CHAPTER 23-21.1
CEMETERY ORGANIZATIONS

23-21.1-01. Applicability of statute.

Any person, firm, corporation, or other form of organization organized or engaging in the business under the laws of the state of North Dakota, or wheresoever organized and engaging in the business in the state of North Dakota, of the ownership, maintenance, or operation of a cemetery, providing lots or other interment space therein for the remains of human bodies, except such organizations which are churches or religious or established fraternal societies, charitable associations, or incorporated cities or other political subdivisions of the state of North Dakota owning, maintaining, or operating cemeteries, is subject to the provisions of this chapter.

23-21.1-02. Definitions.

As used in this chapter:

1. "Nonperpetual care cemetery" means all other cemeteries, mausoleums, columbariums, or other organizations subject to the provisions of this chapter.
2. "Perpetual care cemetery" means any cemetery, mausoleum, columbarium, or other organization provided for in this chapter which has deposited in its perpetual care fund an initial minimum amount required by law and thereafter deposits in its perpetual care fund not less than the amounts set forth in section 23-21.1-03.

23-21.1-02.1. License to operate a perpetual care cemetery - Fee.

No organization may operate as a perpetual care cemetery unless licensed on forms provided by the department of health and human services by the recorder of the county within which the cemetery is located, unless the board of county commissioners designates a different official. The license must be renewed by or before July first of each year. Prior to issuance or renewal of a license, the recorder, or designated official, shall determine if the applicant is in full compliance with the provisions of this chapter. When applying for a license renewal, the applicant shall report to the recorder, or designated official, the number of spaces sold, the gross amount of receipts from the sale of spaces, and the amount of money transferred to the perpetual care trust fund during the organization's previous fiscal year. The license fee must be five dollars per year, except that any perpetual care cemetery which has sold less than ten spaces during the previous fiscal year may not be required to pay a license fee.

23-21.1-02.2. Revocation or nonrenewal of license to operate a perpetual care cemetery.

The recorder, or designated official, shall revoke or refuse to renew a license to operate a perpetual care cemetery if such organization fails to comply with the provisions of this chapter. When the recorder, or designated official, revokes or refuses to renew a license to operate a perpetual care cemetery, a notice of the action must be published in the official county newspaper of the county wherein the cemetery is located. When an organization's license to operate a perpetual care cemetery is not current or has been revoked, the organization shall cease to make sales or transfers of burial spaces.

23-21.1-03. Creation of perpetual care fund.

1. Any organization subject to this chapter which is organized or commences business in this state and desires to operate as a perpetual care cemetery, before selling or disposing of any interment space or lots, shall establish a minimum perpetual care and maintenance guarantee fund of twenty-five thousand dollars in cash, except that the minimum perpetual care and maintenance guarantee fund for organizations in operation on July 1, 1963, must be five thousand dollars. The perpetual care and maintenance guarantee fund must be permanently set aside in trust to be administered under the jurisdiction of the district court of the county wherein the cemetery is located. The district court shall have jurisdiction over the approval of trustees, reports and accounting of trustees, amount of surety bond required, and

investment of funds as provided by chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 relating to the administration of trust estates. Only the income from such fund may be used for the care and maintenance of the cemetery for which it was established. All such organizations shall submit at least annually, to the district court, such reports as are required. The clerks of each of the district courts shall transmit copies of all reports, and rules and regulations enacted by the organization, to the department of health and human services and the commissioner of financial institutions.

2. To continue to operate as a perpetual care cemetery, an organization shall set aside and deposit in the perpetual care fund not less than the following amounts for lots of interment space sold or disposed of:
   a. A minimum of ten percent of the gross selling price with a minimum of twenty dollars for each adult space, whichever is the greater.
   b. A minimum of ten percent of the gross selling price for each child's space with a minimum of five dollars for each space up to forty-two inches [1006.8 millimeters] in length or ten dollars for each space up to sixty inches [1524 millimeters] in length, whichever is the greater.
   c. A minimum of ten percent of the gross selling price with a minimum of one hundred dollars for each space or crypt in a mausoleum, whichever is greater, except a mausoleum located in a cemetery covered by a perpetual care fund which consists of at least ten percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community mausoleum itself shall contain a minimum of ten percent of the cost of the construction of such public or community mausoleum.
   d. A minimum of ten percent of the gross selling price with a minimum of ten dollars for each inurnment niche in a columbarium, except a columbarium located in a cemetery covered by a perpetual care fund which consists of at least ten percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community columbarium itself shall contain a minimum of ten percent of the cost of the construction of such public or community columbarium.
   e. A minimum of ten percent of the gross selling price with a minimum of one hundred dollars, whichever is the greater, for each interment space in crypt gardens or any other structure or device by whatever name, established or constructed wholly or partially above the natural surface of the ground, for the interment of any dead human body.
3. There is no required perpetual care fund deposit on spaces provided without charge for paupers and infants.

