

Cemetery and Funeral Services Act

CHAPTER 62 OF THE REVISED STATUTES, 1989

as amended by

2004, c. 1; 2014, c. 10, ss. 1-17; 2014, c. 39, s. 1;
2017, c. 9, s. 1; 2018, c. 30, ss. 1-7



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**An Act Respecting
Cemetery and Funeral Services**

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Short title

1 This Act may be cited as the *Cemetery and Funeral Services Act*.
R.S., c. 62, s. 1.

Interpretation

2 In this Act,

(a) “burial” means the burial of human remains and includes the permanent placement of human remains in a building or structure;

(b) “care fund” means an irrevocable trust fund required to be established by an operator in accordance with this Act for the specified care and maintenance of graves in a cemetery;

(c) “cemetery” means any land which is set apart or used as a place for burial and includes a building or structure for the permanent placement of human remains;

(d) “cemetery goods or services” means

(i) the goods supplied or to be supplied at and by the cemetery or crematorium in conjunction with the burial or cremation of human remains including grave liners, vaults, urns, memorials and other supplies incidental to the identification or embellishment of a lot, or

(ii) the services performed or to be performed by the cemetery or crematorium relative to the installation or provision of any of the goods referred to in subclause (i), including cremation, opening and closing of lots, and installation of memorials,

but does not include the sale of lots or any interest therein;

(e) “funeral home” means a facility or establishment, by whatever name called, offering or providing funeral merchandise or services to the public;

(ea) “funeral home licence” means a licence to operate a funeral home issued pursuant to the *Embalmers and Funeral Directors Act*;

(f) “funeral merchandise or services” means

(i) the services offered or performed by a funeral director or embalmer incidental to the arrangements, care and preparation of human remains for burial, cremation or other disposition, or

(ii) the merchandise, articles or supplies used, offered for sale or sold directly to the public by the funeral director, in conjunction with the related services,

but does not include the sale of lots or any interest therein;

(g) “grave” includes a place within a building or structure for the permanent placement of human remains;

(h) “human remains” includes cremated human remains;

(ha) “insurance-funded plan” means a pre-arranged funeral plan or pre-need cemetery plan that provides that the price payable for the merchandise, goods or services provided for under the plan is to be funded directly or indirectly out of the proceeds of an insurance policy;

(i) “licence” means a licence issued pursuant to this Act;

(j) “lot” means a lot of land containing or which may contain one or more graves and includes a space within a building or structure which contains or may contain one or more places for the permanent placement of human remains;

(k) “memorial” means a memorial, marker, monument, headstone, footstone, tombstone, plaque, tablet or plate marking a grave and includes an inscription of lettering or ornamentation, or both, on or on the front of a space within a building or structure for the permanent placement of human remains;

(l) “Minister” means the Minister of Service Nova Scotia;

(m) “operator” means a person owning, controlling or managing a cemetery or crematorium and includes an individual, an association of individuals, a partnership or a corporation, including an association incorporated pursuant to the *Co-operative Associations Act*, or an employee or agent thereof;

(n) “pre-arranged funeral plan” means an agreement under which, in consideration of

(i) payment in advance by lump sum or instalments, or

(ii) the price payable being funded out of the proceeds of an insurance policy to be paid directly or indirectly to a person who holds a funeral home licence,

a person who holds a funeral home licence contracts to provide funeral merchandise or services when required for one or more individuals alive at the time the agreement is entered into;

(o) “pre-need cemetery plan” means an agreement under which, in consideration of

(i) payment in advance by lump sum or instalments, or

(ii) the price payable being funded out of the proceeds of an insurance policy to be paid directly or indirectly to an operator of a cemetery or crematorium,

an operator of a cemetery or crematorium contracts to provide cemetery goods or services when required for one or more individuals alive at the time the agreement is entered into;

(p) “purchase agreement” means an agreement for the purchase of a pre-arranged funeral plan, a pre-need cemetery plan or a cemetery lot for use at a future date or the right to use such a lot;

(q) “purchaser” includes the heirs, successors and assigns and the personal representative of the purchaser and the agent of any of them;

(r) “Registrar” means the Registrar of Cemetery and Funeral Services;

(s) “regulations” means regulations made by the Governor in Council pursuant to this Act;

(sa) “trust-funded plan” means a pre-arranged funeral plan or pre-need cemetery plan under which payment is made in advance by lump sum or instalments;

(t) “trustee” means a person who is a trustee in respect of a trust fund or a trust agreement under this Act. R.S., c. 62, s. 2; 2014, c. 10, s. 1; 2018, c. 30, s. 1.

Application of Act

3 (1) Notwithstanding any special or general Act, this Act applies to a cemetery company incorporated by or pursuant to a special or general Act, but does not include a cemetery exempted from this Act by the regulations upon the application of any person or community.

(2) Notwithstanding subsection (1), this Act, except Sections 22 and 23, does not apply to

(a) a city, incorporated town or municipality of a county or district or agency thereof in respect of its cemeteries and those cemeteries; or

(b) a church in respect of its burial ground and the burial ground,

unless otherwise provided by the regulations. R.S., c. 62, s. 3.

