

TITLE 04 – DEPARTMENT OF COMMERCE

CHAPTER 05 - CEMETERY COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Cemetery Commission intends to amend the rules cited as 04 NCAC 05A .0107, 04 NCAC 05C .0101, .0103, .0105, .0201-.0202, .0301.

Proposed Effective Date: July 1, 2005

Public Hearing:

Date: May 11, 2005

Time: 10:00 a.m.

Location: 1100 Navaho Drive, Suite 242, Raleigh, NC 27609

Reason for Proposed Action: *The North Carolina Cemetery Commission is a receipt supported agency. The Commission has not raised fees in over fifteen (15) years. The Commission has been taking in less cash receipts than cash disbursements for several years and no longer has funds to operate. These amendments address that problem by raising license fees as allowed under NCGS 65-54, NCGS 65-55, NCGS 65-57, NCGS 65-68, and NCGS 65-69.*

Procedure by which a person can object to the agency on a proposed rule: *Any person who objects to a proposed rule shall either submit a letter of objection in writing to Claud Whitener at the address give below or submit in writing at the hearing.*

Written comments may be submitted to: *Claud R. Whitener III, NC Cemetery Commission, 1001 Navaho Drive, Suite 100, Raleigh, NC 27609, phone (919)981-2536.*

Comment period ends: May 11, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- ☐ State
☐ Local
☐ Substantive ($\geq \$3,000,000$)
☒ None

SUBCHAPTER 05A - ORGANIZATION

SECTION .0100 - GENERAL INFORMATION

04 NCAC 05A .0107 CEMETERY LICENSE FEE

The annual cemetery license fee shall be ~~three hundred dollars (\$300.00)~~ five hundred dollars (\$500.00). This license has an expiration date of June 30 in each year.

Authority G.S. 65-49; 65-54.

SUBCHAPTER 5C - LICENSING

SECTION .0100 - CEMETERIES

04 NCAC 05C .0101 APPLICATION AND FILING FEE

Any legal entity wishing to establish and operate a cemetery company, as defined in G.S. 65-48(5) must first obtain a license from this commission. The legal entity shall file written application with the commission on the Commission's Application for Certificate of Authority. This form provides a space for the name of the corporation and cemetery, the names of directors and officers of the corporation, the mailing address of the corporation and the address of the cemetery. A filing fee of ~~eight hundred dollars (\$800.00)~~ one thousand dollars (\$1,000.00) must accompany the application. The application form is available by contacting:

North Carolina Cemetery Commission
~~4400~~1001 Navaho Drive, ~~GL-2~~ Suite 100
Raleigh, North Carolina 27609.

Authority G.S. 65-48(5); 65-49; 65-55.

04 NCAC 05C .0103 CHANGE OF CONTROL

Any entity wishing to purchase or acquire control of an existing cemetery company shall first make written application to the Cemetery Commission on the commission's Application for Change of Control. This form provides space for the name and address of the present and proposed owner, along with the name of the corporation and the name of the cemetery. This form can be obtained by writing:

North Carolina Cemetery Commission
~~1400~~ 1001 Navaho Drive, ~~GL-2~~ Suite 100
Raleigh, North Carolina 27609.

This form must be accompanied by a ~~two hundred dollar (\$200.00)~~ five hundred dollar (\$500.00) filing fee. The commission also requires the following:

- (1) an examination be made to establish compliance to trust fund ~~requirements~~ requirements, with the actual cost of the examination to be paid by the applicant;
- (2) a signed certificate assuming liabilities of the existing cemetery company;
- (3) a financial statement of the existing cemetery company showing net worth;
- (4) certification by title insurance policy or by certificate of an attorney-at-law that the cemetery land, subject to appropriate acreage requirements, is owned in fee simple, free of all encumbrances;
- (5) a financial statement of proposed owner, showing net worth and a statement of the proposed owner's experience in the cemetery business.

