

APPLICATION TO OBTAIN REGISTRAR'S CONSENT TO BORROW CAPITAL FROM THE CARE AND MAINTENANCE FUND/ACCOUNT TO INCREASE THE CAPACITY OF THE CEMETERY

INSTRUCTIONS

Introduction

As of January 2022, Section 94 of the Ontario Regulation 30/11 was revoked and the following substituted:

Payment out to increase the capacity of a cemetery

94. (1) For the purposes of subsection 53 (18) of the Act, the trustee of a care and maintenance fund or account for a cemetery that is not a commercial cemetery shall, at the request of the cemetery operator, pay to the operator, from the capital of the fund or account, an amount to be used to increase the capacity of the cemetery, if the registrar authorizes the payment to be made.

(2) The registrar shall authorize a payment to be made under subsection (1) only if, in the opinion of the registrar,

- a) the cemetery operator does not have enough money to increase the capacity of the cemetery;
- b) the payment of the amount from the capital of the fund or account will enable the cemetery operator to increase the capacity of the cemetery;
- c) the cemetery operator will continue to provide adequate care and maintenance for the cemetery; and
- d) the increased capacity will promote the cemetery's economic viability and strengthen the fund or account.

(3) The cemetery operator shall only use a payment received under subsection (1) to increase the capacity of the cemetery, including,

- (a) to purchase land adjoining the cemetery in order to enlarge the cemetery;
- (b) to establish a columbarium or mausoleum in the cemetery;
- (c) to increase the volume of a columbarium or mausoleum in the cemetery;
- (d) to establish a lot or scattering ground in the cemetery; and
- (e) to increase the dimensions of a scattering ground in the cemetery.

(4) Subject to subsections (5) and (6), the cemetery operator shall pay the amount received under subsection (1) back into the fund or account,

- (a) out of the money received by the cemetery operator from the sale of interment rights and scattering rights with respect to the cemetery's increased capacity, after paying into the fund or account the payments required to be made in respect of those rights; and
- (b) in accordance with the registrar's directions regarding the circumstances in which repayment must be made and the portion that must be repaid in each of such circumstances.

[O. Reg. 258/21: GENERAL filed April 6, 2021, under Funeral, Burial and Cremation Services Act, 2002, S.O. 2002, c. 33](#)

Applying for Registrar’s consent to borrow capital from the care and maintenance fund/account to increase the capacity of the cemetery

A non-commercial cemetery wishing to obtain the Registrar’s consent to borrow capital from the care and maintenance fund/account to increase the capacity of the cemetery must complete and return the Application Form and supporting documents to:

By Mail	By Email	By Fax
Financial Compliance Team, Bereavement Authority of Ontario 100 Sheppard Avenue East, Suite 505 Toronto, ON M2N 6N5	trust@thebao.ca Subject Line: Application to obtain the Registrar’s consent to borrow capital from the care and maintenance fund/account	647-748-2645

Application checklist

The applicant should ensure their Annual Reporting under Funeral, Burial and Cremation Services Act, 2002 to the BAO is in compliance. The Registrar will not consider an incomplete application. The applicant is responsible for completing the application form and supporting documents before delivering it to the Bereavement Authority of Ontario.

- **Application Form (Application to obtain Registrar’s consent to borrow capital from the care and maintenance fund/account to increase the capacity of the cemetery)** – Must be completed in full and signed by Chairman/President of the cemetery board and a board member i.e.: Treasurer or Secretary of the secretary of the board.
 - In the case of a Municipality, the application is to be signed by the CAO or City Manager or Town Clerk and a Treasurer or Head of Finance.
- **Specific Supporting Documents.**
 1. **Expansion of the cemetery. – for purchase of land**
 - a. Two (2) copies of legal description and general plan of the cemetery, approved by the local municipality, drawn to scale showing compass bearings, lot numbers and the location and dimensions of every lot, walk, fence, road, watercourse, building and adjoining road in the portion of the cemetery to be available for interments.
Note: The general plan of the cemetery must be prepared by an Ontario Land Surveyor or prepared from a Deposited Reference Plan or Survey
 - b. Two (2) copies of any site plan agreement under the *Planning Act*, that is relevant to the cemetery
 - c. A certificate signed by the Medical Officer of Health for the area, stating that the land is suitable for use as a cemetery.
 - d. Proof of municipal approval if the cemetery is located in an area with municipal organization; or proof of approval from the Ministry of Natural Resources and Forestry if the cemetery is located on Crown Land
 - e. Conditional land purchase agreement – to assess the price of the land being purchased. The agreement should include but not be limited to:

- i. Size of land
 - ii. Price consideration
 - iii. Closing date of offer
 - f. A copy of the certificate of approval issued by the Ministry of the Environment, Conservation and Parks under section 9 of the *Environmental Protection Act*.
- 2. **Establish or increase size of columbarium/mausoleum.**
 - a. Architectural design of columbarium/mausoleum
 - a) Include size in cubic meters
 - b. Supplier quotes including.
 - a) name of proposed supplier
 - b) quote cost of construction
 - c) date of quote
 - o **General Supporting Documents.**
 - a. **Brief feasibility report:** showing future financial projections as a result of the requested expansion covering the duration of the repayment schedule including the payback of capital borrowed. The report should include but not be limited to;
 - a) Business case including purpose of expansion
 - b) Explanation of how the cemetery operator will provide continued adequate care and maintenance after a portion of the capital from the care and maintenance fund/account has been borrowed
 - c) Future revenue projections from expansion covering the proposed repayment period starting from the date of completion of the expansion
 - d) Details of cost involved in expansion
 - b. **Care & Maintenance Trustee account statements;** Trustee / Financial institution account statements as of the end of the most recent month.
 - c. **Operating account statements;** Monthly financial institution account statements for the past 12 months
 - a) Institution Name
 - b) Closing Amount \$
 - c) Statements for last 12 months
 - d. **Any other account/financial institutions where funds are held:**
 - a) Institution Name
 - b) Closing Amount \$
 - c) Statements for last 12 months
 - e. **Audited Financial Statements** (if applicable): For cemetery operators with care and maintenance of over \$500,000.
 - f. **Unaudited Financial Statements**
 - g. **Cemetery (Licensed Operator) Board Approval:** Approval from the board/trustees/directors/council along with minutes of the meeting where the application was discussed.
 - h. **Proof of Identity of Manager** – Government issued photo ID i.e.: License, Passport, etc.

Common Questions:

What happens after the Registrar receives the Application Package?

The Registrar will review the application form and supporting documents. The Registrar is not compelled to give consent to borrow capital from the care and maintenance fund/account to increase the capacity of the cemetery and does so at his or her sole discretion.

Complete applications will be reviewed and responded to within **60** business days of the receipt of the application package.

If the Registrar decides **NOT** to consent to the release of a part of the capital from the care and maintenance fund/account, the applicant will be notified of this decision in writing. The Registrar's decision NOT to consent is not subject to appeal.

Consent to borrow capital from the care and maintenance fund/account to increase the capacity of the cemetery

If the Registrar intends to give consent, a notice of the Registrar's intention to do so (with appropriate instructions and conditions) will be sent to the applicant requesting the consent.

No Consent to borrow capital from the care and maintenance fund/account to increase the capacity of the cemetery

The Registrar will only give consent if the release of the part of the capital will not be against the interest of the public and the cemetery.

How is this different from the existing regulation on borrowing the capital portion of the care and maintenance fund/account to purchase land adjoining the cemetery?

All cemetery operators are subject to the duty to maintain cemetery grounds to ensure the safety of the public and to preserve the dignity of the cemetery. The [Funeral, Burial and Cremation Services Act, 2002 \(FBCSA\)](#) prohibits the use of the capital portion of a care and maintenance fund/account, subject to limited exceptions. Prior to 1st January 2022, only a non-commercial cemetery operator may seek to use any of the capital portion of the care and maintenance fund/account **ONLY** to purchase land adjoining the cemetery in order to enlarge it, subject to the BAO Registrar's authorization. If released, this amount must be paid back into the trust fund.

Between November 20, 2020 and January 19, 2021, the Ministry of Government and Consumer Services posted a consultation paper regarding proposed changes to care and maintenance fund/account requirements under the [Funeral, Burial and Cremation Services Act, 2002 \(FBCSA\)](#) on Ontario's Regulatory Registry for comment. This consultation contributed to regulatory changes made in April 2021, which came into force on January 1, 2022. The changes will permit non-commercial cemetery operators, including municipalities that operate cemeteries, that meet certain criteria to access the capital portion

of a care and maintenance fund/account to increase the capacity of a cemetery subject to approval from the BAO Registrar, under the condition that the capital is paid back into the trust fund.

Definition of Commercial Cemetery

The definition in [Ontario Regulation 30/11](#) states that a commercial cemetery is a cemetery operated for **the purpose** of making a profit for the owner. It does not state that this purpose must be the primary purpose, however it likely has to be a main goal of the Cemetery. This definition can capture the organizations with dual purposes and those that are aiming to create a profit by selling interment rights or other services/supplies.