Supervision of Act

4 The Minister has the general supervision and management of this Act. R.S., c. 62, s. 4.

Registrar

5 (1) The Minister shall appoint a Registrar of Cemetery and Funeral Services who has the functions and duties set out in this Act and the regulations and such other functions and duties pursuant to this Act and the regulations as the Minister may determine.

(2) The Minister may, in the absence or incapacity of the Registrar or when the office of the Registrar is vacant, authorize another person to act in the Registrar’s stead.

(3) The Minister may appoint one or more deputy registrars as required to assist the Registrar in the performance of the Registrar’s duties.

(4) A deputy registrar may perform any of the duties and exercise any of the powers of the Registrar as directed by the Registrar.

(5) A person appointed or authorized to act pursuant to this Section must be employed pursuant to the *Civil Service Act* and that Act applies to that person. 2014, c. 39, s. 1.

Personnel

6 (1) Such inspectors, auditors and other persons as are required for the administration of this Act and the regulations shall be appointed in accordance with the *Civil Service Act*.

(2) Notwithstanding subsection (1), the Minister may engage upon such terms and conditions as the Minister deems fit the services of such persons as the Minister deems necessary for the efficient carrying out of the intent and purpose of this Act and the regulations. R.S., c. 62, s. 6.

Restrictions on solicitations

7 (1) No person shall solicit another person to enter into an agreement respecting or offer for sale to or sell to another person

- (a) a pre-arranged funeral plan;
- (b) a pre-need cemetery plan; or
- (c) a cemetery lot or the right to use a lot in a cemetery,

unless he is licensed as a seller or as a salesperson of a licensed seller pursuant to this Act and the regulations.

(2) No person shall solicit another person to enter into an agreement respecting or offer for sale to or sell to another person

- (a) any funeral merchandise or services under a pre-arranged funeral plan; or
- (b) any cemetery goods or services under a pre-need cemetery plan,

unless the pre-arranged funeral plan or pre-need cemetery plan essentially conforms to a plan which has first been submitted to the Registrar.

(3) Every person who as a seller

- (a) has entered into a pre-arranged funeral plan; and
- (b) continues to be required to hold funds with respect to the plan in trust pursuant to this Act or the regulations,

must continue to hold a licence issued by the Registrar pursuant to Section 8 regardless of whether the person continues to be required to be licensed pursuant to clause (1)(a).

(4) Every person who as a seller

- (a) has entered into a pre-need cemetery plan; and

(b) continues to be required to hold funds with respect to the plan in trust pursuant to this Act or the regulations,

must continue to hold a licence issued by the Registrar pursuant to Section 8 regardless of whether the person continues to be required to hold a licence pursuant to clause (1)(b). R.S., c. 62, s. 7; 2014, c. 10, s. 2.

Issue of licences

8 (1) The Registrar shall issue a licence to sell

- (a) pre-arranged funeral plans;
- (b) pre-need cemetery plans;
- (c) cemetery lots or the right to use a lot in a cemetery,

to a person who meets the requirements for licensing set out by this Act or the regulations and who pays the annual fee.

(1A) In order to be issued a licence to sell pre-arranged funeral plans pursuant to subsection (1), an applicant must hold a funeral home licence.

(2) The Registrar may require an applicant for a licence to provide a bond in the form and amount authorized by the regulations.

(3) A licence is subject to the terms and conditions prescribed by the regulations and any restrictions imposed by the Registrar pursuant to subsection (4).

(4) The Registrar may issue a licence subject to such restrictions as the Registrar may impose. R.S., c. 62, s. 8; 2014, c. 10, s. 3; 2018, c. 30, s. 2.

Display of licence

8A (1) Every person who holds a licence to sell pre-arranged funeral plans shall display the licence in public view at all times at the funeral home operated by the person.

(2) Every person who holds a licence to sell pre-need cemetery plans shall display the licence in public view at all times at the person's business premises. 2014, c. 10, s. 4.

Insurance Act

8B Every person who is selling insurance for insurance-funded plans shall comply with the *Insurance Act*. 2014, c. 10, s. 4.

Suspension or cancellation of licence

9 The Registrar may suspend [or] cancel a licence where the Registrar is satisfied that the licensee has

- (a) violated any provision of this Act or the regulations or has failed to comply with any of the terms, conditions or restrictions to which his licence is subject;
- (b) made a material mis-statement in the application for his licence or in any of the information or material submitted by him to the Registrar;
- (ba) failed to comply with an undertaking provided by the licensee pursuant to Section 9A;
- (c) been guilty of misrepresentation, fraud or dishonesty; or
- (d) demonstrated his incompetency or untrustworthiness to sell pre-arranged funeral plans, pre-need cemetery plans or cemetery lots or the right to use a lot. R.S., c. 62, s. 9; 2014, c. 10, s. 5.

Undertakings

9A Where the Registrar has reason to believe that a person has contravened this Act or the regulations, the Registrar may accept from the person a written undertaking in the form and containing the terms or conditions the Registrar determines are appropriate in the circumstances, including, without limiting the generality of the foregoing, one or more of the following:

- (a) an undertaking to comply with this Act and the regulations;
- (b) an undertaking to refrain from engaging in an act or practice;
- (c) an undertaking with respect to the form, content and maintenance of trust accounts, records, purchase agreements or other documents. 2014, c. 10, s. 6.

