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Introduction

The Cemetery or Burial Grounds Act, Public Act 215 of 1937, MCL 128.1, et seq., gives townships authority to establish, control, maintain and care for public cemeteries that are not owned by another municipality or private organization, and to adopt an ordinance to regulate the operation and use of a cemetery.

This resource packet is not intended to cover every aspect of a cemetery management. Consider this packet a handy reference to some of the most common questions or issues that may arise regarding public cemeteries.
Michigan Cemetery Laws

Act 215 of 1937  Cemetery or Burial Grounds (MCL 128.1-128.3)
Act 46 of 1931  Public Cemeteries (MCL 128.11-128.16)
Act 49 of 1895  Vacating Cemetery in Township (MCL 128.31-128.36)
Act 164 of 1871  Vacating Cemetery in City or Village (MCL 128.41-128.45)
Act 297 of 1929  Vacating Cemetery in City or Village (MCL 128.51-128.57)
Act 113 of 1915  Care of Cemeteries (MCL 128.61-128.62)
Act 95 of 1909  Trust Fund for Care of Cemeteries (MCL 128.71-128.74)
Act 81 of 1903  Care and Preservation of Cemetery Lots (MCL 128.81-128.88)
Act 211 of 1911  Fencing of Private Cemeteries (MCL 128.101-128.103)
Act 88 of 1875  Exemption of Private Burial Grounds from Taxation or Attachment (MCL 128.111-128.112)
Act 22 of 1905  Memory Days (MCL 128.121)
Act 272 of 1909  Enlargement of Township Burial Grounds (MCL 128.151-128.164)
Establishing a Cemetery

MCL 333.2458 Establishment of cemetery; requirements; determinations; approval; disposition of plats; vacating cemetery; removal and reinterment of bodies and remains.

Sec. 2458. (1) A person or governmental entity shall not establish a cemetery in this state until a description of the premises and a plat showing the cemetery's division is filed in duplicate with the local health department having jurisdiction of the premises. A local health department shall not approve a proposed cemetery if the local health department determines that establishment or operation of the cemetery would be injurious to the public health. The local health department shall determine whether it is safe and healthful for a cemetery to be established in the proposed location and if the local health department approves the location and the plat of the premises, the local health department shall indorse its approval on both plats. When the establishment of a cemetery is approved, 1 plat shall be returned to the proprietor and the other shall be retained and preserved by the local health department.

(2) The local health department shall supervise activities to vacate a cemetery and the removal and reinterment of bodies and remains.


Cemetery Ordinance

Because Michigan statutes do not address many specific cemetery management issues, a comprehensive cemetery ordinance can help ensure the smooth operation of a cemetery. An ordinance can define the character of a township cemetery by establishing practical cemetery procedures that reflect the community’s wishes.

Suggested Cemetery Ordinance Sections

An ordinance to protect the public health, safety and general welfare by establishing regulations relating to the operation, control, and management of cemeteries owned by the Township of __________, __________ County, Michigan; to provide penalties for the violation of said ordinance, and to repeal all ordinances or parts of ordinances in conflict therewith.

Section 1: Title
Section 2: Definitions of cemetery lots and burial spaces
Section 3: Sale of lots or burial spaces
Section 4: Purchase price and transfer fees
Section 5: Grave opening charges
Section 6: Markers or memorials
Section 7: Interment regulations
Section 8: Ground maintenance
Section 9: Forfeiture of cemetery lots or burial spaces
Section 10: Repurchase of lots or burial spaces
Section 11: Records
Section 12: Vault
Section 13: Cemetery hours
Section 14: Penalties
Section 15: Severability
Section 16: Effective Date

Michigan law does not require a public hearing before adopting an non-zoning ordinance, but public relations are enhanced when a hearing is held on the ordinance or policies and procedures adopted by the township board.
Cemetery Job Descriptions

The following are typical cemetery duties that are often performed by a cemetery sexton, but that may be performed by additional or different positions within the township. Add or subtract job duties as appropriate for your township.

