address as it appears on the Board's records. All printed materials and letterhead shall include the physical location of the facility.

OAR 830-040-0050(2) provides that no person, firm or corporation shall advertise, promote, or market at need or preneed funeral arrangements without first having received a license from the Board.

OAR 830-040-0050(3) provides that no cemetery or cremation facility, or person, firm or corporation shall advertise, promote, or market at need or preneed cemetery or cremation plans without first having received a certificate of authority to operate [license] from the Board.

OAR 830-040-0050(5) provides that any advertisement which intentionally conceals or misstates a material fact shall be considered misrepresentation.

## **BOARD INSPECTION PROCESS FOR RANDOM INSPECTIONS**

The Board conducts random inspections of all licensed facilities as authorized under ORS 692.320(1)(c)&(2). OAR 830-040-0010(2) provides that every licensee shall accommodate the inspector or investigator of the Board in making his/her random inspections. No appointments shall be necessary unless exigent circumstances exist.

This said, if the inspection pertains to a new licensure, change of ownership or involves a cemetery where records are kept at an authorized person's home or in an office open by appointment only, the inspector generally will schedule the inspection in advance.

Prior to 1997, the product of the Board's facility inspections was often a receipt containing a subjective one-word evaluation, e.g.: poor, good, excellent, and superior. Recognizing the lack of value in such limited and subjective assessments, the Board has since implemented a more comprehensive and objective inspection process. The aim is to improve compliance through education while at the same time building a constructive rapport with licensees.

There is no predetermined amount of time for completion of an inspection. An inspection with minimal deficiencies [violations] may take a couple of hours. An inspection with a number of deficiencies may take several hours. The inspector will inquire if there is a quiet area available for him or her to inspect documents and records. An examination of files and paperwork requires concentration and can be concluded more quickly without interruption. So long as a facility's records are reasonably well organized, the inspector's presence should not cause any undue interference with business.

With the exception of egregious or continuing violations, deficiencies noted during routine inspections rarely lead to formal disciplinary action. Deficiencies are documented by means of a hand written inspection receipt signed by a facility representative and the inspector. Before requesting a signature, the inspector explains the violations noted, answers questions and negotiates a reasonable time frame for corrective action. In order to insure that licensees are aware of the objective basis for inspection findings, specific reference to pertinent rules and statutes are included in the inspection receipt for each violation noted. A copy is provided to the facility representative upon conclusion of the inspection.

Upon return from the field, the inspector sends the facility manager an inspection follow-up letter reiterating the violations noted and the due dates for correction. When paperwork, contracts or forms are found with deficiencies, corrected copies are requested. For other violations, written confirmation that corrective action has been taken is required. Inspection receipts, follow-up letters and corrective action confirmations are retained in permanent facility inspection files. In order to identify continuing violations and verify that corrective action has been taken, these inspection records are reviewed prior to the next regular inspection.

Licensees are encouraged to contact the inspector if they have further questions about the inspection, the inspection follow up letter, need additional time to attain compliance or require technical assistance.

## **CEMETERY INSPECTION CHECKLIST**

The cemetery inspection checklist primarily provides a guideline for record keeping requirements, plus a typical checklist for a basic overview of information the Board reviews during a cemetery compliance inspection. Although the Board has not adopted rules pertaining to cemetery maintenance, a common type of complaint received by compliance staff, all licensees are required to keep their premises sanitary. OAR 830-040-0010(1).

The inspection checklist is used by the inspector throughout the inspection process associated with licensing and also during random Board inspections. This useful tool is subject to change without notice and is available upon request.

### **COMPLAINTS**

What happens if a complaint is filed against a licensee?

Pursuant to ORS 692.180 and 692.320, the Board must conduct investigate complaints by a person and also may initiate an investigation. In accordance with the Administrative Procedures Act (ORS chapter 183), the Board may take disciplinary action for violations of ORS chapter 692 and OAR chapter 830. The Board may also impose discipline for fraudulent and dishonest conduct or conviction of a crime when such conduct or crime bears a demonstrable relationship to death care industry practice. Additionally, the Board may take action for violations of the following:

- ORS chapter 97, as it relates to the final disposition of human remains and to cemeteries;
- ORS 97.929 and 97.937 limited to three specific kinds of endowment care cemetery preneed sales agreements and related trust deposits;
- ORS chapter 432 and OAR chapter 333 division 11, as they relate to the final disposition of human remains and vital records; and,
- FTC regulations pertaining to funeral industry practices (the Funeral Rule).16 CFR Part 453;
- Non-compliance with Oregon Revised Statutes pertaining to the death care industry.

