COMMONWEALTH OF VIRGINIA
CEMETERY BOARD

CEMETERY REGULATIONS

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STATUTES
Title 54.1, Chapter 23.1

Department of Professional and Occupational Regulation
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NOTICE
SUMMARY OF SIGNIFICANT CHANGES

Included in this document are relevant excerpts from the Virginia Administrative Code. Please note that the Cemetery Board is responsible for promulgating regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), and the Virginia Code Commission is responsible for compiling and codifying all of the administrative regulations of state agencies into the Virginia Administrative Code.

It is your responsibility to stay informed and follow all regulations and statutes governing your profession or occupation. As a regulant of the Board, you should read and become familiar with all regulations applicable to your profession or occupation. You can stay informed of regulatory actions that may result in changes to the regulations at Virginia Regulatory Town Hall (www.townhall.virginia.gov).

This document is a complete, edited (unofficial) copy of the 2020 Regulations. Please refer to the Virginia Administrative Code for an official copy of the regulations applicable to your profession or occupation. You can access the Virginia Administrative Code online at http://leg1.state.va.us/000/reg/TOC.HTM.

STATEMENT OF PURPOSE

This booklet contains the information you will need to obtain a license for a Cemetery Company or a Cemetery Salespersonnel registration. The law that governs your profession is found in the Code of Virginia, 1950, as amended in Title 54.1, Chapter 23.1. The law permits the Department of Professional and Occupational Regulation to issue regulations that tell you more about what is expected of you in your profession. This booklet contains a copy of the law and regulations that you will need to know and obey to get and keep your license or registration. BE SURE YOU READ AND UNDERSTAND THE STANDARDS OF PRACTICE AND CONDUCT. YOUR FAILURE TO OBEY THESE STANDARDS COULD RESULT IN A MONETARY PENALTY OR THE LOSS OF YOUR LICENSE OR REGISTRATION.

It is the goal of the Department of Professional and Occupational Regulation to provide you with the information you need to comply with the law and regulation. If you have a question and cannot find the answer to it in this booklet, please write to:

Cemetery Board
Department of Professional and Occupational Regulation
9960 Mayland Drive
Richmond, Virginia 23233

or call the Department at (804) 367-8500.

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PART I.

GENERAL PROVISIONS.

18 VAC 47-20-10. Definitions.

The following words and terms when used in this chapter shall have the definitions ascribed to them in §54.1-2310 of the Code of Virginia or shall have the following meanings, unless the context clearly indicates otherwise:

"Administration" means the cost to administer and maintain records required by Chapter 23.1 (§54.1-2310 et seq.) of Title 54.1 of the Code of Virginia or any regulation of the board, including a percentage of compensation of employees, payment of insurance premiums, reasonable payments for employees' pension and other benefit plans, and costs of maintaining cemetery company and sales personnel compliance with the board's licensure and registration requirements.

"Approved training program" means a training program that has been approved by the board to provide training for individuals to act as a compliance agent or compliance agent designee.

"Change in ownership" means a change in 50% or more of the stockholders or partnership interest, or both, of a cemetery company.

"Compliance agent designee" means an individual who shall be designated by the cemetery company to assure the compliance of the cemetery company with the provisions of Chapter 23.1 (§54.1-2310 et seq.) of Title 54.1 of the Code of Virginia and this chapter when the compliance agent is not available to supervise the activities of any of its affiliated cemeteries.

"Experience" means supervisory experience with a cemetery company as defined in §54.1-2310 of the Code of Virginia.

"Licensee" means any person licensed by the board as a cemetery company.

"Moral turpitude" means, but is not limited to, lying, cheating or stealing.

"Outer burial container" means any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults or grave boxes and grave liners.

"Perpetual care" means continuing care, maintenance, administration and embellishment of the cemetery.

"Preneed trust fund" means those moneys held in accordance with §54.1-2325 of the Code of Virginia.

"Principal" means the following individuals:

1. The sole proprietor of a sole proprietorship.

2. The partners of a general partnership.

3. The managing partners of a limited partnership.

4. The officers of a corporation as registered with the State Corporation Commission.

5. The managers of a limited liability company.

6. The officers or directors of an association.

"Registrant" means any natural person registered with the board as sales personnel.

"Sales personnel" means any natural person employed by or affiliated as an independent contractor with a licensed cemetery company who deals with the public in the sale or offering for sale of any property or services enumerated in the definition of "cemetery company" contained in §54.1-2310 of the Code of Virginia.

"Services" means any act or activity by the cemetery company in relation to arranging, supervising, interring or disposing of the remains or commemorating the memory of deceased human beings.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000; amended, Virginia Register Volume 23, Issue 21, eff. August 1, 2007.

PART II.

APPLICATION AND ENTRY REQUIREMENTS.

18 VAC 47-20-20. Necessity for license and registration.

No person shall engage in the business of a cemetery company in the Commonwealth without first being issued a license by the board, unless exempt by Chapter 23.1 (§54.1-2310 et seq.) of Title 54.1 of the Code of Virginia. All sales personnel must be registered with the board.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-30. Qualifications for cemetery company license.

A. Every person applying for a cemetery company license shall meet all of the requirements outlined in §§54.1-2311 and 54.1-2314 of the Code of Virginia as well as the additional qualifications of this section.

B. Each person applying for a cemetery company license and the principals of that firm shall disclose, at the time the application is submitted, any current or previous cemeteries managed in Virginia or in any other jurisdictions and any disciplinary actions taken against those cemeteries or the individuals managing them. This includes, but is not limited to, any monetary penalties, fines or disciplinary actions taken by any federal, state or local regulatory agencies.

C. In accordance with §54.1-2314 of the Code of Virginia, each applicant shall disclose the following information about the cemetery company and any of the principals of the company:

1. A conviction in any jurisdiction of any felony or any crime of moral turpitude, there being no appeal pending therefrom or the time for appeal having elapsed.

2. A conviction in any jurisdiction of any misdemeanor within five years of the date the application is submitted.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny approval of a cemetery application in accordance with §54.1-204 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-35. Qualifications for compliance agents and designees.

A. Every applicant for compliance agent or designee shall have the following qualifications:

1. Be at least 18 years old;

2. Have two years experience in the cemetery business and have successfully completed a board approved training course; and

3. Be a full time employee of the cemetery company or is a principal.

B. The applicant shall disclose any current or previous licenses/registrations from Virginia or in any other jurisdictions, and any disciplinary actions taken against those licenses/registrations. This includes, but is not limited to, any monetary penalties, fines or disciplinary actions taken by any federal, state or local regulatory agencies. The board, at its discretion, may deny approval of the compliance agent or designee based upon disciplinary actions by any jurisdiction.

C. The applicant shall disclose any conviction or finding of guilt, regardless of adjudication, in any jurisdiction of the United States of any misdemeanor involving moral turpitude or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of conviction, finding or case decision shall be considered prima facie evidence of a conviction or finding of guilt. The board, at its discretion, may deny approval of the compliance agent or designee in accordance with §54.1-204 of the Code of Virginia.

D. The applicant shall certify that he understands and will comply with all the laws of Virginia related to cemetery company licensure under the provisions of Chapter 23.1 (§54.1-2310 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

Historical Notes

Derived from Virginia Register Volume 23, Issue 21, eff. August 1, 2007.

18 VAC 47-20-40. Qualifications for registration of sales personnel.

A. Cemetery company sales personnel shall submit an application on a form prescribed by the board and shall meet the requirements set forth in §54.1-2314 of the Code of Virginia, as well as the additional qualifications of this section.

B. Every applicant to the board for registration as sales personnel shall provide his name, address, the license number of the cemetery company he will be employed by or affiliated with, and the address of each cemetery for which he will act as sales personnel.

C. Each applicant for registration as sales personnel shall disclose, at the time the application is submitted, any current or previous cemetery sales licenses/registrations from Virginia or in any other jurisdictions, and any disciplinary actions taken against those licenses/registrations. This includes, but is not limited to, any monetary penalties, fines or disciplinary actions taken by any federal, state or local regulatory agencies.

D. Each applicant for registration as sales personnel shall disclose, at the time the application is submitted, the following information:

1. A conviction in any jurisdiction of any felony or any crime of moral turpitude, there being no appeal pending therefrom or the time for appeal having elapsed.