**Maintenance**

Cutting all grass and trimming around stones and markers. Grass cutting will be accomplished with (or without) notification and (or) as often as is necessary to keep cemeteries looking neat.

Leveling and seeding all new graves

Leveling and seeding old graves that have settled

Emptying all rubbish containers

Removing dead flowers from new graves, removing winter grave blankets and other grave decorations in spring and fall.

Removing snow *(from graves? paths? other?)*

Raking leaves from all sections of the cemetery during the fall and spring

General cleanup, including removal of fallen tree limbs and brush

Foundation placement (if applicable)

**Administration**

Show available gravesites to family

Mark gravesites for burials

Lot sales and assistance in locating sites

Burial rights certificates sold, recorded, etc. *(Timely deposits to Treasurer)*

Keep lot maps current
Who Accepts Payments for Township Cemetery Burials?

Q. Our township owns a cemetery, and we have a sexton who handles grave openings. It has been the practice of our local funeral directors to pay the interment fees directly to the sexton, instead of the township. Is this proper?

A. A township cannot make a gift of township assets and cannot use public assets (or allow them to be used) for a private interest. The township cemetery property and services—including burial rights and the arrangements for burial—are township assets. The result is that a private individual or business cannot use the township cemetery as a private business, and any fees paid for township cemetery services must be paid to the township.

According to MCL 41.76, “The township treasurer shall receive and take charge of money belonging to the township, or that is by law required to be paid into the township treasury, and shall pay over and account for the money, according to the order of the township board or the authorized officers of the township.”

The funds are subject to the same requirements for accounting, reporting, authorization and lawful expenditures as any other public funds.

The method that best enhances internal controls is for the township clerk to bill the funeral director for the interment fees and have payment made directly to the township treasurer through accounts receivable.

If the township authorizes the sexton to receive cemetery fees on behalf of the township, then all fees received by the sexton must be receipted for using township receipts, delivered to the township treasurer according to an established schedule, and deposited by the treasurer in a township bank account. The township should notify its insurance carrier of any officer, employee or contractor handling money to ensure that the appropriate bond covers each person.

If the sexton is a township employee, compensation should be paid through the payroll process, with the applicable federal and state reporting and withholding.

If the sexton is an independent contractor, payments should be made through accounts payable, reported with an IRS Form 1099.
## Cemetery Income/Expenses Worksheets

### Cemetery Income Worksheet

<table>
<thead>
<tr>
<th>Chart of Account #</th>
<th>Income Source</th>
<th>Previous Year Actual</th>
<th>Current Estimated</th>
<th>Proposed for Next Fiscal year</th>
</tr>
</thead>
<tbody>
<tr>
<td>000-000-000</td>
<td>Sale of Burial Rights</td>
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<td></td>
<td>Opening &amp; Closing</td>
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<td>Interest on Investments</td>
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<td>Foundation Base Installation</td>
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<td></td>
<td>Gifts &amp; Grants</td>
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<tr>
<td></td>
<td>Miscellaneous Income</td>
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<tr>
<td></td>
<td>General Fund</td>
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<tr>
<td><strong>Totals:</strong></td>
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<td></td>
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<td></td>
</tr>
</tbody>
</table>

### Cemetery Expense Worksheet

<table>
<thead>
<tr>
<th>Chart of Account #</th>
<th>Expenditure</th>
<th>Previous Year Actual</th>
<th>Current Estimated</th>
<th>Proposed for Next Fiscal year</th>
</tr>
</thead>
<tbody>
<tr>
<td>000-000-000</td>
<td>Salaries, Fringe Benefits</td>
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<tr>
<td></td>
<td>Maintenance Cost</td>
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<td></td>
<td>Equipment Cost</td>
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<td></td>
<td>Administration Cost</td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Miscellaneous Cost</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Totals:</strong></td>
<td></td>
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</tr>
</tbody>
</table>
Read Carefully

REGISTRAR: This burial-transit permit may be issued upon receipt of satisfactory proof of death.