### **Confidentiality of Complaints**

Complaints filed with the Board are confidential and are not subject to public disclosure. The fact that a complaint has been filed against any licensee is not public information. The Board is required by law to keep confidential, to the greatest extent possible, the identity of the complainant and the respondent. Every effort is made to abide by this requirement, while at the same time conducting a fair and thorough investigation.

### **Investigative Process for Complaints**

ORS 676.165 requires that complaints received from a person shall be assigned to an investigator and a report submitted to the Board within 120 days of receipt of the complaint. However, the statute also provides for extensions of time. Due to the workload of the investigative staff and the complexity of many of the complaints received, it could be longer than 120 days before the Board receives a report of investigation. Investigations initiated by the Board are not subject to the 120 day investigative requirement.

Once a complaint is received, it is reviewed by compliance staff, given a case number and assigned to an investigator. The investigator requests a variety of documents and information from the licensee (respondent) who is the subject of the complaint as well as a written response to the allegations in the complaint. Once the information is received from the respondent, the staff investigator reviews the response and /or records, conducts appropriate witness interviews and collects enough information to conclude a fair and accurate inquiry into the issues raised.

The staff investigator then creates a report of investigation which provides the Board with enough information to either affirm or refute the allegations and make a determination as to whether or not a violation has occurred within the jurisdiction of their legal authority. Also, if there is sufficient evidence to

show that a violation has occurred, additional information is included in the investigative report as to what kind of sanction, if any, is warranted.

The Board deliberates on each case in a closed executive session. ORS 676.165 and 676.175 specify that the information gathered during the investigation as well as the investigative report are confidential and not subject to public disclosure. The Board votes on investigative matters by the assigned case number in the open session of the Board meeting.

If the Board makes a determination not to initiate disciplinary action against a licensee / respondent, the confidentiality statute does provide that the Board may issue a written summary of information obtained during the investigation to the complainant, if so requested, to the extent necessary to explain the reason(s) for the Board's decision.

### **Disciplinary Actions**

The Board may impose a variety of disciplinary sanctions ranging from a reprimand to license revocation. When the Board initiates disciplinary action in accordance with the Oregon Administrative Procedures Act (ORS 183.310 - 183.550), Board staff issues a Notice of Proposed Disciplinary Action to the licensee/respondent. The Notice is essentially a statement of charges against the licensee in question. The Notice contains a timeframe within which a hearing can be requested by the respondent and may specify the level of sanction that has been proposed. The respondent is entitled to a contested case hearing and is afforded every opportunity to exercise that right. If the respondent does not request a hearing within the allotted timeframe, a Final Order is issued by default. If the respondent does request a hearing and does not agree with the Board's final decision, the respondent can appeal to the Oregon Court of Appeals. If there is disagreement with the Court of Appeals' decision, the respondent can appeal to the Oregon Supreme Court.

The Board protects the public by promoting and enforcing compliance with the statutes and rules established for that purpose. Although lacking authority to require payment of compensatory (actual) damages to consumers, the Board may impose civil penalties up to \$1,000 per violation and may negotiate voluntary settlement agreements that provide some measure of restitution to a complainant, in lieu of civil penalties.

Pursuant to ORS 676.175(5), investigative information, Notices, contested case proceedings or any type of Final Orders may not be used as evidence in any civil proceeding except in a proceeding between the Board and the licensee or applicant.

### **Public Records Request**

Notices of Proposed Disciplinary Action and final disciplinary actions (Orders, Consent Orders) taken against licensees are public record and available upon written request for a fee.

### **OREGON STATE WEBSITE**

The Oregon Revised Statutes (ORS') and Oregon Administrative Rules (OAR's) are available through the Oregon State Website:

[www.oregon.gov](http://www.oregon.gov)

Click on the "popular sites" section on the upper right side of the webpage. Both the ORS' and OAR's are listed in this column. Scroll down to the designated site and click on it.

## **CONTACT INFORMATION**

If you have compliance, licensing or other questions and/or also need additional information, please contact the Board office:

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