2. A conviction in any jurisdiction of any misdemeanor within five years of the date the application is submitted.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may refuse registration of a sales personnel application in accordance with §54.1-2314 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-50. Concurrent registration permitted; transfer of sales personnel registration prohibited.

A. Sales personnel may be employed by or affiliated with more than one cemetery company provided that a separate registration is obtained for each such employment or affiliation.

B. A sales personnel registration may not be transferred from one licensed cemetery company to another. The registration is void if the registrant is no longer affiliated with the cemetery company indicated on the original application for registration.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-60. Qualifications of trustees.

A. The trustee of a perpetual care trust fund or a preneed trust fund, other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, must meet the requirements of this section and shall be governed by §54.1-2318 of the Code of Virginia.

B. The trustee applicant shall be at least 18 years old and have a minimum of five years experience either as an individual trustee or as an agent for a firm responsible for the management of a trust.

C. Each trustee or trust firm, or both, shall provide information for the 10 years prior to the submission of the application on any outstanding judgments, outstanding tax obligations, and/or defaults on any bonds directly related to the management of the trust. If the trustee firm or its parent or predecessor organization has, during the previous 10 years, been adjudicated a bankrupt or has any proceeding for the relief of debtors, such fact or facts shall be stated.

D. Each trust firm and principals of the firm shall disclose, at the time the application is submitted, any current or previous trusts managed in Virginia or in other jurisdictions, and any disciplinary actions taken against these trusts, the trust company, or the individuals managing the trusts. This includes, but is not limited to, any monetary penalties, fines or disciplinary actions taken by any federal, state or local regulatory agencies.

E. The trustee must meet the bonding requirements set forth in §§54.1-2317 and 54.1-2326 of the Code of Virginia as applicable.

F. In accordance with §§54.1-2317 and 54.1-2326 of the Code of Virginia, each trustee shall disclose the following information about the trust firm or principals of the firm:

1. A conviction in any jurisdiction of any felony;

2. A conviction in any jurisdiction of any misdemeanor within five years of the date the application is submitted.

Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny approval of a trustee application in accordance with §54.1-2317 or §54.1-2326 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-70. Application Fees

Application fees are nonrefundable.

Cemetery company license	$580 per cemetery
Addition of cemetery	$580 per cemetery
Sales personnel registration	$60 per cemetery

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000; amended, Virginia Register Volume 22, Issue 6, eff. January 1, 2006; Volume 30, Issue 10, eff. March 1, 2014.

PART III.

RENEWAL AND REINSTATEMENT OF LICENSE.

18 VAC 47-20-80. Renewal required.

Licenses and registrations issued under this chapter shall expire two years from the last day of the month in which they were issued, as indicated on the license or registration.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-90. Qualifications for renewal.

All applicants for renewal of a license or registration must meet the renewal requirements set forth in §54.1-2311 of the Code of Virginia, and pay the renewal fee specified in 18VAC47-20-140.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-100. Procedures for renewal.

Renewal of licenses and registrations shall be on forms prescribed by the board. The Department of Professional and Occupational Regulation will mail a renewal application to the licensee or registrant. The renewal application will be sent to the last known address of record.

Failure to receive this application shall not relieve the licensee or regulant of the obligation to renew. The renewal application shall be completed in full prior to renewal of the license or registration.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-110. Reinstatement required.

A. If the requirements for renewal of a license or registration, including receipt of the fee by the board, are not complete within 30 days of the license or registration expiration

date, the licensee or registrant shall be required to reinstate the license or registration by meeting all renewal requirements and paying the reinstatement fee specified in 18VAC47-20-140.

B. A license or registration may be reinstated for up to one year following the expiration date with payment of the renewal and reinstatement fee. After one year, the license or registration may not be reinstated under any circumstances and the applicant must meet all current requirements and apply as a new applicant.

C. Any activity requiring a license or registration conducted subsequent to the expiration may constitute unlicensed or unregistered activity and be subject to prosecution under Chapter 1 (§54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-120. Status of licensee or registrant during the period prior to reinstatement.

A. When a license or registration is reinstated, the license or registration shall continue to have the same number and shall be assigned an expiration date two years from the previous expiration date of the license or registration.

B. A licensee or registrant who reinstates his license or registration shall be regarded as having been continuously licensed or registered without interruption. Therefore, the licensee or registrant shall remain under the disciplinary authority of the board during this entire period and may be held accountable for his activities during this period.

C. A licensee or registrant who fails to reinstate his license or registration shall be regarded as unlicensed from the expiration date of the license or registration forward.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-130. Board discretion to deny renewal or reinstatement.

A. The board may deny renewal or reinstatement of a license or registration for the same reasons as it may refuse initial licensure or registration or discipline a licensee or registrant.

B. The board may deny renewal or reinstatement of a license or registration if the applicant has not fully paid monetary penalties, satisfied sanctions and paid costs imposed by the board, plus any accrued interest.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-140. Renewal and reinstatement fees.

A. All fees required by the board are nonrefundable. The date on which the fee is received by the department or its agent shall determine whether the licensee or registrant is eligible for renewal or reinstatement or must reapply as a new applicant.

Renewal of cemetery company license	$580 per cemetery
Renewal of sales personnel registration	$60 per cemetery
Reinstatement of cemetery company license	$580 per cemetery
Reinstatement of sales personnel registration	$60 per cemetery

B. For licenses and registrations expiring on May 31, 2020, and before May 1, 2022, the renewal fees are as follows:

Renewal of cemetery company license	$300 per cemetery
Renewal of sales personnel registration	$40 per cemetery

Statutory Authority

§§ 54.1-201 and 54.1-2313 of the Code of Virginia.

Historical Notes

Derived from Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000; amended, Virginia Register Volume 22, Issue 06, eff. January 1, 2006; Volume 30, Issue 10, eff. March 1, 2014; Volume 34, Issue 15, eff. May 1, 2018; Volume 36, Issue 15, eff. May 1, 2020.

PART IV.

STANDARDS OF PRACTICE AND CONDUCT.

18 VAC 47-20-150. Grounds for disciplinary action.

The board may suspend a license or registration for a stated period or indefinitely, revoke any license or registration, censure or reprimand any person licensed or registered by the board or place such person on probation for such time as it may designate when any licensee or registrant has been found to have violated or cooperated with others in violating any provision of Chapter 23.1 (§54.1-2310 et seq.) of Title 54.1 of the Code of Virginia or any regulation of the board.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-160. Maintenance of license and registration.

A. Any change in the name and address of each cemetery in Virginia in which the cemetery company has a business interest, the name and address of all officers and directors of the cemetery company, the registered agent for the cemetery company, or the compliance agent must be reported to the board in writing within 30 days after the change as required by §54.1-2311 of the Code of Virginia. A new license shall be required if there is a change in ownership of the cemetery company or whenever the legal business entity holding a cemetery company license is dissolved or altered to form a new business entity.

B. A cemetery company wishing to add a cemetery to its license shall complete a form provided by the board and submit the fee as prescribed in 18VAC47-20-70. Both the cemetery company and the cemetery being added to the registration must meet the requirements found in Chapter 23.1 of Title 54.1 of the Code of Virginia and 18VAC47-20-30. Sales personnel of the new cemetery will be required to register in accordance with 18VAC47-20-40.

C. Any change in the name and home address of any registrant must be reported to the board in writing within 30 days after the change.

D. The board shall not be responsible for the licensee's or registrant's failure to receive notices, communications and correspondence caused by the licensee's or registrant's failure to promptly notify the board of any change of address.

E. Sales personnel shall be issued a registration to the compliance agent at the place of business of the licensed cemetery company with which the registrant is affiliated or at which the registrant is employed. When any registrant is discharged or in any way

terminates his employment or affiliation with a licensed cemetery company, or when the cemetery company's license is suspended or revoked, it shall be the duty of the compliance agent to return the registration to the board within 10 calendar days of the date of such discharge or termination.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-170. Display and verification of license or registration.

Licenses and registrations must be visibly displayed at the place of business of the licensed cemetery company. All licensees and registrants must provide verification of licensure or registration upon request of the public.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-180. Records of interments.

A permanent record shall be kept of every interment in the cemetery, showing the date of the interment, the name of the person interred, together with information identifying the specific location in which the interment was made. For interments made pursuant to §54.1-2312.01 of the Code of Virginia, the permanent records shall also include the type and name of the pet interred, and the name of the owner, with information identifying the specific location in which the pet interment was made.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000; amended, Virginia Register Volume 32, Issue 21, eff. September 1, 2016.