FUNERAL DIRECTOR OR MORTUARY SCIENCE LICENSEE: The burial-transit permit is required for transports and any manner of disposition of a dead body including interment, storage and cremation.

Under no circumstances shall a funeral director or mortuary science licensee issue a burial-transit permit to anyone other than himself and then only according to the provision of Act 229, P.A. 1960, and Rule 4, “Governing transportation and Disposition of dead Bodies.”

When the body is to be transported by common carrier, the burial-transit permit shall be issued in duplicate. The original shall be attached to the shipping case in a strong envelope. As a safeguard against loss in transit, the duplicate, so labeled, shall be mailed to the funeral director at destination, or handed to him by the escort traveling with the body.

MEDICAL EXAMINER: This permit may be used to authorize disposal by cremation.

SEXTON: It is unlawful for any sexton, or other person in charge of a burial place, to permit burial or other disposition of a dead body before a burial-transit permit is deposited with him. (The sexton may accept the permit of any state and the District of Columbia, as authorized for burial.)

All permits must be endorsed and recorded in the sexton’s register.

If the body is buried in a cemetery having no sexton in charge, the funeral director or mortuary science licensee shall sign the burial-transit permit.
V.A. Information on Veteran Headstones and Markers

General Information

Eligibility for a Headstone or Marker

Ordering a Headstone or Marker

- VA Form 40-1330, Application for Standard Government Headstone or Marker (PDF)
- Veterans Military Discharge Documents
- How to Complete VA Form 40-1330

VA Form 40-1330, Application for Standard Government Headstone or Marker

- Types of Headstones and Markers Available

Checking Status of a Headstone or Marker Request

Memorial Headstones and Markers

Setting Government Headstones and Markers

Inscriptions

- Emblems of Belief Available for Placement on Headstones and Markers

Replacement Headstones and Markers

Pre-World War I Era Headstones and Markers
Michigan Law on Markers and Flags for Veterans’ Graves

Markers for Veterans’ Graves, Public Act 63 of 1915 (Excerpt)

MCL 35.831 Flag holders and United States flags for veterans' graves in cemetery belonging to city, village, municipality, or township; petition; expense; purpose.
Sec. 1. (1) The legislative body of a city, village, municipality, or township in this state, upon the petition of a local, or an affiliate of, a recognized veterans' organization or of 5 eligible voters of the city, village, municipality, or township, shall procure for and furnish to the petitioners, at the expense of the city, village, municipality, or township, a suitable flag holder and United States flag for the grave of each veteran who served in the armed forces of the United States and who is buried within the limits of a public or private cemetery located within the city, village, municipality, or township. The requirement to provide a suitable flag holder and United States flag for private cemeteries does not apply in the current fiscal year where an initial request for a suitable flag holder and United States flag exceeds 50 graves within a particular township, but would apply in the following fiscal year at that township.

(2) A flag holder and United States flag shall be placed on the grave of a veteran for the purpose of marking and designating the grave for memorial purposes.


MCL 35.833 Taking down, destroying, defacing, carrying away, or possessing flag holder or flag as misdemeanor; penalty.
Sec. 3. A person who willfully takes down, destroys, defaces, or carries away or possesses a flag holder or other design or memorial flag placed at a grave for memorial purposes without authority from the owner of the cemetery or the person causing the flag holder or other design or memorial flag to be placed in the cemetery or at the grave is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than $5.00 or more than $500.00, or both.

Vaults Are Not Required

Michigan Occupational Code, Public Act 299 of 1980 (Excerpt)

MCL 339.1811 Purchase of vault or similar receptacle as condition to burial prohibited; discrimination; right to require vault not impaired.

Sec. 1811. (1) The purchase of a vault or similar receptacle designed or intended to enclose or receive a casket, coffin, or other similar container from a particular individual, partnership, association, or corporation shall not be required as a condition to burial in a cemetery in this state. There shall not be a discrimination by price, burial fee, or otherwise by reason of a failure to purchase the vault or similar receptacle from or under the direction of the cemetery or the owner of the cemetery.