Publication of information

9B (1) The Registrar may publish

- (a) a list of licensees, including their names and business addresses;
- (b) any terms, conditions or restrictions to which a particular licence is subject;
- (c) information relating to the status of a particular licence, including whether the licence has been cancelled or suspended;
- (ca) any undertakings to which a particular funeral home licence is subject;
- (cb) any hearings scheduled by the Registrar;
- (cc) any decision, or summary of a decision, made by the Registrar;
- (cd) any convictions, fines or other penalties imposed by the courts under this Act; and
- (d) any other information prescribed by the regulations.

(2) The Registrar may publish the information referred to in subsection (1) in whatever form and manner the Registrar considers appropriate. 2014, c. 10, s. 6; 2018, c. 30, s 3.

Requirements of purchase agreement

10 **(1)** The purchase of

- (a) a pre-arranged funeral plan;
- (b) a pre-need cemetery plan; or
- (c) a cemetery lot for use at a future date or the right to use such a lot,

shall be by agreement in writing, signed by both parties and a copy shall be given to the purchaser at the time of signing or within ten days therefrom or mailed to the purchaser within ten days therefrom.

(2) The form and content of purchase agreements used by a seller of pre-arranged funeral plans or pre-need cemetery plans must

- (a) be approved by the Registrar; and
- (b) comply with the requirements, if any, set out by the regulations.

(3) No seller shall accept money for the future delivery of funeral merchandise or services for an individual who is alive at the time the money is accepted unless the seller and the purchaser have entered into a written purchase agreement for a pre-arranged funeral plan.

(4) No seller shall accept money for the future delivery of cemetery goods or services for an individual who is alive at the time the money is accepted unless the seller and the purchaser have entered into a written purchase agreement for a pre-need cemetery plan. R.S., c. 62, s. 10; 2014, c. 10, s. 7.

Included documents

10A The seller of an insurance-funded plan shall attach to the purchase agreement

- (a) the insurance policy or the enrolment or other documents that confirm the purchase of the insurance; and
- (b) the document designating the holder of the funeral home licence or the operator of the cemetery or crematorium as the beneficiary of the insurance or assigning the proceeds of the insurance to the holder of the funeral home licence or the operator of the cemetery or crematorium. 2014, c. 10, s. 8.

Cancellation of purchase agreement

11 **(1)** Any purchase agreement may be cancelled without penalty by the purchaser by notice in writing sent by registered mail or delivered in person to

the seller of the plan or lot within ten days from the date of agreement or within ten days of the receipt of the agreement as determined by subsection (2).

(2) Where the copy of the purchase agreement is not given to the purchaser at the time of signing but mailed to him, the ten day period for cancellation by the purchaser without penalty begins when the purchaser receives his copy of the agreement and shall be presumed to be on the third day after the seller has mailed the copy.

(3) The purchase agreement shall contain, at the top of page one of each copy of the agreement in type not less than ten point in size, the following words:

You may, without penalty or obligation, cancel this transaction by notice in writing sent by registered mail to *(name and address of seller to be inserted here)* or by delivering it there yourself within ten days after you have received the agreement.

(4) Where a copy of the purchase agreement is not

- (a) given to the purchaser at the time of signing; or
- (b) mailed to the purchaser within ten days of the signing,

the purchase agreement is voidable at the option of the purchaser at any time.

(5) Where a notice of cancellation is given pursuant to subsection (1) or the purchase agreement is voided pursuant to subsection (4), all money paid under the purchase agreement for a trust-funded plan shall be returned to the purchaser within thirty days after written demand for the same has been given by the purchaser to the seller. R.S., c. 62, s. 11; 2014, c. 10, s. 9.

Payment by personal representative

12 (1) Every trust-funded plan shall contain a provision that, where a purchaser who is not in default under the plan dies before making all the payments, his personal representative may pay to the seller any unpaid balances.

(2) Every trust-funded plan shall provide for cancellation if the personal representative does not pay the unpaid balance as referred to in subsection (1) and upon the cancellation subsection (2) of Section 13 shall apply to the trust-funded plan. R.S., c. 62, s. 12; 2014, c. 10, s. 10.

Cancellation of plan

13 (1) Every pre-arranged funeral plan or pre-need cemetery plan shall provide for cancellation

- (a) by the purchaser at any time prior to his death; or
- (b) by his personal representative after his death but only when, because of great distance or of some extraordinary circumstance, it is not reasonably feasible to provide or use the goods, merchandise or services contracted for by the purchaser under the purchase agreement.

(2) When a trust-funded plan is cancelled, terminated or discontinued pursuant to subsection (1), the seller may retain the income that has accrued on the principal pertaining to the plan that has been cancelled, terminated or discontinued and the principal less any amount expended in accordance with the plan shall be paid and any funeral merchandise, cemetery goods or other things acquired by the seller on behalf of the purchaser shall be delivered to the purchaser or his personal representative within thirty days after written demand for the same has been given to the seller.

(3) Nothing in subsection (2) authorizes a seller to expend money for cemetery goods or services, prior to the death of the purchaser, pursuant to a pre-arranged funeral plan or the pre-need cemetery plan unless it specifically authorizes the expenditure.