18 VAC 47-20-190. Prohibited activities.

In addition to the acts set forth in §§54.1-2314, 54.1-2315 and 54.1-2316 of the Code of Virginia, the board may discipline a licensee or registrant for the following acts:

1. Employing or affiliating with by independent contract, sales personnel not registered with the board.

2. Unless otherwise addressed in this chapter, failing to retain for a period of three years all records required by this chapter or Chapter 23.1 (§54.1-2310 et seq.) of Title 54.1 of

the Code of Virginia at the place of business in Virginia of the licensed cemetery company.

3. Failing to produce to the board or any of its agents, upon request, any document, book, or record required by this chapter or Chapter 23.1 (§54.1-2310 et seq.) of Title 54.1 of the Code of Virginia.

4. Failing to respond to an inquiry by the board or any of its agents within 21 days.

5. Advertising in any name other than the name in which licensed or registered.

6. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license or registration.

7. Allowing a cemetery company license or sales personnel registration to be used by an unlicensed cemetery company or unregistered sales personnel.

8. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

9. Having failed to inform the board in writing, within 30 days, that the company, an officer, director or compliance agent, has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or any crime involving moral turpitude.

10. Having failed to inform the board in writing, within 30 days, of a disciplinary action in a jurisdiction where licensed, including suspension, revocation or surrender in connection with a disciplinary action.

11. Failing to reasonably maintain the buildings, grounds, and facilities of a cemetery licensed to a cemetery company.

12. Failing to file any report required by Chapter 23.1 of Title 54.1 of the Code of Virginia.

13. Engaging in negligent, improper, fraudulent, or dishonest conduct.

14. Failing to segregate entirely the section of the cemetery dedicated to the interment of pets or the interment of human remains and the pets of such deceased humans by means such as hedge, wall, tree line, fence, roadway, or other similar physical barrier or boundary.

15. Permitting the interment of a pet in the same grave, crypt, or niche as the remains of a human.

16. If a cemetery company has a section devoted to the interment of pets or the interment of human remains and the pets of such deceased humans, any advertisements failing to clearly state the cemetery company has such section or sections in its cemetery.

17. Failing to clearly mark the section or sections devoted to the interment of pets or the interment of human remains and the pets of such deceased humans with signage that is reasonably apparent to the general public.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000; amended, Virginia Register Volume 32, Issue 21, eff. September 1, 2016.

18 VAC 47-20-200. Perpetual care trust fund and bonding requirement.

A. Each licensed cemetery company shall establish a perpetual care trust fund in accordance with §54.1-2316 of the Code of Virginia.

B. If the trustee for the perpetual care trust fund is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall be approved by the board and shall deposit a fidelity bond in accordance with §54.1-2317 of the Code of Virginia.

C. Deposits into the fund shall be made in accordance with §§54.1-2319 through 54.1-2321 of the Code of Virginia.

D. The income from the perpetual care trust fund shall be used in accordance with §54.1-2322 of the Code of Virginia.

E. Each licensed cemetery company shall submit written financial reports regarding perpetual care trust funds to the board as prescribed by §§54.1-2323 and 54.1-2324 of the Code of Virginia.

F. Transfer of funds to another trustee shall be done in accordance with §54.1-2337 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-210. Preneed trust fund and bonding requirements.

A. Each licensed cemetery company shall establish a preneed trust fund and make deposits in accordance with §54.1-2315 of the Code of Virginia.

B. If the trustee for the preneed trust fund is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall be approved by the board and shall deposit a fidelity bond with the board in accordance with §54.1-2326 of the Code of Virginia.

C. Deposits into the fund shall be made in accordance with §54.1-2325 of the Code of Virginia.

D. All funds shall be handled in accordance with §§54.1-2329 through 54.1-2331 of the Code of Virginia.

E. Each licensed cemetery company shall submit a written financial report regarding preneed trust accounts to the board as prescribed by §54.1-2333 of the Code of Virginia.

F. Transfer of funds to another trustee shall be done in accordance with §54.1-2337 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000; amended, Virginia Register Volume 23, Issue 21, eff. August 1, 2007.

18 VAC 47-20-220. Itemized statement and general price list of burial fees to be furnished.

Cemetery companies shall furnish a written general price list and a written itemized statement of goods and services they provide. This itemized statement shall include, but is not limited to, burial vaults and other burial receptacles, other merchandise, facilities used, and other professional services. Prices for merchandise may be stated as a range of values. Prices for services must be specific for each type of service, including any difference in prices based on the day or time the service is provided. This list shall be set forth in a clear and conspicuous manner.

The list shall be available to individuals inquiring in person about burial arrangements or the prices of property or services. In addition, upon beginning a discussion of burial arrangements or the selection of any property or services, the general price list shall be offered by the cemetery property.

Prior to execution of any contract, cemetery companies shall provide the general price list and itemized statement of goods and services to the individual or individuals entering the contract. The contract shall include an acknowledgment signed by the individual or individuals and the cemetery sales personnel stating the cemetery company provided the general price list and itemized statement of goods and services to the individual or individuals prior to the execution of the contract.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000; amended, Virginia Register Volume 32, Issue 03, eff. December 1, 2015.

18 VAC 47-20-230. Preneed burial contracts.

A. All preneed burial contracts must be made on forms prescribed by the board in accordance with §54.1-2328 of the Code of Virginia and must contain the following disclosures:

1. Identifies the seller, seller's license number, contract buyer and person for whom the contract is purchased if other than the contract buyer;

2. Contains a complete description of the property or services purchased;

3. Clearly discloses whether the price of the property and services purchased are guaranteed;

4. States, for funds required to be trusted pursuant to §54.1-2325 of the Code of Virginia, the amount to be trusted and the name of the trustee;

5. Contains the name, address and telephone number of the board and lists the board as the regulatory agency which handles consumer complaints;

6. Provides that any purchaser who makes payment under the contract may terminate the agreement within three days of execution and that such purchaser shall be refunded all consideration paid or delivered, less amounts paid for any property or supplies that have been delivered;

7. Provides that if the particular property or services specified in the contract are unavailable at the time of delivery, the seller shall be required to furnish property or services similar in size and style and at least equal in quality of material and workmanship and that the representative of the deceased shall have the right to choose the property or services to be substituted, which shall be at least equal or reasonably equivalent in quality of material, workmanship, and cost;

8. Discloses any additional costs that the purchaser may be required to pay at-need, including the disclosure of the cost of opening and closing the grave;

9. Complies with all disclosure requirements imposed by the board;

10. Is executed in duplicate and a signed copy given to the buyer;

11. Provides that the contract buyer shall have the right to change the contract provider at any time prior to the furnishing of the property or services, excluding any mausoleum crypt or garden crypt, contracted for under the preneed burial contract. If the contract seller will not be furnishing the property and services to the purchaser, the contract seller shall attach to the preneed burial contract a copy of the seller's agreement with the provider.

B. Any preneed burial contract sold or offered by any cemetery company or agent with a trust fund deposit of less than 100% shall be required to include the following printed statement in capitalized letters, in 10-point, bold-faced type:

THIS PRENEED BURIAL CONTRACT REQUIRES THE PLACEMENT IN TRUST OF A MINIMUM OF 40% OF THE FUNDS INCLUDED IN THIS CONTRACT. THE BALANCE OF FUNDS MAY BE USED FOR CARE AND MAINTENANCE OF THE CEMETERY AND ARE NOT REQUIRED TO BE PLACED IN TRUST.

C. Each seller of a preneed burial contract shall file with the board, upon request, a detailed account of all contracts and transactions regarding preneed burial contracts in accordance with §54.1-2332 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000.

18 VAC 47-20-240. (Repealed.)

Historical Notes

Derived from Virginia Register Volume 16, Issue 13, eff. April 12, 2000; Errata, 16:14 VA.R. 1911 March 27, 2000; repealed, Virginia Register Volume 23, Issue 21, eff. August 1, 2007.

18 VAC 47-20-250. Compliance agent or designee conduct.

Each cemetery company and cemetery affiliated with a cemetery company shall be supervised by a compliance agent or designee. The compliance agent or designee shall exercise reasonable and adequate supervision of the provision of services by employees of the cemetery company. Factors to be considered in determining whether the supervision is reasonable and adequate include, but are not limited to, the following:

1. The availability of the compliance agent or designee to all cemetery company employees and to the public to answer questions within a reasonable time pertaining to the operation of the cemetery company.

