

A photograph of three business professionals in a meeting. A man in a grey suit and blue tie is in the foreground, looking to the right. Behind him, another man in a grey suit is also looking right. In the bottom right foreground, the back of a woman's head with blonde hair is visible. They are seated at a green table with papers and a laptop. The image is framed by a dark blue background with a diagonal orange line.

MICHIGAN GUIDE TO CEMETERY REGULATION ACT



TABLE CONTENT

- [Registration Requirement](#)
- [Registration Process](#)
- [Annual Registration Requirement](#)
- [Change of Control Application](#)
- [Act Exemptions](#)
- [Record Keeping Requirements](#)
- [Endowment and Perpetual Care Trust Fund](#)
- [Cemetery Annual Report Requirement](#)
- [Prepaid Contracts](#)

MICHIGAN GUIDE to CEMETERY REGULATION ACT

This guide is intended to provide an overview of the Cemetery Regulation Act, Act 251 of 1968 (“the Act”) and the rules under the Act. This guide is not intended to replace the Act and rules and does not purport to cover all aspects of the industry or all regulatory requirements. You are urged to review the Act and the rules under it and to speak with an attorney if you do not understand the requirements that they impose. A link to the Act and rules is available on the Bureau website at www.michigan.gov/cscl



What is a cemetery

A cemetery means 1 or combination of more than 1 of the following:

- (i) A burial ground for earth internments
- (ii) A mausoleum for crypt entombments
- (iii) A crematory for the cremation of human remains
- (iv) A columbarium for the inurnment of cremated remains

Section of the Act: MCL 456.522



Registration Requirement

A person shall not establish a cemetery without a valid permit or operate an existing cemetery except under a valid registration issued under this act.

If a person proposes to purchase or acquire a controlling interest in an existing cemetery company, that person shall first apply to the commissioner for a formal approval of a proposed change of control.

Section of the Act: MCL 456.532

Registration Process

To apply for a registration to establish a new cemetery, the applicant must apply through MiCLEAR, the website used by the Bureau to facilitate licensing under the Act. Instructional Guides for the application are included on the MiCLEAR website. The application shall be accompanied by a nonrefundable investigation fee of \$1,500.00.

Sections of the Act: MCL 456.529(9), MCL 456.532, MCL 456.533, MCL 456.534

Rule: 456.1201

Annual Registration Requirement

Registrations expire on **July 1** of each year. All renewal applications must be submitted through the MiCLEAR portal and require a fee of \$20.00. There are instructional guides on the main MiCLEAR page with step-by-step instructions on how to renew your registration.

Sections of the Act: MCL 456.531, MCL 456.535



Change of Control Application

A person who proposes to purchase or otherwise acquire a controlling interest in an existing cemetery company shall first apply to the commissioner for a certificate of approval of a proposed change of control of a cemetery company. Change of control applications should be submitted through the MiCLEAR system.

There is a \$1,500 investigation fee for an application for a purchase or change of control of a cemetery.

Section of the Act: MCL 456.532

Rule: Rule 456.1202

Act Exemptions

A cemetery owned and operated by a municipal corporation, church, or religious institution is exempt from the Cemetery Regulation Act. However, a municipal corporation may pass ordinances necessary for regulating that municipal corporation's cemeteries.

A cemetery which meets all of the following is exempt from the fee provisions of this act and may be exempt from the endowment care trust fund requirements:

- It is a cemetery for earth interment of 10 acres or less in size
- It is owned and operated entirely and exclusively by an existing nonprofit entity, and
- A burial has taken place before September 15, 1968.

Section of the Act: MCL 456.530



RECORD KEEPING REQUIREMENTS

The Act and rules specify books and records that registrants are required to maintain. Each registrant is required to maintain accurate, complete, and legible records of any books, contracts, records or documents pertaining to, prepared in, or generated by the cemetery operation.

The records should include, but are not limited to, all of the following:

- Forms
- Reports
- Accounting records
- Ledgers
- Internal audit records
- Correspondence
- Personnel records
- Receipts journal
- Funding and disbursement journals for each trust

Detailed requirements related to the receipts journal are listed in Rule 456.1302 and detailed requirements related to the funding and disbursement journals are listed in Rule 456.1303. These rules provide specific details about what information is required to be recorded in these journals.

