

MANITOBA
THE PUBLIC UTILITIES BOARD ACT
THE CEMETERIES ACT

Board Order 74/11

May 17, 2011

Before: Graham F. J. Lane, C.A, Chairman
 S. Proven, P.H.Ec., Member
 M. Girouard, C.G.A., Member

**AN APPLICATION BY ROSEWOOD MEMORIAL GARDENS
LTD. TO PASS ACCOUNTS DEALING WITH THE PERPETUAL
CARE FUNDS FOR THE PERIOD FROM JANUARY 1, 2004 TO
DECEMBER 31, 2009**

1.0 Background

Section 31 of *The Cemeteries Act* (Act) provides The Public Utilities Board (Board) with the responsibility for “Passing Accounts” with respect to the handling of perpetual care funds.

Rosewood Memorial Gardens Ltd. (Rosewood) accounts were last reviewed and passed by the Board by Order 52/05 for the six year period from January 1, 1998 to December 31, 2003. That Order required Rosewood to make an application for Passing Accounts for the period January 1, 2004 to December 31, 2006, by May 31, 2007. No formal application was made however; Rosewood had been filing annual statements with the Board.

Order 52/05 directed that, although Rosewood was entitled to receive the income from the trust fund (e.g. interest and dividends) for the purpose of perpetual care, Rosewood was not entitled to receive or withdraw from the trust fund any capital gains realized in or any amounts on account of any unrealized capital appreciation, which capital amounts were to remain in the Fund to generate future income.

Rosewood advises that no withdrawals have been made from the trust fund during the period under review and as directed by the Board.

2.0 Application

Rosewood’s submissions to the Board for the Passing of Accounts for the perpetual care fund of Rosewood’s cemetery, in accordance with the Act included the following information:

- Royal Bank Trust perpetual care trust statements for the period January 1, 2004 to December 31, 2006;

- Concentra Trust perpetual care trust statements for the period February 1, 2005 to December 31, 2009;
- Annual listing of perpetual care on regular lot sales for the period January 1, 2004 to December 31, 2009;
- Annual listing of perpetual care on existing lot contracts for the period January 1, 2004 to December 31, 2009;
- Annual listing of perpetual care on columbarium niche sales for the period January 1, 2004 to December 31, 2009;
- Annual Perpetual Care Fund Statements for the period January 1, 2004 to December 31, 2009;
- Annual Perpetual Care Trust Fund Reports (Capital and Revenue) for the period January 1, 2004 to December 31, 2009;
- Annual Statement of Perpetual Care Expenditures for the period January 1, 2004 to December 31, 2009; and
- Annual Lot and Niche Inventory Reports for 2004 to 2009.

Rosewood also requests the Board to pass the accounts of the company on an annual basis.

3.0 Amounts Transferred to the Perpetual Care Fund

For the period under review, Rosewood “allocated” \$142,683 of the proceeds it received from the sale of cemetery lots or niches/spaces in columbarium to the Perpetual Care Fund (PCF) of the cemetery and columbarium. Although \$63,350 was the minimum amount required to be transferred to the PCF pursuant to the Act, \$150,863 was actually deposited to the PCF.

4.0 Board Finding

All perpetual care monies received on the sale of lots, plots and spaces must be deposited to the trust fund in accordance with the Act.

Having reviewed the information provided by Rosewood for the period January 1, 2004 to December 31, 2009, the Board is satisfied that the perpetual care funds have been dealt with in a reasonable manner. The Board will therefore pass the accounts.

Noting that the PCF has increased since 2003 and that Rosewood has been allocating and depositing funds in excess of the minimum amounts required under the Act, the Board will remove the restriction of Rosewood's entitlement to receive or withdraw from the trust fund any capital gains realized in the PCF or any amounts on account of any unrealized capital appreciation. The Board will require Rosewood to use care and caution in this regard to ensure that the PCF does continue to grow.

The Board is of the view that the passage of time between passing of accounts should not exceed three years. However, the Board is also aware of Rosewood's request to review and pass the accounts on an annual basis. The Board will therefore accept the annual filings from Rosewood with respect to its PCF and order that Rosewood file an official application with the Board for passing accounts for the period January 1, 2010 to December 31, 2012 no later than May 31, 2013.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure.

5.0 It Is Therefore Ordered That:

1. An account of the dealings with the perpetual care funds of Rosewood Memorial Gardens Ltd. for the six-year period from January 1, 2004 to December 31, 2009, pursuant to Section 31(2) of *The Cemeteries Act*, BE AND IS HEREBY PASSED.
2. An application be filed with the Public Utilities Board for the passing of accounts for the perpetual care fund of Rosewood Memorial Gardens Ltd. for the three-year period from January 1, 2010 to December 31, 2012 by no later than May 31, 2013.

THE PUBLIC UTILITIES BOARD

“Graham F. J. Lane, C.A.”

Chairman

“Hollis Singh”

Secretary

Certified a true copy of
Board Order 74/11 issued by
The Public Utilities Board

Secretary