(4) Every purchase agreement for an insurance-funded plan must include a statement that cancellation of the pre-arranged funeral plan or the pre-need cemetery plan does not cancel the insurance contract, but that cancellation of the insurance contract does cancel the pre-arranged funeral plan or the pre-need cemetery plan. R.S., c. 62, s. 13; 2014, c. 10, s. 11.

Missed payment

13A (1) Where a purchaser fails to make a payment under a trust-funded plan within thirty days after the payment is due, the seller may demand payment and give written notice that the plan may be cancelled if payment is not received within thirty days from the date the demand and notice were sent to the purchaser.

(2) Where payment is not received within the thirty-day period referred to in subsection (1), the seller may cancel the plan by giving written notice of cancellation to the purchaser and refunding to the purchaser all money paid under the plan, minus all income earned and minus the percentage retained by the seller on account of administrative expenses pursuant to subsections (2) and (3) of Section 15.

(3) The notices required by subsections (1) and (2) must comply with the requirements, if any, set out by the regulations.

(4) The plan is not cancelled and the seller shall honour the prices and the funeral merchandise or services, or the cemetery goods or services, contracted for under the purchase agreement if

(a) the purchaser pays any unpaid balances that are due within the thirty days from the date of the demand and notice sent pursuant to subsection (1); or

(b) the seller does not provide the written notices as required by subsections (1) and (2) and refund the money as provided for in subsection (2). 2014, c. 10, s. 12.

Assignment

13B (1) A pre-arranged funeral plan may be assigned to another licensed seller of pre-arranged funeral plans in accordance with the regulations by

- (a) the seller who entered into the plan, with the written consent of the purchaser;
- (b) the purchaser on the purchaser's own behalf or on behalf of any other person for whom the plan was purchased;
- (c) the person for whom the plan was purchased; or
- (d) the personal representative of the deceased person for whom the plan was purchased.

(2) Where an assignment of a pre-arranged funeral plan is made to another licensed seller, the seller who entered into the plan shall transfer all money held in trust to the other licensed seller, and the other licensed seller shall continue to hold the money in trust in accordance with this Act and the regulations.

(3) Neither the seller of a pre-arranged funeral plan who assigns it nor the seller to whom it is assigned shall charge the purchaser

- (a) any penalty or other fee relating to the assignment; or
- (b) any percentage on account of administrative expenses, if a percentage has been retained by any person pursuant to subsections (2) and (3) of Section 15. 2014, c. 10, s. 12.

Notice of intended sale or cessation of operations

13C (1) The seller of a pre-arranged funeral plan shall give written notice to the purchaser at least thirty days in advance of an intended cessation of operations of a funeral home from which the funeral merchandise or services contracted for under the plan were to be provided.

(2) A licensee shall give written notice to the purchaser within thirty days after a sale or change in location of a funeral home from which the funeral merchandise or services contracted for under the plan were to be provided.

(3) The notices required by subsections (1) and (2) must comply with the requirements, if any, set out by the regulations.

(4) The seller of pre-arranged funeral plans shall file with the Registrar, at least thirty days in advance of an intended sale or cessation of operations of a funeral home operated by the seller,

- (a) an interim report that meets the requirements, if any, in the regulations, respecting the pre-arranged funeral plans and trust accounts held by the seller;
- (b) a report that sets out how the pre-arranged funeral plans and trust accounts will be dealt with as part of the intended sale or cessation of operations; and

(c) in the case of an intended sale, the name of the proposed purchaser.

(5) The Registrar may require the seller to provide additional information and particulars with respect to any report filed with the Registrar pursuant to subsection (4). 2014, c. 10, s. 12.

Where seller ceases to carry on business

13D Where a pre-arranged funeral plan that is a trust-funded plan is cancelled because the funeral home from which the funeral merchandise or services contracted for under the plan were to be provided is ceasing to carry on business, the seller of the plan

(a) shall not retain the income that has accrued on the principal;

(b) shall refund to the purchaser the principal and all income earned, minus any amount expended in accordance with the plan and minus the percentage retained by the seller on account of administrative expenses pursuant to subsections (2) and (3) of Section 15; and

(c) shall deliver to the purchaser any funeral merchandise or other things acquired by the seller on behalf of the purchaser. 2014, c. 10, s. 12.

Resolution of disputes by Registrar

14 (1) Any dispute or disagreement between a purchaser and a seller regarding a pre-arranged funeral plan or a pre-need cemetery plan that cannot be resolved to their mutual satisfaction may be resolved by the Registrar by order.

(2) The Registrar, with the approval of the Minister, may order the payment of money to the person entitled to receive it from a pre-arranged funeral plan or a pre-need cemetery plan.

(3) Where a seller has been requested in writing, by a person having authority to make the demand to be reimbursed under Section 11, 12 or 13 and fails to do so within thirty days of receipt of the demand, the purchaser may apply to the Registrar for an order directing the release of the funds. R.S., c. 62, s. 14.