23-21.1-03.1. Bond.

Each person charged by an organization with the statutory responsibility of setting aside and depositing funds in a perpetual care fund, before entering upon the discharge of the person's duties and annually thereafter, shall furnish a bond in the penal sum of an amount to be determined by the district court of the county wherein the organization is located. The size of the bond must be at least as large as the amount of money the person or the person's predecessor deposited in the perpetual care fund during the organization's previous fiscal year.

23-21.1-04. Previously existing organizations.

Any such organization subject to the provisions of this chapter which was organized and engaged in business prior to the effective date of this chapter shall be a perpetual care cemetery if it at all times subsequent to the effective date of this chapter complies with the requirements of a perpetual care cemetery as set forth in section 23-21.1-03.

23-21.1-05. Nonperpetual care cemeteries.

Each nonperpetual care cemetery shall post in a conspicuous place in the office or offices where sales are conducted a legible sign stating: "This is a nonperpetual care cemetery". The lettering of this sign must be of suitable size so it is easily read at a distance of fifty feet [15.24 meters].

Each nonperpetual care cemetery shall also have printed or stamped, at the head of all of its contracts, deeds, statements, letterheads, and advertising material, the legend: "This is a nonperpetual care cemetery" and may not sell any lot or interment space therein unless the purchaser thereof is informed in writing that the cemetery is a nonperpetual care cemetery.

23-21.1-06. Nonperpetual care cemetery's qualification as perpetual care cemetery.

Any nonperpetual care cemetery after the effective date of this chapter may become a perpetual care cemetery by placing in the perpetual care trust fund twenty-five thousand dollars or five thousand dollars per acre [.40 hectare] of all property sold, whichever is the greater, and shall comply with the requirements for a perpetual care cemetery as provided in section 23-21.1-03.

23-21.1-06.1. Cemetery lot - Neglect - Resale.

Any cemetery lot, transferred to an individual owner by a cemetery organization governed by the provisions of this chapter, in which no interment has been made and which remains uncared for or neglected by the owner for a period of thirty or more years may, except when the owner is entitled to perpetual care of the lot, be resold by the cemetery organization after the publication of notice of its intent to resell the lot. The notice must be published for three successive weeks in the official newspaper of the county in which the lot is located.

23-21.1-07. Unlawful acts.

It is unlawful for any organization subject to the provisions of this chapter to pay or offer to pay to, or for any person, firm, corporation, or limited liability company to receive directly or indirectly a commission or bonus or rebate or other things of value, for or in connection with the sale of any interment space, lot, or part thereof, in any cemetery described in section 23-21.1-01. The provisions of this section do not apply to an individual regularly employed and supervised by such organization.

23-21.1-08. Unlawful acts - Denial of privilege of interment because of race or color.

It is unlawful for any organization subject to the provisions of this chapter to deny the privilege of interment of the remains of any deceased person in any cemetery described in section 23-21.1-01 solely because of the race or color of such deceased person. Any contract, agreement, deed, covenant, restriction, or charter provision at any time entered into, or bylaw, rule, or regulation adopted or put in force, either subsequent or prior to the effective date of this chapter, authorizing, permitting, or requiring any organization subject to the provisions of this chapter to deny such privilege of interment because of race or color of such deceased person is hereby declared to be null and void and in conflict with the public policy of this state. No organization subject to the provisions of this chapter or any director, officer, agent, employee, or trustee thereof or therefor, shall be liable for damages or other relief, or be subject to any action in any court otherwise having jurisdiction in the premises by reason of refusing to commit any act declared unlawful herein.

23-21.1-09. Penalties.

Any person violating any of the provisions of this chapter is guilty of a class A misdemeanor.

23-21.1-10. Continuing penalties.

Each day any person, firm, corporation, or limited liability company violates any provision of this chapter, except the commission of any act declared unlawful in section 23-21.1-08, must be deemed to be a separate and distinct offense.

23-21.1-11. Representations as to speculative investment prohibited.

No organization subject to the provisions of this chapter nor any person representing it may advertise or represent, in connection with the sale or attempted sale of any interment space, that the same is or will be a desirable speculative investment for resale purposes.

23-21.1-12. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

23-21.1-13. Effect on existing cemetery organizations - Enforcement.

The provisions of this chapter in no way affect existing statutes relating to the administration, regulation, or registration of all cemetery organizations. It is the duty of the state's attorney or the attorney general to enforce the provisions of this chapter.