2. The availability of training and written procedures and policies that provide, without limitation, clear guidance in the following areas:

a. Required deposits for the perpetual care trust fund;

b. Required deposits for the preneed trust fund;

c. Proper handling of preneed burial contracts;

d. Proper handling of deposits to the perpetual care trust fund;

e. Proper handling of deposits to the preneed trust fund;

f. Interment records;

g. Itemized statement of goods and services provided;

h. General price list;

i. Advertising;

j. Solicitation;

k. Proper care, maintenance, administration and embellishment of the cemetery;

l. Such other matters as necessary to assure the competence of licensees and registrants to comply with this chapter and Chapter 23.1 (§54.1-2310 et seq.) of Title 54.1 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 23, Issue 21, eff. August 1, 2007.

18 VAC 47-20-260. Protection of perpetual care and preneed trust funds.

In the event that preneed or perpetual care funds are held in trust and the board or any of its agents have reason to believe that (i) the licensee or any agent of the licensee has diverted or misused any funds held in trust; (ii) the licensee is not able to adequately protect the interest of the person involved; (iii) the licensee's conduct or the operation of the cemetery company threatens the interests of the public; or (iv) the licensee has had its license suspended, revoked or surrended, the board may initiate legal proceedings in accordance with §54.1-2313.1 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 23, Issue 21, eff. August 1, 2007.

18 VAC 47-20-270. Standards of approval of training course.

All training courses shall be approved by the board. The training course shall be at least four hours and include appropriate testing procedures to demonstrate an understanding of the topics. The training program shall include, but is not limited, to the following topics:

1. Cemetery Board statute and regulations;

2. Perpetual care trust fund requirements;

3. Preneed trust fund requirements;

4. Preneed burial contracts;

5. Interment records;

6. General price list;

7. Itemized statement of goods and services provided;

8. Advertising;

9. Solicitation;

10. Funeral rule; and

11. Proper care, maintenance, administration and embellishment of the cemetery.

Historical Notes

Derived from Virginia Register Volume 23, Issue 21, eff. August 1, 2007; amended, Virginia Register Volume 32, Issue 21, eff. September 1, 2016.

18 VAC 47-20-280. Special interment requirement

A licensed cemetery company may establish a section in its cemetery devoted to the interment of pets or the interment of human remains and the pets of such deceased humans in accordance with § 54.1-2312.01 of the Code of Virginia. All other provisions of this chapter shall apply.

Historical Notes

Derived from Virginia Register Volume 23, Issue 21, eff. September 1, 2016.

NOTICE

Included in this booklet are relevant excerpts from the *Code of Virginia*. Please note that the Virginia General Assembly is responsible for creating and amending the *Code*, not the Cemetery Board. The version contained herein contains all changes, if any, that have been made by the General Assembly through the 2017 session. Any changes made during the 2017 session became effective July 1, 2017, unless otherwise noted. It is your responsibility to stay informed of revisions to the regulations and the statutes governing your profession or occupation. Please consult the General Assembly or your local library for annual changes.

TITLE 54.1, CHAPTER 23

§ 54.1-2310. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Advertisement" means any information disseminated or placed before the public.

"At-need" means at the time of death or while death is imminent.

"Board" means the Cemetery Board.

"Cemetery" means any land or structure used or intended to be used for the interment of human remains. The sprinkling of ashes or their burial in a biodegradable container on church grounds or their placement in a columbarium on church property shall not constitute the creation of a cemetery.

"Cemetery company" means any person engaged in the business of (i) selling or offering for sale any grave or entombment right in a cemetery and representing to the public that the entire cemetery, a single grave, or entombment right therein will be perpetually cared for; (ii) selling property or services, vaults, grave liners, urns, memorials, markers, and monuments used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or performance of the service may be delayed more than 120 days after receipt of the initial payment on account of such sale; or (iii) maintaining a facility used for the interment or disposal of the remains and required to maintain perpetual care or preneed trust funds in accordance with this chapter. Such property or services include but are not limited to burial vaults, mausoleum crypts, garden crypts, lawn crypts, memorials, and marker bases, but shall not include graves or incidental additions such as dates, scrolls, or other supplementary matter representing not more than ten percent of the total contract price.

"Compliance agent" means a natural person who owns or is employed by a cemetery company to assure the compliance of the cemetery company with the provisions of this chapter.

"Cost requirement" means the total cost to the seller of the property or services subject to the deposit requirements of § 54.1-2325 required by that seller's total contracts.

"Department" means the Department of Professional and Occupational Regulation.

"Garden crypt" means a burial receptacle, usually constructed of reinforced concrete, installed in quantity on gravel or tile underlay. Each crypt becomes an integral part of a given garden area and is considered real property.

"General funds" means the sum total of specific funds put together in a single fund.

"Grave" means a below-ground right of interment.

"In-person communication" means face-to-face communication and telephonic communication.

"Interment" means all forms of final disposal of human remains including, but not limited to, earth burial, mausoleum entombment and niche or columbarium inurnment. The sprinkling of ashes on church grounds shall not constitute interment.

"Lawn crypt" means a burial vault with some minor modifications for the improvement of drainage in and around the receptacle and is considered personal property.

"Licensee" means any person holding a valid license issued by the Board.

"Marker base" means the visible part of the marker or monument upon which the marker or monument rests and is considered personal property.

"Mausoleum crypt" means a burial receptacle usually constructed of reinforced concrete and usually constructed or assembled above the ground and is considered real property.

"Memorials, markers or monuments" means the object used to identify the deceased and is considered personal property.

"Perpetual care trust fund" means a fund created to provide income to a cemetery to provide care, maintenance, administration and embellishment of the cemetery.

"Preneed" means at any time other than either at the time of death or while death is imminent.

"Preneed burial contract" means a contract for the sale of property or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or performance of the service may be delayed for more than 120 days after the receipt of initial payment on account of such sale. Such property includes but is not limited to burial vaults, mausoleum crypts, garden crypts, lawn crypts, memorials, and marker bases, but shall not include graves or incidental additions such as dates, scrolls, or other supplementary matter representing not more than ten percent of the total contract price.

"Resale" means the sale of an interment right in a cemetery governed by this chapter to a person other than the cemetery company owning the cemetery in which the right exists by a person other than that cemetery company or its authorized agent. The term "resale" shall not be construed to include the transfer of interment rights upon the death of the owner.

"Retail sales price" means the standard, nondiscounted price as listed on the general price list required by § 54.1-2327.

"Seller" means the cemetery company.

"Seller's trust account" means the total specific trust funds deposited from all of a specific seller's contracts, plus income on such funds allotted to that seller.

"Solicitation" means initiating contact with consumers with the intent of influencing their selection of a cemetery.

"Specific trust funds" means funds identified to a certain contract for personal property or services.

(1998, cc. 708, 721; 2000, c. 36; 2011, c. 792.)

§ 54.1-2311. Cemetery operators required to be licensed by the Board.

No person shall engage in the business of a cemetery company in the Commonwealth without first being licensed by the Board. The cemetery company shall renew its license as required by the Board. Such license and such renewal of license shall (i) be on forms prescribed by the Board and shall include the name and address of each cemetery in Virginia in which the cemetery company has a business interest, the name and address of all officers and directors of the cemetery company, the registered agent for the cemetery company, the compliance agent, and any such other information as the Board may require consistent with the purposes of this chapter and (ii) include a fee as prescribed by the Board for each cemetery in Virginia in which the cemetery company has a business interest. The cemetery company shall notify the Board of any change in the information required to be filed within thirty days after the change. A new license shall be required if there is a change in the ownership of the cemetery company. If there is a change in the compliance agent designated by the cemetery company, it shall promptly notify the

Board in writing. All fees shall be remitted to the State Treasurer and shall be placed to the credit and special fund of the Department to be used in the administration of this chapter.

(1998, cc. 708, 721.)

§ 54.1-2312. Exemptions.

A. The provisions of this chapter shall not apply to cemeteries wholly owned and operated by the state or a county, city or town; a church; or a nonstock corporation not operated for profit if the corporation (i) does not compensate any officer or director except for reimbursement of reasonable expenses incurred in the performance of his official duties, (ii) does not sell or construct or directly or indirectly contract for the sale or construction of vaults or lawn, garden or mausoleum crypts, and (iii) uses proceeds from the sale of all graves and entombment rights for the sole purpose of defraying the direct expenses of maintaining the cemetery.