Funds in trust

15 (1) Subject to subsection (2), all money received by a seller under a pre-arranged funeral plan or pre-need cemetery plan, together with any income earned thereon, shall be held in trust in accordance with the regulations until

(a) the funeral merchandise or services or the cemetery goods or services mentioned in the plan have been purchased or provided in accordance with the plan; or

(b) the money held in trust, or any unused balance thereof, has been refunded to the purchaser or his personal representative,

and shall not be subject to seizure or detention under any legal process.

(2) The seller of a trust-funded plan may, if the plan so provides, retain not more than the percentage, as determined by the regulations, of money payable under the plan on account of administrative expenses.

(3) The seller of a trust-funded plan may retain the percentage on account of administrative expenses referred to in subsection (2) only at one of the following times:

- (a) where payment is by lump sum, when the seller deposits the lump sum payment in trust;
- (b) where payment is by instalments, when the seller deposits the first instalment payment in trust;
- (c) where the pre-arranged funeral plan or pre-need cemetery plan is cancelled, when cancelled.

(3A) Notwithstanding subsections (3) and 13B(3), where a trust-funded plan was entered into before September 1, 2016, and the seller who entered into the plan is able to prove to the Registrar's satisfaction that no administrative fee or percentage on account of administrative expenses referred to in subsection (2) has been taken, the Registrar may approve the seller to retain the percentage on account of administrative expenses at the time the plan is transferred to another licensed seller of pre-arranged funeral plans in accordance with Section 13B.

(4) The seller of an insurance-funded plan shall not charge any fee or amount on account of administrative expenses. R.S., c. 62, s. 15; 2014, c. 10, s. 13; 2017, c. 9, s. 1.

Change to insurance-funded plan

15A The seller of a pre-arranged funeral plan or a pre-need cemetery plan shall not cancel a trust-funded plan and replace it with an insurance-funded plan unless the seller

- (a) obtains prior written consent from the purchaser to cancel the trust-funded plan and replace it with an insurance-funded plan;
- (b) contracts in the insurance-funded plan to provide the same funeral merchandise or services or the same cemetery goods or services, at the same prices, as were contracted for in the trust-funded plan; and
- (c) does not charge the purchaser any additional fee or amount for the insurance-funded plan. 2014, c. 10, s. 14.

Unclaimed trust money

15B (1) Money held in trust by a seller for a pre-arranged funeral plan or a pre-need cemetery plan becomes unclaimed trust money if the seller

- (a) has been unable to determine whether the person for whom the plan was purchased is deceased and has reasonable grounds to believe that the person for whom the plan was purchased would be one hundred and twenty years old or older; or

(b) has reasonable grounds to believe that another person has provided the funeral merchandise or services or the cemetery goods or services,

and the funeral merchandise or services or the cemetery goods or services that are mentioned in the plan have not been provided and the seller has been unable to locate the purchaser or a personal representative of the purchaser.

(2) Once money held in trust by a seller becomes unclaimed trust money pursuant to this Section, the seller shall transfer the money and income to the Minister within fifteen days.

(3) Money paid to the Minister pursuant to subsection (2) must be held in trust by the Minister for two years.

(4) All interest earned on money paid to the Minister pursuant to subsection (2) accrues to Her Majesty in right of the Province.

(5) Every person who makes an application to claim money paid pursuant to subsection (2) shall

(a) make the application in a form approved by the Registrar; and

(b) provide the Registrar with any information requested by the Registrar.

(6) Within one hundred and twenty days after an application and any information required by the Registrar is received pursuant to subsection (5), the Registrar shall consider the application and may either

(a) allow the claim, if the Registrar is satisfied that the applicant has a valid entitlement to the money; or

(b) deny the claim, if the Registrar is not satisfied that the applicant has a valid entitlement to the money.

(7) Where the Registrar does not receive an application for money paid pursuant to subsection (2) by a person who the Registrar is satisfied is validly entitled to it within two years from the time that the money is paid to the Minister,

(a) the money defaults to Her Majesty in right of the Province and must be paid into the General Revenue Fund of the Province; and

(b) all claims to the money by any person entitled to it are extinguished. 2014, c. 10, s. 14.

Money paid under existing plan

16 Money standing to the credit of a purchaser under a pre-arranged funeral plan or a pre-need cemetery plan entered into prior to the first day of Octo-

ber, 1983, shall be held in trust in accordance with Section 15 and the regulations. R.S., c. 62, s. 16.

Statement of cost of lot

17 (1) Where a pre-arranged funeral plan or a pre-need cemetery plan is combined with the sale of a lot or the right to use a lot, the cost of the lot shall be clearly set forth in any documents pertaining thereto.

(2) Sections 15 and 16 do not apply to the money paid for the lot and the agreement shall clearly set out that Sections 15 and 16 do not apply.

(3) Section 24 applies to the money paid for the lot. R.S., c. 62, s. 17.

Prohibition of solicitation in certain places

18 No person shall solicit a person in any hospital, home for special care, nursing home or senior citizens home to

(a) enter into a pre-arranged funeral plan or a pre-need cemetery plan with him or with any other person who would provide the cemetery goods or services or the funeral merchandise or services under any such plan; or

(b) purchase a lot in a cemetery or the right to use a lot in a cemetery. R.S., c. 62, s. 18.

Solicitation by telephone and harassment

19 (1) Solicitation of sales by telephone shall not be made between the hours of nine o'clock in the afternoon and nine o'clock in the forenoon.