(2) This section shall not limit the right of a cemetery to require the use of a vault in a burial in the cemetery.

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Winter Burials and Use of Firearms and Snowmobiles in Cemetery

Winter Burials
Public Health Code (Excerpt), Public Act 368 of 1978

MCL 333.2852 Weather conditions requiring storage of dead body; authorization for delayed interment; disinterment and reinterment permit not required.

Sec. 2852. When weather conditions prevent an immediate interment of a dead body and storage is necessary, the individual in charge of a cemetery shall obtain written authorization for delayed interment signed by the next of kin or authorized agent. The authorization shall specify the approximate hour and date of interment and place of temporary storage. This storage is not considered interment and a disinterment and reinterment permit is not required.

Use of Firearms in a Cemetery

MCL 456.114 Use of firearms in cemetery; entering over fence; penalty.

Sec. 14. No person shall use firearms upon the grounds of any cemetery owned and enclosed by any such corporation, nor hunt game therein. No person shall enter into such enclosed cemetery by climbing or leaping over or through any fence or wall around the same, nor direct or cause any animal to enter therein in any such manner. Any person offending against any of the provisions of this section shall be punished by a fine not exceeding 50 dollars or by imprisonment not exceeding 3 months, or by both, in the discretion of the court.

Use of Snowmobiles in a Cemetery

MCL 324.82126 Operation of snowmobile; prohibitions; construction, operation, and maintenance of snowmobile trail; conditions; “operate” defined; prohibited conduct; assumption of risk.

[Excerpt] Sec. 82126. (1) A person shall not operate a snowmobile under any of the following circumstances:

* * *
(h) On or across a cemetery or burial ground.
Michigan Association of Municipal Cemeteries (MAMC)

George Silverston, President
Metamora Township
810-678-2103

Wayne Spletzer,
Secretary/Treasurer
Oronoko Charter Township
269-471-2824  Fax 269-471-2826

John Harmon
Delta Township
517-323-8555

Dan Morrison
Alpena
989-356-0135

Al Dommond
Cadillac
231-775-2803

Brian Dawson
Montague
231-855-0560

Rob Bramer
City of Port Huron
810-855-0560

Ron Walker
Plainfield Charter Township
616-363-9399
Townships Must Register If Offering Prepaid Cemetery Services

Recent amendments to the Prepaid Funeral Contract Funding Act, Public Act 255 of 1986 (MCL 328.211, et seq), now require any township that provides prepaid cemetery services or merchandise to register with the Michigan Department of Labor and Economic Growth (MDLEG).

Township cemeteries are exempt from the Cemetery Regulation Act, PA 251 of 1968 (MCL 456.521, et seq), and the Prepaid Funeral Contract Funding Act previously did not require registration for cemetery services or merchandise. However, effective January 1, 2005, MCL 328.216 now requires that a township “shall not sell, provide or agree to provide merchandise or funeral or cemetery services pursuant to a prepaid contract unless that person is registered with the department as provided in this section and has received a certificate of registration.”

A prepaid contract is a contract that requires payment in advance for funeral or cemetery services or merchandise that would be delivered or retained after the death.

“Cemetery services” are cremations, grave openings and closings, and installation of grave memorials. “Cemetery merchandise” means (1) burial vaults or other outside containers, grave memorials and urns, and (2) items of merchandise sold or offered for sale or lease to consumers that will be used in connection with a funeral or an alternative to a funeral or the final disposition of human remains, including, but not limited to, caskets, combination units and catafalques. Merchandise does not include land (such as burial lots), interests in land (such as burial rights), or interests in mausoleums or columbariums.

The application fee for the original registration is $120. Registration is valid for three years and renewable for a $30 application fee. Registration application forms are available at the MDLEG “Prepaid Funeral Contract Providers” Web page at www.michigan.gov/cis. Click on “Commercial Services and Corporations,” “Professional and Occupational Licenses,” and “Prepaid Funeral Contract Providers.”

