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RULE PROPOSALS

**LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY CEMETERY BOARD**

41 N.J.R. 3029(a)

Proposed Amendment: *N.J.A.C. 13:44J-13.6*

Proposed New Rule: *N.J.A.C. 13:44J-5.4A*

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Co-Mingling of Trust Funds for Building Maintenance; Application to Lease or License Cemetery Lands

Authorized By: New Jersey Cemetery Board, Dianne Tamaroglio, Executive Director.

Authority: *N.J.S.A. 45:27-4*.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-260.

Submit comments by October 16, 2009 to:
Dianne Tamaroglio, Executive Director
New Jersey Cemetery Board
PO Box 45031
Newark, NJ 07101

The agency proposal follows:

Summary

N.J.S.A. 45:27-14 requires cemetery companies to create a Building Maintenance Fund for the maintenance of a public mausoleum and to create a trust fund for every private mausoleum constructed on cemetery grounds. The

Cemetery Board (Board) proposes new rule N.J.A.C. 13:44J-5.4A to allow cemetery companies to co-mingle private mausoleum trust funds and to co-mingle public mausoleum trust funds. Cemetery companies that co-mingle trust funds must ensure that the income from the co-mingled fund is allocated to each mausoleum based upon the amount each mausoleum contributes to the co-mingled fund. These requirements are imposed to ensure that the income from each individual mausoleum fund is being used to maintain that mausoleum and is not being used to support other mausoleums. The proposed new rule requires cemetery companies that co-mingle trust funds to include specific information in annual reports.

The Board proposes to amend *N.J.A.C. 13:44J-13.6* to require that an application to lease cemetery lands include a statement that 15 percent of the proceeds of the lease will be deposited in the Maintenance and Preservation Fund. This requirement is imposed pursuant to N.J.S.A. 45:27-34e.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

The Board anticipates that the proposed new rule and amendment will benefit cemetery companies. Currently, a separate trust fund must be created for each mausoleum in a cemetery. These trust funds are relatively small and the administrative costs associated with maintaining the trust results in a small amount of income to maintain the mausoleum. The Board believes that co-mingling trust funds will result in lower administrative [page=3030] costs, as those costs will be shared by all the mausoleum trust funds in the co-mingled fund. These lower administrative costs will leave more income to maintain mausoleums. The Board does not believe that the proposed new rule and amendment will have any other impact on society. The proposed amendment and new rule will also benefit consumers who have purchased spaces in public mausoleums or have constructed private mausoleums.

Economic Impact

The Board believes that the proposed new rule and amendment will have an economic impact on cemetery companies in that the co-mingling of trust funds will result in lower administrative costs to the individual trust funds and more income for the maintenance of mausoleums. The Board does not believe that the proposed new rule and amendment will have any other economic impact.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rule and amendment do not involve any Federal standards or requirements.

Jobs Impact

The Board does not believe that the proposed new rule and amendment will result in an increase or decrease of jobs in the State.

Agriculture Industry Impact

The Board does not believe that the proposed new rule and amendment will have any impact on the agriculture industry of this State.

Regulatory Flexibility Analysis

Since the cemetery companies that are issued certificates of authority by the Board are individually licensed by the

Board, under the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq., (the Act) they may be considered "small businesses" for the purposes of the Act.

The economic impact imposed by the proposed new rule and amendment are the same for all cemetery companies as set forth above in the Economic Impact statement. The Board does not believe that cemetery companies will need to employ any professional services to comply with the requirements of the proposed new rule and amendment. The proposed new rule and amendment impose no recordkeeping requirements, but imposes compliance and reporting requirements upon cemetery companies as detailed in the Summary.

The Board believes that because the proposed new rule and amendment ensure the proper allocation of income from a co-mingled trust fund, the new rule and amendment must be applied uniformly to all cemetery companies regardless of the size of the business.

Smart Growth Impact

The Board does not anticipate that the proposed new rule and amendment will have any impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan, otherwise known as the State Plan.

Housing Affordability Impact

The proposed new rule and amendment will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the proposed rules concern comingling of cemetery trust funds and leasing of cemetery lands.

Smart Growth Development Impact

The proposed new rule and amendment will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed rules concern co-mingling of cemetery trust funds and leasing of cemetery lands.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 5. CEMETERY COMPANIES

13:44J-5.4A Co-mingling of trust funds for building maintenance

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

"Private mausoleum fund" means a trust fund created for the maintenance of the structure of a private mausoleum and the area on which it is located as required by N.J.S.A. 45:27-14a.

"Public mausoleum fund" means a Building Maintenance Fund created for the maintenance of a public mausoleum as required by N.J.S.A. 45:27-14b.

(b) A cemetery company may co-mingle private mausoleum funds established pursuant to N.J.S.A. 45:27-14 in a co-mingled private mausoleum trust fund.

(c) A cemetery company may co-mingle public mausoleum funds in a co-mingled public mausoleum trust fund.

(d) If a cemetery company co-mingles private or public mausoleum trust funds pursuant to (b) or (c) above, the cemetery company shall ensure that the income of the co-mingled trust fund is allocated for the maintenance of each individual mausoleum based upon the initial contribution to the co-mingled fund. For example, if the public mausoleum trust funds for mausoleum one and mausoleum two are co-mingled, such that mausoleum one contributes 75 percent of the initial contribution to the co-mingled fund, 75 percent of the income of the co-mingled fund shall be allocated to mausoleum one.

(e) If additional money is deposited in a co-mingled trust fund created pursuant to (b) or (c) above, either from mausoleum trust funds that are already part of the co-mingled trust fund or new mausoleum trust funds being added to the co-mingled trust fund, the cemetery company shall recalculate the allocation of income from the co-mingled trust fund in proportion to the contributions from the individual private or public mausoleum trust funds.

(f) Income allocated from a co-mingled trust fund created pursuant to (b) above to an individual mausoleum shall be redeposited in the co-mingled trust fund or used for the maintenance of that mausoleum. Such income shall not be used to maintain other mausoleums or for other cemetery expenses.

(g) If the income allocated from a co-mingled trust fund created pursuant to (c) above to an individual mausoleum exceeds the cost of maintaining that mausoleum, the excess income shall be reserved for future maintenance of that mausoleum and shall not be used to maintain other mausoleums or for other cemetery expenses.

(h) A cemetery company that co-mingles trust funds pursuant to (b) or (c) above shall include in its annual report:

- 1. A list of private mausoleum funds that have been co-mingled in a co-mingled private mausoleum fund and the amount each private mausoleum fund has in the co-mingled fund;**
- 2. A list of public mausoleum funds that have been co-mingled in a co-mingled public mausoleum fund and the amount each public mausoleum fund has in the co-mingled fund;**
- 3. Documentation indicating the allocation made from each co-mingled trust fund to the individual mausoleums that are part of the co-mingled fund;**
- 4. Bank statements from the co-mingled private mausoleum fund and the co-mingle public mausoleum fund.**

SUBCHAPTER 13. APPLICATIONS

13:44J-13.6 Application to lease or license cemetery lands

(a) (No change.)

(b) An application to lease or license cemetery lands pursuant to *N.J.S.A. 45:27-34* shall include:

1. (No change.)

2. A certified statement by the board of trustees or directors that 15 percent of the proceeds of the lease will be deposited into the Maintenance and Preservation Fund;

Recodify existing 2.-6. as **3.-7.** (No change in text.)

(c) (No change.)