B. The provisions of this chapter shall not apply to any community cemetery not operated for profit if the cemetery (i) does not compensate any officer or director except for reimbursement of reasonable expenses incurred in the performance of his official duties, and uses the proceeds from the sale of the graves and mausoleum spaces for the sole purpose of defraying the direct expenses of maintaining its facilities or (ii) was chartered by the Commonwealth prior to 1857 A.D.

C. The provisions of this chapter regarding preneed burial contracts shall not apply to prearranged funeral plans entered into by licensees of the Board of Funeral Directors and Embalmers.

D. The provisions of the chapter shall not apply to any family cemetery provided that no graves or entombment rights therein are sold or offered for sale to the public.

E. Subject to the requirements of § 54.1-2312.1, the provisions of this chapter shall not apply to the resale of any interment right in a cemetery in the Commonwealth.

(1998, cc. 708, 721; 2011, c. 792.)

§ 54.1-2312.01. Special interments; definitions; regulations by Board.

A. A cemetery company may have a section in the cemetery devoted to the interment of human remains and the pets of such deceased humans, provided:

1. The section of the cemetery property dedicated for this purpose is segregated entirely from the remainder of the cemetery devoted to the interment of human remains;

2. No pet is interred in the same grave, crypt, or niche as the remains of a human; and

3. The section of the cemetery is clearly marked and advertised as such by the cemetery company.

B. A cemetery company may have a section in the cemetery devoted to the interment of pets, provided:

1. The section of the cemetery property dedicated for this purpose is segregated entirely from the remainder of the cemetery devoted to the interment of human remains; and

2. The section of the cemetery is clearly marked and advertised as such by the cemetery company.

C. As used in the section, "pet" means the same as that term is defined in § 57-39.20.

D. The Board shall adopt such regulations as the Board deems appropriate and necessary to implement the provisions of this section. Regulations of the Board shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

(2014, c. 500.)

§ 54.1-2312.1. Resale of interment right; conditions for resale transaction; contents of transfer form; approval by cemetery company.

A. No person shall participate as a seller in more than four consummated resale transactions in any calendar year except as authorized by this section or § 54.1-2312.2.

B. Unless exempted by subsection A, no resale transaction shall be valid unless:

1. The resale is at-need;

2. The seller is (i) a funeral director, embalmer, establishment, or service licensed pursuant to Chapter 28 (§ 54.1-2800 et seq.) or (ii) a cemetery company licensed pursuant to this chapter;

3. No more than one interment right is transferred by the transaction;

4. Any merchandise, personal property, or service purchased in the original pre-need transaction is transferred with the interment right;

5. The resale is approved, pursuant to subsection C, by the cemetery company that owns the cemetery in which the interment right exists; and

6. The seller provides written notice to the buyer that the resale transaction is contingent upon (i) approval by the cemetery company that owns the cemetery in which the interment right exists, (ii) payment of the cemetery transfer fee, and (iii) compliance with the provisions of this section.

C. A cemetery company shall approve a resale transaction upon receipt of a valid transfer form that has been acknowledged by the buyer as required by subsection D 6, a reasonable cemetery transfer fee to be set by the cemetery company, and a copy of the bill of sale or other document confirming the resale, provided such approval is consistent with the current rules and regulations of the cemetery company.

D. The transfer form shall be provided by the seller to the buyer at the time of the resale and shall be valid only when signed by the seller, buyer, and cemetery company. At a minimum, the transfer form shall contain the following information:

1. The name and address of each seller and buyer;

2. The valid license number of each seller under Chapter 28 (§ 54.1-2800 et seq.) or under this chapter;

3. A complete description of the location of the property for which the interment right is being sold;

4. A clear disclosure of the cemetery transfer fee;

5. The name, address, and telephone number of the Board and a statement that the Board is the regulatory agency that handles consumer complaints; and

6. An acknowledgement that the buyer has read, understands, and agrees to abide by the current rules and regulations of the cemetery and its current general price list, as applicable.

The information required to be included in the transfer form by subdivisions 1 through 5 shall be provided by the seller.

E. In the event a resale is not approved by the cemetery company under this section, the resale transaction shall be void and within 30 days the seller shall refund to the buyer any and all moneys paid pursuant to the transaction and the buyer shall return to the seller any merchandise or personal property that was transferred to the buyer by the seller as a part of the resale.

(2011, c. 792; 2013, c. 395.)

§ 54.1-2312.2. Resale of interment right by certain churches and religious organizations.

A. In addition to the provisions of § 54.1-2312.1, a church or religious organization may proceed with a resale transaction of an interment right if (i) the church or religious organization is exempt from income tax under Title 58.1 or from taxation pursuant to § 501(c)(3) of the Internal Revenue Code and (ii) the buyer is a member of the church congregation or religious organization or an immediate family member of such member.

B. Resale transactions under this subsection shall also comply with the following:

1. Any merchandise, personal property, or service purchased in the original preneed transaction is transferred with the interment right;

2. The resale is approved, pursuant to subdivision 4, by the cemetery company that owns the cemetery in which the interment right exists;

3. The seller provides written notice to the buyer that the resale transaction is contingent upon (i) approval by the cemetery company that owns the cemetery in which the interment right exists, (ii) payment of the cemetery transfer fee, and (iii) compliance with the provisions of this section;

4. A cemetery company shall approve a resale transaction upon receipt of a valid transfer form that has been acknowledged by the buyer as required by subdivision 5 e, a reasonable cemetery transfer fee to be set by the cemetery company, and a copy of the bill of sale or other document confirming the resale, provided such approval is consistent with the current rules and regulations of the cemetery company; and

5. The transfer form shall be provided by the seller to the buyer at the time of the resale and shall be valid only when signed by the seller, buyer, and cemetery company. A cemetery company may rely in good faith on the representations and documentation submitted by the buyer and seller. At a minimum, the transfer form shall contain the following information:

a. The name and address of each seller and buyer;

b. A complete description of the location of the property for which the interment right is being sold;

c. A clear disclosure of the cemetery transfer fee;

d. The name, address, and telephone number of the Board and a statement that the Board is the regulatory agency that handles consumer complaints; and

e. An acknowledgment that the buyer has read, understands, and agrees to abide by the current rules and regulations of the cemetery and its current general price list, as applicable.

The information required to be included in the transfer form by subdivisions a through d shall be provided by the seller.

C. In the event a resale is not approved by the cemetery company under this section, the resale transaction shall be void and within 30 days the seller shall refund to the buyer all money paid pursuant to the transaction and the buyer shall return to the seller any

merchandise or personal property transferred to the buyer by the seller as a part of the resale.

D. Nothing in this section shall prevent a church or religious organization exempt from income tax under Title 58.1 or from taxation pursuant to § 501(c)(3) of the Internal Revenue Code from reselling any interment right back to the cemetery company. Subsequent sale of such interment rights by the cemetery company shall not be considered a resale transaction.

E. Nothing in this section shall prevent a cemetery company from reselling an interment right of a natural person.

(2013, c. 395.)

§ 54.1-2313. Board; appointment; terms; vacancies; meetings; quorum; other powers; regulations.

A. The Cemetery Board shall consist of seven members to be appointed by the Governor as follows: four cemetery operators who have operated a cemetery in the Commonwealth for at least five consecutive years immediately prior to appointment, no more than two of whom shall be affiliated with a cemetery company incorporated in the Commonwealth which is owned, operated or affiliated, directly or indirectly, with a foreign corporation; one representative of local government, and two citizen members. Appointments to the Board shall generally represent the geographical areas of the Commonwealth.

B. All appointments shall be for terms of four years, except that appointment to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for more than two successive four-year terms.

C. The Board shall annually elect a chairman and a vice-chairman from among its members. The Board shall meet at least once each year and may meet as often as its duties require. Four members shall constitute a quorum.

D. In addition to the general powers and duties conferred in this subtitle, the Board shall have the power and duty to (i) regulate preneed burial contracts and perpetual care trust fund accounts as prescribed by this chapter, including, but not limited to, the authority to prescribe preneed contract forms, disclosure requirements and disclosure forms and to require reasonable bonds to insure performance of preneed contracts, (ii) regulate and register sales personnel employed by a cemetery company, and (iii) regulate and establish qualifications and standards of conduct for compliance agents employed by a cemetery company to assure compliance of the cemetery with the provisions of this chapter.