For more information, contact Licensing Administrator Suzanne Jolicoeur at (517) 241-9252 or email: bcslic@michigan.gov.

http://www.michigan.gov/mdcs/0,1607,7-154-35299_35414_35468---,00.html
Private Burial Grounds

MCL 128.111. Private burial grounds; laying out; deed

Sec. 1. That it shall be lawful for any person or persons in this state to lay out and survey any tract of land not included within the corporate limits of any city or village which may be owned by such person or persons, as a private burial ground for the use of their families or descendants for purposes of interment of members of such families and descendants, and for no other purpose, not exceeding in quantity 1 acre of land, and may make a deed of the same to some person or persons to be named therein as trustees, with such provisions for continuing such trusteeship as they shall deem necessary, which said deed shall be acknowledged by such persons making the same, in the same manner as other deeds of land, and shall be recorded in the county where such land shall lie.

MCL 128.112. Private burial grounds; exemptions

Sec. 2. Such land so laid out and described in said deed, when recorded in the register's office of the county where such land lies, shall operate as a grant forever of the land described in such deed to said trustees and their successors forever, for the purposes described in said deed, and no sale, judgment, or decree shall be made which shall have the effect to divert the same from the objects of said grant, set forth in such deed, and the same shall not be taxed for any purpose, or be subject to any sale for taxes or any execution, attachment, or other order of sale made by any court, and any deed made by said trustees or their successors, or upon any sale made for taxes, or upon any execution, or decree, or order of sale made by any court of said lands or any part thereof, or any tenements, tombs, or other structures, thereon and appurtenant thereto, shall be void and shall convey no interest or title to the grantee named in such deed.

MCL 211.7t. Burial grounds, tombs and monuments

Sec. 7t. Land used exclusively as burial grounds, the rights of burial, and the tombs and monuments in the land, while reserved and in use for that purpose is exempt from taxation under this act. The stock of a corporation owning a burial ground shall not be exempt.
Disinterment and Reinterment Permit Form

DISINTERMENT AND REINTERMENT PERMIT
MICHIGAN DEPARTMENT OF PUBLIC HEALTH

Permission is hereby given to ______________________ to disinter the remains of ______________________, who died ______________________ at ______________________, at the age of ______________________.

the cause of death being given as ______________________.

now buried in ______________________ cemetery, ________________ county; and to remove the same for reinterment in ______________________ cemetery at ______________________.

said disinterment, removal, and reinterment to be so conducted in conformity with the laws of this State and rules of the Michigan Department of Public Health as not to endanger the public health.

Special instructions ______________________

Health officer ______________________

County ______________________

Approved for cremation ______________________

Medical Examiner ______________________ Date ______________________

Endorsement of sexton of cemetery where disinterred ______________________ Date ______________________

Endorsement of sexton of cemetery where interred ______________________

Sexton ______________________ Date ______________________ Sexton ______________________ Date ______________________

READ CAREFULLY

This permit is authority for disinterment and reinterment of a human body and can be issued to a licensed funeral director upon submission of a properly completed affidavit.

All disinterments must be conducted in accordance with Act No. 368, P.A. 1978, and rules of the Michigan Department of Public Health.

No body shall be disinterred for removal unless a permit has been issued by the local health officer in whose jurisdiction the cemetery is located. No disinterred body shall be accepted for transportation by common or contract carrier unless it has been enclosed in a container which will insure against leakage, offensive odors and other menaces to the public health and safety to its destination. Disinterred bodies may be transported by private vehicle under the supervision of a licensed funeral director when enclosed in a suitable container which will insure against leakage, offensive odors, and other menaces to the public health and safety. Any special instructions issued by the health officer shall be followed. The licensed funeral director in charge of a disinterment shall be responsible for the proper conduct of the disinterment and removal.