No one shall take over the operation of a cemetery company in anticipation of a change of control until all necessary information concerning that change of control has been submitted to the administrator of the Cemetery Commission. No one shall change control of a cemetery company without first obtaining approval of the Cemetery Commission. Once a change of control has been approved by the Cemetery Commission, the change of control must be completed within 90 days of the date of the Cemetery Commission's approval. If the change of control is not completed within 90 days of the date of the Cemetery Commission's approval, then the entity wishing to effect the change of control will be required to make a new application to the Cemetery Commission in accordance with provisions of this Rule. Upon completion of the change of control, the entity requesting the change of control shall notify in writing the Administrator of the Cemetery Commission of the completion. A representative of the buyer and the seller shall be present at any meeting when the commission is going to consider the change of control application.

Authority G.S. 65-49; 65-53(2); 65-59.

04 NCAC 05C .0105 MEETING REQUIREMENT

Any application and all related information for a new cemetery license or a change of control of a cemetery must be received by the administrator of the Commission ~~ten~~ 30 regular working days before the meeting date the item is to be heard.

Authority G.S. 65-49; 65-55.

SECTION .0200 - CEMETERY SALES ORGANIZATIONS: MANAGEMENT ORGANIZATIONS AND BROKERS

04 NCAC 05C .0201 APPLICATION AND FILING FEE

Any legal entity wishing to establish and operate a cemetery sales organization, cemetery management organization or a cemetery broker, as each are defined under G. S. 65-48, must first obtain a license from this commission. The legal entity shall file written application with the commission on the Commission's Application for Cemetery Broker, Sales and/or Management Contractor License. This form provides space for applicant's name and address; space is also provided for employment, references and criminal record for an individual, corporate officer or partner, as the case may be. The application form is available by contacting:

North Carolina Cemetery Commission
~~1400~~ 1001 Navaho Drive, ~~GL-2~~ Suite 100
Raleigh, North Carolina 27609.

The following documents shall accompany this application:

- (1) If individual, officer or partner has not been licensed as a cemetery salesman for a period of two years, the application is to be accompanied by a written request for waiver setting forth at least one year general cemetery experience.
- (2) Corporate applications are to be accompanied by:
 - (a) certified copy of that portion of the minutes of the corporation wherein the officer named on the application was elected an officer,
 - (b) certified copy of that portion of the minutes of the corporation wherein the officer named on the application was authorized to file the application on behalf of the corporation.
- (3) All brokerage, sales or management contracts.

Application ~~Filing~~ filing fees ~~shall be in accordance with G.S. 65-57(c).~~ are six hundred dollars (\$600.00) for sales and management organizations, and four hundred dollars (\$400.00) for brokers.

Authority G.S. 65-49; 65-57.

04 NCAC 05C .0202 LICENSE

Licenses for sales organizations, management organizations and brokers shall be granted where the Commission has received the proper fee, information and documents called for in G.S. 65-57(b) (1) to (5) and G.S. 65-57(c) and where it determines that, based on the information and documents, the applicant is of good moral character, or, in the case of a business organization, employs and is directed by personnel of good moral character. The annual license fee for sales organizations, management organizations, and brokers is five hundred dollars (\$500.00). These licenses have an expiration date of June 30 in each year.

Authority G.S. 65-49; 65-57.

SECTION .0300 - INDIVIDUAL PRE-NEED SALESPEOPLE

04 NCAC 05C .0301 APPLICATION AND FILING FEE

Any person who offers to sell pre-need grave spaces, mausoleum crypts, niches, memorials, vaults or any other pre-need cemetery merchandise or services that are authorized for any cemetery, cemetery sales groups or cemetery management groups must first obtain a license from this commission. Applications for a license must be filed with the Commission on their Application for Persons Selling Pre-need Cemetery Property together with a fee in the amount of ~~twenty five dollars (\$25.00), one hundred dollars (\$100.00), fifteen dollars (\$15.00) fifty dollars (\$50.00)~~ of which shall constitute an application fee and ~~ten dollars (\$10.00) fifty dollars (\$50.00)~~ of which shall constitute ~~annual~~ a two year license fee. The form provides space for applicant's name, cemetery name, past address, previous employment and criminal record. The application form is available by contacting:

North Carolina Cemetery Commission
~~1100~~ 1001 Navaho Drive, ~~GL-2~~ Suite 100
Raleigh, North Carolina 27609.

This license has an expiration date of June 30 in each ~~year~~ year, and is not transferable from the cemetery to which it is issued.

Authority G.S. 65-49; 65-58.