E. In addition to such other regulations the Board deems appropriate, the Board shall adopt regulations which provide:

1. A method for executing, at-need, a preneed burial contract, including the petitioning a court of competent jurisdiction for the appointment of a receiver, where a licensee who is a party to such preneed burial contract has had his license to operate a cemetery revoked or suspended for violation of this chapter or Board regulations; and

2. Consumer protections which are consistent with those provisions of the Federal Trade Commission Funeral Rules which the Board finds may be appropriately applied to cemetery companies.

(1998, cc. 708, 721; 2004, c. 247; 2010, c. 91; 2012, c. 522.)

§ 54.1-2313.1. Protection of preneed burial and perpetual care trust funds; operation of cemetery company; appointment of receiver.

No licensee or any agent of the licensee shall divert or misuse any funds held in trust or otherwise held by him for another. If preneed or perpetual care funds are held in trust and the Board or its agents have reason to believe that (i) the licensee is not able to adequately protect the interest of the person involved, (ii) the licensee has had his license suspended, revoked or surrendered, or (iii) the conduct of the licensee or the operation of the cemetery threatens the interests of the public, the Board may file a petition with any court of record having equity jurisdiction over the licensee or any of the funds held by him stating the facts upon which it relies and the relief requested. The court may temporarily enjoin further activity by the licensee and take such further action as shall be necessary to ensure that the cemetery company is operated in full compliance with this chapter and the Board's regulations, or to conserve, protect, and disburse the funds involved, or both, including the appointment of a receiver to operate the cemetery company. The Board shall not be liable for any expenses or fees of the receiver.

(2004, c. 192.)

§ 54.1-2314. Refusal, suspension or revocation of license or registration.

The Board may refuse to license or register any applicant, suspend a license or registration for a stated period or indefinitely, revoke any license or registration, censure or reprimand any person licensed or registered by the Board or place such person on probation for such time as it may designate for any of the following causes related to the sale or offering to the public of cemetery vaults, grave liners, urns, memorials, markers or monuments:

1. Conviction of any felony or any crime involving moral turpitude;

2. Unprofessional conduct which is likely to defraud or to deceive the public or clients;

3. Misrepresentation or fraud in the conduct of the cemetery company or its sales personnel, or in obtaining or renewing a license or registration;

4. False or misleading advertising;

5. Solicitation in violation of subsection B of § 54.1-2327;

6. Direct or indirect payment or offer of payment of a commission to others by the licensee, his sales representatives, agents, or employees for the purpose of securing business;

7. Use of alcohol or drugs to the extent that such use renders him unsafe to practice his licensed or registered activity;

8. Aiding or abetting an unlicensed person to engage in the business of a cemetery company;

9. Using profane, indecent or obscene language within the immediate hearing of the family or relatives of a deceased, whose body has been interred or otherwise disposed of;

10. Violation of any statute, ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;

11. Failure to comply with subsection A of § 54.1-2327 and to keep on file an itemized statement of all retail prices and fees charged related to the sale of property or services as required by Board regulations and this chapter;

12. Charging third-party handling fees, which shall not include installation fees; and

13. Refusing to honor the transfer of preneed contract arrangements to another party. However the licensee shall not be responsible for paying additional costs associated with any actual transfer.

(1998, cc. 708, 721.)

§ 54.1-2315. Other prohibited activities.

The following acts shall be prohibited:

1. Employment directly or indirectly of any sales representative, agent, employee or other person, on a part-time or full-time basis, or on a commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment or cemetery company;

2. Solicitation, offer, payment, or acceptance by a licensee or registered sales personnel of a licensee, of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or cemetery;

3. Violating or cooperating with others to violate any provision of this chapter or Board regulations;

4. Interfering with the freedom of choice of the general public in the choice of persons or establishments providing funeral services, preneed funeral planning or preneed funeral contracts.

Nothing in this section shall preclude a cemetery company employing or retaining a sales representative, agent, employee or other person, on a part-time or full-time basis, from offering cemetery company goods and services on a commission basis.

(1998, cc. 708, 721.)

§ 54.1-2316. Certain representations unlawful; perpetual care trust fund required.

It shall be unlawful to sell or offer for sale in the Commonwealth any grave or entombment right in a cemetery and, in connection therewith, to represent to the public in any manner, express or implied, that the entire cemetery or any grave or entombment right therein will be perpetually cared for, unless adequate provision has been made for the perpetual care of the cemetery and all graves and entombment rights therein as to which such representation has been made.

Each cemetery company shall establish in a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, an irrevocable trust fund in the amount of at least $50,000 before the first lot, parcel of land, burial or entombment right is sold. This fund shall be designated the perpetual care trust fund.

(1998, cc. 708, 721; 2004, c. 192.)

§ 54.1-2317. Who may serve as trustee of perpetual care trust fund.

A. The trustee of the perpetual care trust fund shall be appointed by the person owning, operating, or developing a cemetery company. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall be approved by the Board.

A trustee that is not a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth shall apply to the Board for approval, and the Board shall approve the trustee when it has become satisfied that the applicant:

1. Employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others;

2. Will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized; and

3. Is authorized to do business in the Commonwealth and has adequate facilities to perform its duties as trustee.

B. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall furnish a fidelity bond with corporate surety thereon, payable to the trust established, which shall be designated "Perpetual Care Trust Fund for (name of cemetery company)," in a sum equal to not less than 100 percent of the value of the principal of the trust estate at the beginning of each calendar year, which bond shall be deposited with the Board.

C. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth and if it appears that an officer, director or employee of the trustee is dishonest, incompetent, or reckless in the management of a perpetual care trust fund, the Board may bring an action in the appropriate court to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

(1998, cc. 708, 721.)

§ 54.1-2318. Application of Part A (§ 64.2-1200 et seq.) of Subtitle IV of Title 64.2.

Trustees appointed pursuant to this chapter shall be governed in their investment of trust funds by § 2.2-4519 and §§ 64.2-1502 through 64.2-1506, except as otherwise provided in this chapter.

(1998, cc. 708, 721.)

§ 54.1-2319. Deposit in perpetual care trust fund required upon sale of graves, etc.

Each cemetery company shall deposit a minimum of ten percent of the receipts from the sale of graves and above-ground crypts and niches, excluding below-ground burial vaults, in cash in the perpetual care trust fund within thirty days after the close of the month in which such receipts are paid to it. If the purchaser's payment is made on an installment or deferred payment basis, the cemetery company shall have the option of paying ten percent of the amount of principal in each payment received into the perpetual care trust fund. If the cemetery company provides a grave or an above-ground crypt or niche without compensation, ten percent of the retail sales price shall be deposited within thirty days after the close of the month in which the property is provided to the consumer.

(1998, cc. 708, 721; 2000, c. 36.)

§ 54.1-2320. Additional deposit not required upon subsequent sale of same grave, crypt or niche.

If ten percent of the sales price of a grave or above-ground crypt or niche has been deposited in a perpetual care trust fund, no deposit shall be required on subsequent sales of the same grave, crypt or niche.

(1998, cc. 708, 721.)

§ 54.1-2321. Recovery of original perpetual care trust fund deposit.

Once the cemetery company has deposited in the perpetual care trust fund a sum equal to twice the amount of the original deposit, exclusive of the original deposit, the trustee shall allow the cemetery company to recover its original deposit by withholding the money that would otherwise be required to be deposited in the perpetual care trust fund until the amount of the original deposit is recovered. Once the cemetery company has recovered an amount equal to its original deposit, deposits to the perpetual care trust fund shall be resumed.

(1998, cc. 708, 721.)

§ 54.1-2322. Use of income from perpetual care trust fund; distributions.

A. The income from the perpetual care trust fund shall be used solely and exclusively for the general care, maintenance, administration, and embellishment of the cemetery. Unless prior approval has been obtained from the Board or a court of competent jurisdiction, the principal of the perpetual care trust fund shall only be used for investment purposes.

B. A cemetery company may request the trustee of a perpetual care trust fund to elect the distribution of either of the following from the perpetual care trust fund:

1. All net income, which for purposes of this section means the collected dividends, interest, and other income of the perpetual care trust fund less any taxes on income, fees, commissions, and costs. A distribution made under this subdivision shall be referred to as a "net income distribution method"; or

2. An amount not to exceed five percent of the fair market value of the perpetual care trust fund at the close of its fiscal year preceding the distribution year. A distribution made under this subdivision shall be referred to as a "total return distribution method."