At the time of disinterment, one copy of this permit must be endorsed by the sexton or person in charge of the cemetery or place from which the deceased is removed and filed permanently as part of the records of the cemetery. The other copy is to accompany the body as a burial permit. If reinterment takes place within the State of Michigan, it shall be accepted, endorsed by the sexton or person in charge of the place of reburial, and filed permanently as part of the records of the cemetery.
# Affidavit for Disinterment and Reinterment of a Dead Body

**Affidavit for Disinterment and Reinterment of a Dead Body**

**Michigan Department of Public Health**

**Act 368, P.A. 1978 As Amended**

The applicant, being duly sworn, deposes and says that:

1. On the ______ day of ______ 19____, ________ was buried in ________ cemetery located in the county of ________ , grave number ____, lot ______, section ______, other location, such as mausoleum (specify) ________

   Date of death ___________ Place of death ___________ Age ________

   Cause of death ________

2. A permit for the disinterment and reinterment of the deceased is hereby requested on behalf of:

   Name of petitioner __________________ Relationship to decedent ______

   Address __________________

   Said body is to be reinterred in: ________ cemetery, located in ________

   The reason for seeking removal of said body is __________

3. The owner(s) of the lot or burial right where the body is currently interred is(are):

   Name(s) of owner(s) __________________

   The owner(s) hereby consent to the disinterment of the decedent:

   Signature(s) of owner(s) __________________

4. Consent of the next surviving kin as required by Rule 326.8052 is hereby granted (see reverse side).

<table>
<thead>
<tr>
<th>Signature</th>
<th>Date</th>
<th>Relationship</th>
</tr>
</thead>
</table>

   5. The applicant further swears that to the best of his/her knowledge he/she obtained all approvals in items 3 and 4 above as required by law and rule, and that he/she takes this oath with the full understanding that he/she assumes responsibility for the proper disinterment and reinterment of the decedent.

   Name of Funeral Director __________________

   Address __________________

   Subscribed and sworn to before me this ______ day of ________ 19____

   Signature, Notary Public __________________

   ________ County, Michigan

   My Commission expires: __________________

   NOTE: If not able to obtain the required consent to disinter, a person may petition the circuit court of the county where the cemetery is located for a disinterment order.

   B-27a 1/83
R 325.8051 Discovery of remains; notification of police required; exception.

Rule 1. A person who inadvertently discovers a burial or parts of a human skeleton shall immediately notify the police authority of the jurisdiction where the remains are found. If preliminary inspection by the police authority indicates that the remains are those of a prehistoric or historic native American, the state archaeologist of the Michigan history division, department of state, shall be immediately notified of the finding. This rule does not apply to archaeological excavations conducted by representatives of established scientific institutions or societies.

R 325.8052 Disinterment permit; application; fee.

Rule 2. (1) A request for a disinterment permit shall be made to the local health officer in whose district the cemetery is located, and the request shall be made on an affidavit which is signed by a licensed funeral director and by a person or persons as follows:
   (a) The surviving spouse.
   (b) If no surviving spouse, then by all surviving children.
   (c) If no surviving children, then by the surviving parents.
   (d) If no surviving parents, then by all surviving brothers and sisters.
(2) The request shall be accompanied by a fee established by the local health department pursuant to section 2444 of Act No. 388 of the Public Acts of 1978, as amended, being §333.2444 of the Michigan Compiled Laws.

R 325.8053 Affidavit content.

Rule 3. An affidavit shall contain all of the following information:
   (a) The name and address of the licensed funeral director to whom the permit is to be issued.
   (b) The name and address of the person petitioning for the permit.
   (c) The name of the lot or the burial right owner.
   (d) The name of the deceased.
   (e) The present location of the grave, including the lot number, the section number, or other location, such as a location in a mausoleum.
   (f) Reinterment location.
   (g) Relationship of petitioner to deceased.
   (h) Reason for disinterment.
   (i) Approval of all persons who may have a claim for the deceased as specified in R 325.8052.
   (j) Written consent of the lot or burial space owner or owners, if other than petitioner.

R 325.8054 Local health officer; duties.

Rule 4. The local health officer or his or her designated representative shall do all of the following:
   (a) Review the affidavit for disinterment-reinterment.
   (b) Issue the disinterment-reinterment permit if the consent required by R 325.8052(1) has been obtained, or deny the disinterment-reinterment permit if the consent required by R 325.8052(1) has not been obtained.
   (c) Provide instructions or guidance to the funeral director on the handling of the disinterred body which is necessary to protect the health of the public and those handling the disinterred body.
   (d) Retain the affidavit for a period of not less than 5 years.