(2) No solicitation shall be conducted in a manner that may harass or appear to harass an individual.

(3) An individual who has declined to enter into a purchase agreement and who is solicited again within one year by the same person who originally solicited that individual shall be *prima facie* deemed to be harassed. R.S., c. 62, s. 19.

20 *repealed 2014, c. 10, s. 15.*

Cemetery plan

21 (1) No person shall sell a lot in a cemetery or any right to use a lot in a cemetery unless a plan of the cemetery in accordance with the regulations has been filed with the Registrar and the lot being sold is shown on the plan.

(2) The Registrar shall not accept for filing a plan that is not in accordance with the regulations.

(3) Every plan filed with the Registrar may be inspected by any person during the regular office hours of the Registrar.

(4) Part IX of the *Municipal Government Act* and Part IX of the *Halifax Regional Municipality Charter* does not apply to the subdivision of a cemetery into lots.

(5) The *Registry Act* and the *Land Registration Act* do not apply to an instrument to the extent that it affects a lot in a cemetery sold for burial or the right to use a lot in a cemetery for burial or in respect of which a purchase agreement for burial has been executed. R.S., c. 62, s. 21; 2018, c. 30, s. 4.

Rights of purchaser of cemetery lot

22 (1) The sale of a lot in a cemetery or of the right to use a lot in a cemetery

- (a) subject to subsection (2), vests in the purchaser the right of reasonable access to the lot;
- (b) vests in the purchaser the right to use the lot for burial;
- (c) vests in the purchaser the right to erect a memorial on the lot subject to any specifications provided for by the purchase agreement; and
- (d) subject to subsections (2) and (3), vests in the public a right to reasonable access for visitation to any grave in the lot which has been used for burial.

(2) The operator may vary the access to a lot in a cemetery at any time so long as reasonable access is maintained.

(3) Where all of the lots in a building, structure or enclosure in a cemetery are owned by one family, there is no public right of access to the building, structure or enclosure. R.S., c. 62, s. 22.

Exemption from taxation and sale of lot

23 (1) A lot in a cemetery or a right to use a lot in a cemetery which has been conveyed to a purchaser or is subject to a purchase agreement is exempt from taxation of any kind and is not liable to be seized or sold on execution for taxes or otherwise unless the purchaser holds it for resale.

(2) The sale of a cemetery, on execution or otherwise, does not affect a right acquired by a purchaser pursuant to Section 22. R.S., c. 62, s. 23.

Care fund

24 (1) In this Section, “operator” means the operator of a cemetery.

(2) Except as provided in subsection (3), every operator shall maintain in force at all times an irrevocable trust fund, separate and distinct from all other funds, to be known as the care fund of the particular cemetery to be used for the care and maintenance of graves in the cemetery.

(3) From all money received on the sale of a lot, the operator shall deduct and set aside in the care fund, a portion of the money in the manner and in the amount prescribed by the regulations.

(4) The care fund shall be held and administered by a trustee approved by the Registrar in accordance with an irrevocable trust agreement approved by the Registrar.

(5) The Registrar shall keep a copy of every trust agreement approved by him.

(6) Every trust agreement submitted to the Registrar and approved by him may be inspected by any person during the regular office hours of the Registrar.

(7) A trustee shall not pay out of a care fund any money except in accordance with the trust agreement.

(8) The care fund and any money held for deposit to the care fund shall not be subject to seizure or detention under any legal process.

(9) An operator may deposit to the care fund money from sources other than from the sale of lots and in such case the money forms part of the care fund. R.S., c. 62, s. 24.

Maintenance of cemetery

25 An operator shall maintain a cemetery or crematorium in good order at all times. R.S., c. 62, s. 25.

Requirements for cremation

25A The operator of a crematorium shall not cremate human remains unless the remains are enclosed in a container that

- (a) is of sufficient strength to hold and conveniently transfer the remains;
- (b) prevents the remains from posing a health hazard; and
- (c) meets the requirements, if any, set out by the regulations. 2014, c. 10, s. 16.

Inspections

26 The Registrar or an inspector appointed pursuant to this Act may enter and inspect a cemetery, crematorium or a funeral home at any time. R.S., c. 62, s. 26.

Access to records

27 The Registrar or an auditor appointed or engaged pursuant to this Act shall have access at any time to the records of

- (a) a seller of a pre-arranged funeral plan;

- (b) a seller of a pre-need cemetery plan;
- (c) a seller of a lot in a cemetery or of a right to use a lot in a cemetery;
- (d) an operator; and
- (e) a trustee in respect of a trust fund or a trust agreement under this Act. R.S., c. 62, s. 27.

Act of default

27A Where any person of a class referred to in clauses (a) to (d) of Section 27

- (a) carries out any act of bankruptcy or makes a general assignment for the benefit of that person's creditors or other acknowledgement of insolvency or makes any application pursuant to the *Bankruptcy and Insolvency Act* (Canada) or the *Companies Creditors Arrangement Act* (Canada) or any similar legislation;
- (b) fails to fulfil any contractual, fiduciary or statutory duties to
 - (i) a purchaser or the person for whom a pre-arranged funeral plan or pre-need cemetery plan was purchased, or
 - (ii) the personal representative of a purchaser or the person for whom the plan was purchased, after the death of the purchaser or that person;[;] or
- (c) is unwilling or unable to comply with this Act or the regulations,

or where any circumstances prescribed by regulation exist, an act of default is deemed to have occurred for the purpose of Sections 27B to 27D. 2004, c. 1, s. 1.

