

## Cemetery Regulations

These regulations pertain to cemeteries owned/operated by congregations.

The regulation of cemeteries falls under the jurisdiction of federal, provincial and municipal bodies.

### *FEDERAL CONSIDERATIONS*

The following Canada Revenue Agency (CRA) considerations apply to all cemeteries that are owned/operated by congregations in the Eastern Synod:

1. The operation/maintenance of a cemetery must be included as one of the charitable purposes of the congregation in its governing documents and in the application form (currently known as form T2050) that was submitted to CRA when the congregation originally applied for registered charity status. If this purpose wasn't specified at the time of original registration or through a subsequent amendment, an amendment to the congregation's charitable purpose must be requested from and approved by CRA. For more details about the process involved and the information that CRA will require in order to consider such a request, please contact me (email: [kmyra@kmyra.ca](mailto:kmyra@kmyra.ca)).
2. A registered charity that has been established to operate and maintain a cemetery cannot restrict the sale of its plots to only those individuals who are members of the congregation, nor can it charge a lower rate to a member compared to a non-member as doing so would be in violation of the Income Tax Act (providing an undue private benefit to a member). Similarly, in the case of the congregation charging a fee for a funeral/memorial service, the same fee must be charged to a member and a non-member.
3. All plots must be sold at fair market value.

Non-compliance with any of the above regulations could result in fines to a congregation, suspension of its tax-receipting privileges, or in the case of repeated violations, revocation of its charitable registration status.

### *PROVINCIAL CONSIDERATIONS*

In Ontario, cemeteries are governed by the [Burial and Funeral, Cremation Services Act, 2002](#) and administered by the Bereavement Authority of Ontario (BAO). Although regulations in other provinces are for the most part quite similar to those of Ontario, there are a few

differences from province to province. Cemeteries in Ontario must adhere to the following requirements:

1. By-laws must be established, approved and kept up to date to reduce the risk of liability. Sample by-laws that can be used as a model and amended as required are available from the BAO. The by-law approval process involves several steps including:
  - Publishing the proposed new/amended by-laws in a local newspaper with general circulation
  - Clearly posting the proposed by-laws at the entrance to the cemetery for four weeks
  - Delivering a copy of the proposed by-laws to those who supplied markers within the previous year
  - Final approval of the new/amended by-laws by the BAO Registrar
2. If the balance of a Cemetery Care and Maintenance (Perpetual Care) Fund exceeds \$50,000 the funds must be held by an incorporated/licensed trustee that is licensed under the Ontario Trustee Act.

If the balance of a Care and Maintenance Fund is less than <\$50,000, the cemetery operator must apply to the municipality requesting that the municipality act as trustee in which case a memorandum of understanding is provided and used in place of a trust agreement. If the municipality refuses to act in this capacity, it must provide a letter to the cemetery and the fund must be held in a local bank branch where it may be invested in any investment vehicle that is permitted under the Ontario Trustee Act (e.g. cash, GICs, stocks, bonds, mutual funds, etc.), provided that a prudent investor would do so under similar circumstances. Such funds must be held in a separate account and cannot be co-mingled for investment purposes with other congregational funds.

### *MUNICIPAL CONSIDERATIONS*

In addition to CRA and provincial bodies, municipalities also have authority in limited areas such as the care of abandoned cemeteries and approving major alterations to a cemetery (e.g. expanding land available for burial, building a crematorium, etc.). Municipalities also have the power to order a cemetery operator to maintain an existing cemetery.

Upon request and where it is likely that an existing cemetery may otherwise be abandoned (e.g. if a congregation is no longer able to maintain its cemetery), some municipalities will assume responsibility for the cemetery's ongoing maintenance and operation. Other municipalities may refuse these types of requests to avoid increasing the financial burden on its taxpayers.

*FOR MORE INFORMATION*

Congregations located in Ontario should consult the following sources:

- Bereavement Authority of Ontario (BAO): Website: <https://thebao.ca> Email: [info@thebao.ca](mailto:info@thebao.ca); Phone toll-free: 1-844-493-6356
- [Consumer Information Guide](#) – This information is also provided by funeral homes, cemeteries, etc.

Congregations located in Nova Scotia requiring advice on provincial cemetery matters should contact Rev. Dr. Kimber McNabb, pastor of Resurrection Lutheran Church, Halifax (email: [revkimbermcnabb@yahoo.ca](mailto:revkimbermcnabb@yahoo.ca); phone: (902) 422-9224).

As neither Quebec nor New Brunswick have provincial regulators for cemeteries, congregations located in these provinces are advised to contact their local municipal office.

Keith Myra  
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