C. A cemetery company may request the trustee of a perpetual care trust fund to convert from a net income distribution method to a total return distribution method by delivering written or electronic notice to the trustee. Notice of such conversions shall be provided to the Board at least 90 days prior to implementation of the total return distribution method. Such notices may be written or electronic and shall include a copy of the trust instrument, election of distribution method, and an investment and distribution policy pursuant to subdivision D 1. In the event that a distribution method is not elected, distributions shall be limited to the net income distribution method.

D. The trustee of a perpetual care trust fund may reject a cemetery company's request to elect a total return distribution method. If a trustee determines that election of a total return distribution method is proper, he shall:

1. Prior to implementation of the total return distribution method, adopt a written investment and distribution policy under which the amounts of future distributions from the perpetual care trust fund will be calculated under the total return distribution method rather than net income distribution method. The investment goals and objectives of such policy shall be tailored to achieve (i) principal growth through equity investment; (ii) current income through income investment, as necessary; and (iii) an appropriate balance between (a) maintaining purchasing power through principal appreciation and (b) generating income to support the cemetery company's care and maintenance. A copy of such policy shall be sent to the Board with the notice required in subsection C;

2. Ensure that asset allocation under the perpetual care trust fund includes a diversified portfolio and that investment decisions are made in accordance with all other applicable laws of the Commonwealth;

3. Determine the fair market value of the perpetual care trust fund at least annually using generally accepted valuation methods and such valuation date or dates or averages of valuation dates as are readily ascertainable;

4. Make distributions from the perpetual care trust fund on a monthly, quarterly, semi-annual, or annual basis, as agreed upon by the cemetery company and the trustee;

5. Require that both of the following tests be met each fiscal year prior to allowing any distribution from the perpetual care trust fund to the cemetery company: (i) the fair market value of the perpetual care trust fund after the distribution will be greater than the aggregate of 80 percent of the fair market value of the perpetual care trust fund at the close of the preceding fiscal year plus the total contributions made to the trust principal from such date to the date that the method of distribution is elected and (ii) beginning with the third year of using a total return distribution method, a three-year analysis of investment returns and distribution practices indicates that such practices will result in sufficient protection of the trust principal. If either test is not met, distributions for that fiscal year shall be limited to the net income distribution method;

6. In the event that the taxes and fees paid by the perpetual care trust fund are greater than two and one-half percent of the fair market value of the trust at the close of the preceding fiscal year, reduce the distribution by the amount exceeding two and one-half percent; and

7. Maintain records documenting the fair market value of the assets held in the perpetual care trust fund at the end of the accounting period immediately prior to conversion to the total return distribution method.

E. In addition to filing an annual perpetual care trust fund financial report with the Board pursuant to § 54.1-2324, a cemetery company that has elected a total return distribution method shall also file a copy of such financial report at the close of each fiscal year with the commissioner of accounts in a jurisdiction in the Commonwealth in which the cemetery company owns a cemetery. The commissioner of accounts shall review the financial report and forward his finalized accounting to the Board, with all reasonable fees and costs for such filing and review borne by the cemetery company. A trustee shall not make any distribution from a perpetual care trust fund under a total return distribution method until the review by the commissioner of accounts has been finalized. A review shall be deemed finalized if the commissioner of accounts has not responded or communicated any deficiencies within 60 days of the submission of the financial report.

F. The Board shall review all notices of conversion or reversion of perpetual care trust fund distribution method for compliance with this section. The Board may engage the services of a professional to review notices of conversion or reversion to a total return distribution method, with all reasonable costs of such review borne by the cemetery company that submitted such notice.

The Board may limit or prohibit conversion from a net income distribution method to a total return distribution method if the trustee or any investment manager is not able to demonstrate sufficient knowledge and expertise regarding effective implementation of the total return distribution method. The Board may prohibit a reversion from the total return distribution method to the net income distribution method if the trust principal is less than it was at the time the cemetery company converted to the total return distribution method, as adjusted for inflation.

If a conversion to the total return distribution method has already been made, the Board may limit or prohibit distributions from the perpetual care trust fund if the trustee or any investment manager is not able to demonstrate sufficient knowledge and expertise regarding the distribution of trust income for the maintenance of the cemetery using the total return distribution method. In deciding whether a distribution should be limited or prohibited, the Board shall consider the presence and stated value of trust assets that do not have an active market and are not traded on a regular basis, the frequency of appraisals and evaluations of such assets, the asset allocation of the trust, and whether trust principal, as adjusted for inflation, is less than it was at the time the cemetery company converted to the total return distribution method.

The Board may require a cemetery company to restore a distribution to the perpetual care trust fund if (i) the distribution and all other aspects of the trust were not in compliance with the requirements of this section at the time such distribution was made or (ii) the cemetery company has committed fraud against the trust.

G. If a total return distribution method has been elected, the perpetual care trust fund may not be reverted to a net income distribution method absent approval by the Board. A failure by a cemetery company to file a perpetual care trust fund financial report annually

with the Board as required by § 54.1-2324 shall automatically prohibit a conversion to or continuation of a total return distribution method pending further action by the Board.

H. No portion of the perpetual care trust fund shall be used to pay any personal obligation or debt of any officer or owner of the cemetery or any tax obligation incurred by the cemetery or for any purpose other than that expressly described in this section. Nothing in this section shall be construed to limit the ability of the perpetual care trust fund trustee from paying normal operating expenses and income taxes of the trust itself, the trust being a separate legal entity.

(1998, cc. 708, 721; 2004, c. 192; 2012, c. 355; 2017, cc. 12, 65.)

§ 54.1-2323. Financial records required.

The cemetery company shall file with the Board detailed accounts of all transactions, receipts and accounts receivable subject to the ten percent trust requirement and of all expenditures of income from the perpetual care trust fund at such times as required by the Board.

(1998, cc. 708, 721.)

§ 54.1-2324. Financial report and report of independent certified public accountant required for perpetual care trust funds.

A. Within four months after the close of its fiscal year, the cemetery company shall report the following information to the Board, on forms prescribed by the Board:

1. The total amount of principal in the perpetual care trust fund;

2. The securities in which the perpetual care trust fund is invested and the amount of cash on hand as of the close of the fiscal year;

3. The income received from the perpetual care trust fund, and the sources of such income, during the preceding fiscal year;

4. The method of distribution used for distributions from the perpetual care trust fund and, if a total return distribution method was used, a schedule to verify compliance with the requirements of § 54.1-2322;

5. An affidavit executed by the compliance agent that all applicable provisions of this chapter relating to perpetual care trust funds have been complied with;

6. The total receipts subject to the 10 percent trust requirement;

7. All expenditures from the perpetual care trust fund;

8. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, proof that the required fidelity bond has been secured and that it is in effect; and

9. A separate total of expenses incurred for general care and maintenance, embellishment and administration of its cemeteries.

B. The cemetery company shall (i) engage an independent certified public accountant to apply agreed-upon procedures as specified by the Board to the total of all receipts subject to § 54.1-2319, in accordance with standards established by the American Institute of Certified Public Accountants or any successor standard authorities, and (ii) provide to the Board the independent certified public accountant's report on the agreed-upon procedures. The information provided by the cemetery company shall provide full disclosure of any transactions between the perpetual care trust fund and any directors, officers, stockholders, or employees of the cemetery company, or relatives of the cemetery company's employees, and shall include a description of the transactions, the parties involved, the dates and amounts of the transactions, and the reasons for the transactions.

C. The information required to be filed hereunder with the Board shall be exempt from the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.).

(1998, cc. 708, 721; 2000, c. 36; 2004, c. 247; 2015, c. 344; 2017, cc. 12, 65.)

§ 54.1-2325. Deposit in preneed trust required upon sale of property or services not to be delivered within 120 days.

A. Each cemetery company shall deposit into a trust fund at least forty percent of the receipts from the sale of property or services purchased pursuant to a preneed burial contract, when the delivery thereof will be delayed more than 120 days from the initial payment on said contract. The cemetery company shall establish a special trust fund in a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth. The trust shall bear the legend "Preneed Trust Account." Deposits are required to be made by the cemetery company within thirty days after the close of the month in which said receipts are paid to it.