Powers of Registrar upon act of default

27B (1) Where an act of default has occurred, the Registrar may take any steps the Registrar considers necessary or advisable to remedy the default or mitigate the default and, without limiting the generality of the foregoing, may

- (a) take control over and administer, assign or dispose of any trust fund relating to a pre-arranged funeral plan or pre-need cemetery plan or a care fund;
- (b) refund to the purchaser or the purchaser's personal representative the principal paid under any pre-arranged funeral plan or pre-need cemetery plan, together with any income earned thereon to the extent funds are available to do so;
- (c) order an operator to perform any function relating to the operation of a cemetery;
- (d) allocate or specify the use of any income earned on a care fund.

(2) An order made under clause (c) of subsection (1) may be appealed to the Supreme Court of Nova Scotia within thirty days. 2004, c. 1, s. 1.

Administrator

27C (1) Where an act of default by an operator has occurred, the Minister may appoint an administrator to perform the duties and functions of the operator with respect to a cemetery until

- (a) another operator becomes responsible for the operation of the cemetery;
- (b) an operational arrangement for the on-going care and maintenance of the cemetery is established; or
- (c) three years have passed since the appointment of the administrator,

whichever occurs first.

(2) An administrator appointed under subsection (1)

- (a) has control and management of the cemetery and any assets or property of the operator used in the operation of the cemetery;
- (b) may act in the stead of the operator upon such terms and conditions as are prescribed by the Minister; and
- (c) has access to and may expend any money that an operator would be entitled to spend pursuant to this Act.

(3) An administrator appointed under subsection (1) shall attempt to

- (a) find another operator for the cemetery; or
- (b) make an operational arrangement for the on-going care and maintenance of the cemetery.

(4) Where three years have passed from the date of appointment of an administrator under subsection (1) and the administrator has not been able to find another operator for the cemetery or make an operational arrangement for the on-going care and maintenance of the cemetery, the operation of the cemetery shall be

- (a) carried on in accordance with the regulations; or
- (b) terminated in accordance with the regulations. 2004, c. 1, s. 1.

Expropriation and conveyance

27D Where an act of default by an operator has occurred and the Minister considers it necessary to vest the cemetery in another operator, the Minister may designate the cemetery as land required for a public purpose within the meaning of

the *Expropriation Act* and the land may be expropriated in accordance with that Act and conveyed to the other operator. 2004, c. 1, s. 1.

No action or liability

27E Notwithstanding anything contained in this Act,

(a) no action for damages may be commenced or maintained and no cause of action lies against the Minister, an administrator appointed by the Minister or an employee or agent acting under the direction of the Minister or an administrator, if the action arises out of any act or omission of that person that occurs while that person is carrying out duties or exercising powers pursuant to this Act in good faith; and

(b) nothing in this Act makes an administrator, the Minister or Her Majesty in right of the Province liable for any debt or obligation of the operator of a cemetery. 2004, c. 1, s. 1.

Costs

27F Any costs incurred by an administrator that exceed the revenue generated by the operation of a cemetery are a debt due and owing to Her Majesty in right of the Province by the operator of the cemetery. 2004, c. 1, s. 1.

Regulations

28 (1) The Governor in Council may make regulations

(a) respecting the application of this Act;

(b) prescribing functions and duties of the Registrar and inspectors, auditors and other persons appointed or engaged pursuant to this Act;

(c) regulating, limiting or prohibiting the solicitation of pre-arranged funeral plans, pre-need cemetery plans and the sale of cemetery lots or the right to use a cemetery lot;

(ca) requiring a salesperson of a licensed seller to be licensed, and respecting the licensing of such salespersons;

(cb) prescribing, or authorizing the Registrar to prescribe, an amount, or a formula for calculating the amount, of the bond referred to in subsection (2) of Section 8;

(cba) prescribing, or authorizing the Registrar to prescribe, the form of the bond referred to in subsection (2) of Section 8;

(cc) providing for the forfeiture of bonds and for the distribution of the proceeds of bonds;

(cd) respecting advertising in relation to funeral merchandise or services or cemetery goods or services, including prohibiting practices with respect to advertising;