However, where a profit is simply ancillary to other primary purposes (i.e., public interest, taking over abandoned cemeteries, other not-for-profit operators) these cemeteries likely should not be captured by the definition. In determining whether a Cemetery meets the definition of commercial, the BAO considers the following:

- 1) Does the organization charge consumers for cost-recovery purposes, or for profit?
- 2) Is the organization a municipality or government actor?
- 3) Is the organization a not-for-profit?
- 4) What are the main goals of the organization as set out in their incorporation documents/by-laws or other documents?

Where it is not clear that the Cemetery is making a profit, and/or that it aims to make a profit for the personal benefit of the owner in the future, and the Cemetery has public interest goals the Cemetery is not commercial. Municipal and government operators are also not deemed Commercial Cemeteries in most cases.

What are the eligibility criteria to apply to borrow capital from the care and maintenance fund/account to increase the capacity of the cemetery?

The following criteria are to be met to evaluate the eligibility before applying.

- the cemetery is not a commercial cemetery
- the cemetery operator does not have enough money to increase the capacity of the cemetery
- the cemetery must be in good standing with the BAO and in compliance with the [Funeral, Burial and Cremation Services Act, 2002 \(FBCSA\)](#)
- the cemetery operator does not have enough money to increase the capacity of the cemetery
- the borrowing of the amount from the capital of the fund or account will enable the cemetery operator to increase the capacity of the cemetery limited to the following items;
 - (a) to purchase land adjoining the cemetery in order to enlarge the cemetery;
 - (b) to establish a columbarium or mausoleum in the cemetery;
 - (c) to increase the volume of a columbarium or mausoleum in the cemetery;
 - (d) to establish a lot or scattering ground in the cemetery; and
 - (e) to increase the dimensions of a scattering ground in the cemetery.

- the increased capacity will promote the cemetery's economic viability and strengthen the fund or account.

How much can I borrow of the capital from the care and maintenance fund/account?

- The cemetery operator can only borrow capital from the care and maintenance fund/account which is in direct relation to increasing the capacity of the cemetery in the following manner;
 - to purchase land adjoining the cemetery in order to enlarge the cemetery;
 - to establish a columbarium or mausoleum in the cemetery;
 - to increase the volume of a columbarium or mausoleum in the cemetery;
 - to establish a lot or scattering ground in the cemetery; and
 - to increase the dimensions of a scattering ground in the cemetery.
- The cemetery operator needs to show evidence of continued adequate care and maintenance for the cemetery once portion of the capital from the care and maintenance fund/account has been borrowed.

What if the amount borrowed is not entirely used for the planned expansion?

As per [Ontario Regulation 258/21, s. 3](#);

If the cemetery operator uses any part of a payment received under subsection (1) for a purpose that does not increase the capacity of the cemetery as required under subsection (3), the operator shall pay the amount used for the other purpose back to the fund or account within the period specified by the registrar.

If the cemetery operator does not use the entire amount approved under this application, the cemetery operator shall pay the amount that was not used back to the fund or account within 10 business days and notify the Registrar in writing of this refund.

What if the cemetery operator decides to cancel the planned expansion?

If the cemetery operator decides to cancel the expansion plan, the cemetery operator shall inform the Registrar in writing and pay the borrowed amount back to the fund or account within 10 business days of decision knowing.

What would be the term of the loan?

The cemetery operator can still provide a suitable term of payment in the application. However, the term of the loan would remain up to the discretion of the Registrar at the BAO. This would account for the circumstances of the application submitted by the cemetery operator (e.g., type of capacity increase, cost thereof, amount in the care and maintenance fund/account, number of new interments resulting from the increase, etc).

Is there any interest on the amount being borrowed?

There will not be any interest charged on the amount being borrowed from the care and maintenance fund/account.

How do I repay the amount borrowed?

The cemetery operator shall pay the amount received back into the fund or account, out of the money received by the cemetery operator from the sale of interment rights and scattering rights with respect to the cemetery's increased capacity, after paying into the fund or account the payments required to be made in respect of those rights.

When does the repayment commence for the amount being borrowed?

The repayment commences once the expansion project is complete. Once the application is approved and the Registrar intends to give consent, a notice of the Registrar's intention to do so with appropriate instructions and conditions on the repayment timelines will be provided to the applicant.

Consequences of Misrepresentation

All applicants are warned that making a false statement, misrepresentation, or material omission in their application is prohibited. Such conduct may result in criminal and regulatory sanctions, and any funds will be required to be repaid immediately.