R 325.8055 Disinterment of cremated remains; opening casket; permit not required.

Rule 5. (1) A permit is not required to disinter cremated remains. A request to disinter cremated remains may be made to the cemetery by the next surviving kin, as designated in R 325.8052, on an affidavit described in R 325.8053. The affidavit shall be maintained as part of the permanent records of the cemetery from which the cremated remains are removed.
(2) A permit is not required to open a casket to remove an article or to place an article in a casket.

R 325.8056 Cemetery retention of permit.

Rule 6. A duplicate copy of the permit shall be maintained as part of the permanent records of the cemetery from which the deceased was removed.

R 325.8057 Transportation of disinterred body.

Rule 7. A disinterred body shall not be accepted for transportation by common or contract carrier unless it has been enclosed in a container which insures against leakage, offensive odors, and other menaces to the public health and safety. A disinterred body may be transported by private vehicle, under the supervision of a licensed funeral director, if enclosed in an suitable container which insures against leakage, offensive odors, and other menaces to the public health and safety. The licensed funeral director in charge of disinterment shall be responsible for the proper conduct of the disinterment and removal.
MTA Legal Counsel Opinion on Perpetual Care Funds

A township may establish a perpetual care fund as set out in Michigan Statute MCL 128.1 which provides in relevant part that:

“(1) The legislative body of the municipality owning or controlling a cemetery or burial grounds may by resolution or ordinance provide for the perpetual care and maintenance of a cemetery or burial lot upon the payment of the owner of the lot or another person of the agreed upon sum, and in consideration for which the municipality may bind itself to perpetually care for and maintain the lot.”

With a perpetual care fund, the principle amounts placed in the fund are retained permanently and the interest earned on the principle is used for the care and maintenance of the cemetery or certain burial lots as specified in the resolution or ordinance. Typically, the perpetual care fund is funded through payment of a specific charge at the time a grave site is sold. Additionally, the perpetual care fund can be funded by testamentary bequests, trusts, and other donations earmarked for perpetual care. Perpetual care normally refers to cutting grass, raking, cleaning, and pruning of shrubs and trees. The obvious benefit of a perpetual care fund is that the township will forever have a source of income to expend for the care and maintenance of the township cemetery or certain burial lots. The principle in the perpetual care fund remains out of reach for expenditure by the Township Board.

A perpetual care fund can work nicely if it has enough principle. However, if the Township does not have a lot of principle, due to the small size of the cemetery or newness of the fund, the Township may have trouble earning a meaningful amount in interest to put toward the care and maintenance of the cemetery or certain lots. This problem is exacerbated in times such as now when interest rates are low.

Additionally, when interest rates are low, the Township may end up with a lot of principle being tied up and the amount in interest not enough to care for or maintain the cemetery or certain lots. We have had townships come to us in the past disenchanted with their perpetual care funds because they were not earning enough interest to maintain and care for the cemetery or certain lots. These townships would have liked to have been able to dip into just enough principle to make up the shortfall.

It is important to understand that a Township already has a duty to cause all cemeteries within the Township, except private cemeteries and cemeteries owned by cities and villages located within the township, to be properly taken care of (MCL 128.61). Basically, a Township has a perpetual care and maintenance requirement for its cemeteries whether it has established a perpetual care fund or not. The Township could, as an alternative, voluntarily place sums aside (i.e., amounts raised by sale of lots) in a cemetery fund and then operate the fund similar to a perpetual care fund. However, if need be, the Township Board could dip into the fund's principle to provide for the care and maintenance of the cemetery. It should be noted that if the Township voluntarily puts monies aside for the cemeteries' maintenance and care, then this money is not protected in the same manner as the perpetual care fund, and the fund could be used for other purposes at the will of the Township Board.
Burial Rights Certificate

(coming)