- (ce) for the purpose of subsection (1) of Section 9B, prescribing information that may be published by the Registrar;
- (cf) respecting the requirements for purchase agreements and the terms and conditions of purchase agreements, or any class of purchase agreements;
- (cg) requiring reports or other information respecting insurance-funded plans or insurance policies to be filed with the Registrar by sellers of insurance-funded plans;
- (ch) requiring records to be kept by sellers of insurance-funded plans respecting insurance-funded plans or insurance policies;
- (d) respecting the bonding of persons referred to in Section 27;
- (e) prescribing the requirements for trust agreements required by this Act;
- (f) governing the manner in which trust funds shall be kept and accounted for;
- (fa) governing the payment of money into trust funds or trust accounts, including the time within which and the circumstances under which payments are to be made;
- (fb) prescribing records or other information with respect to trust funds or trust accounts that must be provided to purchasers of trust-funded plans;
- (fc) for the purpose of subsection (3) of Section 13A, respecting the requirements for the notices to a purchaser required pursuant to subsections (1) and (2) of Section 13A, including, without limiting the generality of the foregoing, the manner in which the seller must provide the notices to the purchaser and the form and content of the notices;
- (fd) respecting the assignment of pre-arranged funeral plans pursuant to Section 13B, including, without limiting the generality of the foregoing, respecting the transfer of the money held in trust;
- (fe) for the purpose of subsection (3) of Section 13C, respecting the requirements for the notices to the purchaser of a pre-arranged funeral plan, including, without limiting the generality of the foregoing, the manner in which the notices must be provided and the form and content of the notices;
- (ff) for the purpose of clause (a) of subsection (4) of Section 13C, respecting the requirements for the interim report to be filed with the Registrar with respect to pre-arranged funeral plans and trust accounts held by a seller;
- (g) prescribing the requirements for care funds;

- (h) prescribing the requirements for licensing and the renewal of licences;
- (i) prescribing the terms and conditions subject to which licences are issued;
- (j) prescribing the requirements for cemetery plans to be filed with the Registrar;
- (k) respecting the requirements for the operation and maintenance of cemeteries and crematoria;
- (ka) respecting the requirements for containers used in the cremation process;
- (l) prescribing the classes of trustees who may be approved by the Registrar;
- (m) prescribing the records to be kept by persons referred to in Section 27;
- (n) respecting the inspection of cemeteries and crematoria;
- (o) respecting the examination of records required to be kept by this Act or the regulations;
- (p) requiring reports or other information to be filed annually or on some other periodic basis or at the request of the Registrar by persons referred to in Section 27;
- (q) prescribing the form and content of reports or other information required to be filed pursuant to this Act;
- (r) requiring the carrying of liability insurance by persons referred to in Section 27;
- (s) prescribing the maximum fees which may be charged for services by operators;
- (t) prescribing the minimum fee which shall be charged for maintenance of a lot, grave or memorial;
- (u) prescribing the maximum percentage of money payable under a pre-arranged funeral plan or pre-need cemetery plan on account of administrative expenses;
- (v) prescribing fees for the purposes of this Act and the regulations;
- (w) respecting the requirements for burial;
- (wa) prescribing circumstances that constitute acts of default under Section 27A;
- (wb) respecting circumstances in which the principal from a care fund may be disbursed and any conditions attaching to money disbursed;

(wc) respecting the performance by the Registrar of any duties or functions of an operator after an act of default has occurred under Section 27A;

(wd) respecting the power of the Registrar to address issues arising from acts of default;

(we) respecting the terms and conditions of the appointment of administrators appointed under Section 27C;

(wf) respecting the powers, duties and functions of administrators appointed under Section 27C;

(wg) respecting the operation of cemeteries or the termination of operation of cemeteries in circumstances referred to in subsection (4) of Section 27C;

(x) prescribing forms, or requiring forms to be in the form prescribed by the Registrar, and providing for their use;

(y) exempting any person or class of persons from this Act or the regulations or any provision of either of them;

(z) defining any word or expression used in this Act and not expressly defined herein;

(aa) respecting any matter necessary or advisable to carry out the intent and purpose of this Act.

(2) The exercise of the authority contained in subsection (1) shall be regulations within the meaning of the *Regulations Act*. R.S., c. 62, s. 28; 2004, c. 1, s. 2; 2014, c. 10, s. 17; 2018, c. 30, s. 5.

Offence and penalty

29 **(1)** Any person who

(a) violates any provision of this Act or the regulations; or

(b) fails to comply with any direction made pursuant to this Act or the regulations by the Registrar,

is guilty of an offence.

(2) Subject to subsection (4), an individual who is guilty of an offence under subsection (1) is liable on summary conviction to a fine of not less than \$1,000 and not more than \$25,000 or to imprisonment for a period of up to two years, or to both a fine and imprisonment.

(3) Subject to subsection (4), a corporation that is guilty of an offence under subsection (1) is liable on summary conviction to a fine of not less than \$3,000 and not more than \$300,000.

(4) The minimum fine for a violation of Section 7 is \$5,000 for an individual and \$10,000 for a corporation.

(5) Where a corporation commits an offence, every principal, director, manager, employee or agent of the corporation who authorized the contravention or assented to, acquiesced in or participated in it is guilty of the offence whether or not the corporation has been prosecuted for the offence.

(6) In addition to any other penalty under this Act, the court may do one or both of the following:

(a) order the person to comply with the provision of this Act or the regulations respecting which the person was convicted;

(b) where the court is satisfied that monetary benefits have accrued to the convicted person, order the person to pay compensation or make restitution to any person. R.S., c. 62, s. 29; 2018, c. 30, s. 6.

Limitation period

30 A prosecution for an offence under this Act may not be commenced more than three years after the later of

(a) the date on which the offence was committed; and

(b) the date on which the evidence of the offence first came to the attention of the Registrar. 2018, c. 30, s. 7.