All of the required records should be kept for at least **7 years** from the date of record completion. If there is a change of control of the cemetery, the records must be transferred to the new registrant to maintain.

The commissioner or someone appointed by the commissioner may visit and examine the affairs of a cemetery and shall have free access to the books, papers, records, and documents. The books, papers, records, and documents shall be available for inspection or audit at any time during regular business hours with reasonable notice.

Section of the Act: 456.532a

Rules: 456.1301, 456.1302, 456.1303

ENDOWMENT AND PERPETUAL CARE TRUST FUND

Each cemetery must establish and maintain an irrevocable endowment and perpetual care trust fund. Each month, not less than 15% of all proceeds received during the prior month from the sales of burial rights, entombment rights, or columbarium rights shall be deposited with the trustee for inclusion in the endowment and perpetual care trust fund. No total deposit for a single burial right sale or assignment shall be less than \$20.00. The trustee of the irrevocable endowment and perpetual care trust fund must be a regulated financial institution with trustee powers. A regulated financial institution is defined in the act to mean a state or nationally chartered bank, savings and loan association or savings bank, credit union, trust company, or other state or federally chartered lending institution, or a regulated affiliate or regulated subsidiary.

The cemetery must notify the commissioner in writing at least **14 days** before the effective date of an appointment of a trustee. The agreement with the trustee must provide that the investing of the assets are subject to the Michigan Prudent Investor Rule (1998 PA 386, sections 1501 to 1512 and 7803). The endowment and perpetual care trust fund agreement shall include reference to all of the following:

No portion of the interest or income of the funds required to be in the trust may be used directly or indirectly for salaries or other payments to the officers, directors, partners, members, or managers of the entity owning the cemetery.

The income and interest from the fund may be paid only to the persons in possession, management, operation, and control of the grounds and structures intended to benefit from the fund. The sole use of the income and interest from the fund shall be for the endowment and perpetual care trust of the cemetery specifically intended to benefit from the fund. The trust shall be governed by state law.

More specific requirements regarding the investment of trust funds are included in MCL 456.536.

The funds deposited into an endowment and perpetual care trust fund shall be held in perpetuity by the trustee and may only be distributed to the cemetery upon order of a court. The fees and costs of the trustee may be paid from the principal of the trust. Interest or income earned on the deposited funds shall be used only for endowment and perpetual care. A cemetery must maintain records showing that interest from the endowment and perpetual care trust fund is used exclusively for endowment and perpetual care. Endowment and perpetual care means all general work necessary to keep the cemetery property in a presentable condition at all times, including, but not limited to:

The cutting of grass at reasonable intervals;

The raking, cleaning, filling, seeding and sodding of graves;

The replacement, pruning, or removal of shrubs and trees in order to assure access to interment rights; and

The repair and maintenance of enclosures, buildings, drives, walks, and the various memorial gardens.

Sections of the Act: MCL 456.522, MCL 456.536

Rule: Rule 456.1401



Cemetery Annual Report Requirement

A cemetery must annually submit a Cemetery Annual Report to the Bureau on or before **June 30th**. This Report provides data regarding the endowment and perpetual care trust fund for the previous calendar year along with assurances regarding internal controls. The Report should be prepared by the Registrant and attested to or certified by a Michigan-licensed CPA on the form provided by the Bureau.

If you hold a Crematory License, you need to submit a Crematory Annual Report.

Report Forms are available on the Forms & Publications Page of the Bureau's website. Once completed, these forms will only be accepted if they are submitted through the Registrant's MiCLEAR account. Instructions on how to submit these forms are available at www.michigan.gov/miclear.

Registrants may submit a request to extend the deadline for submission for not more than **90 days**. Extension requests should be submitted through the Registrant's MiCLEAR account before **June 15**.

Section of the Act: MCL 456.536

Rules: 456.1701, 456.1702

Prepaid Contracts

If the cemetery sells prepaid contracts for cemetery merchandise or services, they must comply with the Prepaid Funeral and Cemetery Sales Act, 1986 PA 255. Preneed contracts that were entered into before January 1, 2005 are subject to the Merchandise Trust Fund requirements of Section 456.536.

Section of the Act: MCL 456.536

Rules: 456.1501, 456.1502, 456.1503



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Corporations, Securities &
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[Back to Table of Contents](#) 11