B. If the purchaser's payment is made on an installment or deferred payment basis, the seller shall have the option of paying each payment received into the preneed trust account.

(1998, cc. 708, 721.)

§ 54.1-2326. Who may serve as trustee of preneed trust fund.

A. The trustee of the preneed trust fund shall be appointed by the person owning, operating, or developing a cemetery company. If the trustee is other than a Virginia trust

company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall be approved by the Board.

A trustee that is not a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth shall apply to the Board for approval, and the Board shall approve the trustee when the Board has become satisfied that the applicant:

1. Employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others;

2. Will perform its duties in a proper and legal manner and that the trust funds and interest of the public generally will not be jeopardized; and

3. Is authorized to do business in the Commonwealth and has adequate facilities to perform its duties as trustee.

B. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, the trustee shall furnish a fidelity bond with corporate surety thereon, payable to the trust established, which shall be designated "Preneed Trust Fund for (name of cemetery company)," in a sum equal to but not less than 100 percent of the value of the principal of the trust estate at the beginning of each calendar year, which bond shall be deposited with the Board.

C. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, and if it appears that an officer, director or employee of the trustee is dishonest, incompetent, or reckless in the management of a preneed trust fund, the Board may bring an action in the appropriate court to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

(1998, cc. 708, 721.)

§ 54.1-2327. Itemized statement and general price list of burial fees to be furnished; solicitations prohibited.

A. Every cemetery company licensed pursuant to the provisions of this chapter shall furnish a written general price list and a written itemized statement of charges in connection with burial services provided by the cemetery company.

Individuals inquiring in person about burial arrangements or the prices of property or services shall be given the general price list. Upon beginning discussion of burial arrangements or the selection of any property or services, the general price list shall be offered by the cemetery company.

The itemized statement shall include, but not be limited to, the following charges: burial vaults or other burial receptacles, facilities used, and other professional services used, which shall be set forth in a clear and conspicuous manner.

The general price list and itemized statement of burial fees shall comply with forms prescribed by Board regulation, which regulations shall promote the purposes of this section.

B. No cemetery company licensed pursuant to the provisions of this chapter shall make any solicitation at-need or any preneed solicitation using in-person communication by the cemetery company, his agents, assistants or employees, which is false, misleading, or contrary to the stated purpose. However, general advertising and preneed solicitation shall be permitted.

(1998, cc. 708, 721.)

§ 54.1-2328. Requirements of preneed burial contracts.

A. It shall be unlawful for any person doing business within the Commonwealth to make, either directly or indirectly by any means, a preneed burial contract unless the contract:

1. Is made on forms prescribed by the Board and is written in clear, understandable language and printed in easy-to-read type, size and style;

2. Identifies the seller, seller's license number, contract buyer and person for whom the contract is purchased if other than the contract buyer;

3. Contains a complete description of the property or services purchased;

4. Clearly discloses whether the price of the property and services purchased is guaranteed;

5. States, for funds required to be trusted pursuant to § 54.1-2325, the amount to be trusted and the name of the trustee;

6. Contains the name, address and telephone number of the Board and lists the Board as the regulatory agency which handles consumer complaints;

7. Provides that any purchaser who makes payment under the contract may terminate the agreement within three days of execution and that such purchaser shall be refunded all consideration paid or delivered, less amounts paid for any property or supplies that have been delivered;

8. Provides that if the particular property or services specified in the contract are unavailable at the time of delivery, the seller shall be required to furnish property or services similar in size and style and at least equal in quality of material and

workmanship and that the representative of the deceased shall have the right to choose the property or services to be substituted, which shall be at least equal or reasonably equivalent in quality of material, workmanship, and cost;

9. Discloses any additional costs that the purchaser may be required to pay at-need, including disclosure of the cost of opening and closing the grave;

10. Complies with all disclosure requirements imposed by the Board;

11. Is executed in duplicate and a signed copy given to the buyer; and

12. Provides that the contract buyer shall have the right to change the contract provider at any time prior to the furnishing of the property or services, excluding any mausoleum crypt or garden crypt, contracted for under the preneed burial contract. If the contract seller will not be furnishing the property and services to the purchaser, the contract seller shall attach to the preneed burial contract a copy of the seller's agreement with the provider.

B. Any preneed burial contract sold or offered by any cemetery company or agent with a trust fund deposit of less than 100 percent shall be required to include the following printed statement in capitalized letters, in ten-point, bold-faced type:

THIS PRENEED BURIAL CONTRACT REQUIRES THE PLACEMENT IN TRUST OF A MINIMUM OF 40% OF THE FUNDS INCLUDED IN THIS CONTRACT. THE BALANCE OF FUNDS MAY BE USED FOR CARE AND MAINTENANCE OF THE CEMETERY AND ARE NOT REQUIRED TO BE PLACED IN TRUST.

(1998, cc. 708, 721.)

§ 54.1-2329. Identification of specific funds.

Specific funds deposited in the trust account shall be identified in the records of the seller by the contract number and by the name of the buyer. The trustee may commingle the deposits in any preneed trust account for the purposes of the management thereof and the investment of funds therein.

(1998, cc. 708, 721.)

§ 54.1-2330. Specific funds and income to remain in preneed trust account; exception.

Specific funds shall remain intact until the property is delivered or services performed as specified in the contract. The net income from the preneed trust account, after payment of any appropriate trustee fees, commissions, and costs, shall remain in the account and be reinvested and compounded. Any trustee fees, commissions, and costs in excess of income shall be paid by the cemetery company and not from the trust. However, the

trustee shall, as of the close of the cemetery company's fiscal year, upon written assurance to the trustee of a certified public accountant employed by the seller, return to the seller any income in the seller's account which, when added to the specific funds, is in excess of the current cost requirements for all undelivered property or services included in the seller's preneed burial contracts. The seller's cost requirements shall be certified in its records by an affidavit sworn by the compliance agent and shall be determined by the seller as of the close of the cemetery company's fiscal year.

(1998, cc. 708, 721.)

§ 54.1-2331. Disbursement of trust funds upon performance of contract.

A. Upon performance of the preneed burial contract, the seller shall certify to the trustee by affidavit the amount of specific funds in the trust, identified to the contract performed, which the trustee shall pay to the seller. The seller may in its records itemize the property or services and the consideration paid or to be paid therefor, to which the deposit requirements of this chapter apply. In such case, the seller may, upon certification to the trustee of performance or delivery of such property or services and of the amount of specific trust funds identified in its records to such items, request disbursement of that portion of the specific funds deposited pursuant to the contract, which the trustee shall pay to the seller.

B. If the preneed contract provides for two or more persons, the seller may, at its option, designate in its records the consideration paid for each individual in the preneed burial contract. In such case, upon performance of that portion of the contract identified to a particular individual, the seller may request, by certification in the manner described above, the disbursement of trust funds applicable to that portion of the contract, which the trustee shall pay to the seller.

(1998, cc. 708, 721.)

§ 54.1-2332. Seller required to keep records.

Each seller of a preneed burial contract shall file with the Board at such time as the Board may prescribe, detailed accounts of all contracts and transactions regarding preneed burial contracts.

(1998, cc. 708, 721.)

§ 54.1-2333. Financial report and report of independent certified public accountant required for preneed trust accounts.

A. The cemetery company shall report the following information to the Board within four months following the cemetery company's fiscal year, on forms prescribed by the Board:

1. The total amount of principal in the preneed trust account;

2. The securities in which the preneed trust account is invested;

3. The income received from the trust and the source of that income during the preceding fiscal year;

4. An affidavit executed by the compliance agent that all provisions of this chapter applicable to the seller relating to preneed trust accounts have been complied with;

5. Forty percent of the total receipts required to be deposited in the preneed trust account;

6. All expenditures from the preneed trust account; and

7. If the trustee is other than a Virginia trust company or trust subsidiary or a federally insured bank or savings institution doing business in the Commonwealth, proof that the required fidelity bond has been secured and that it is in effect.

B. The cemetery company shall (i) engage an independent certified public accountant to apply agreed-upon procedures as specified by the Board to the total of all receipts subject to § 54.1-2325, in accordance with standards established by the American Institute of Certified Public Accountants or any successor standard authorities, and (ii) provide to the Board the independent certified public accountant's report on the agreed-upon procedures.

The information provided by the cemetery company shall provide full disclosure of any transactions between the preneed trust account and any directors, officers, stockholders, or employees of the cemetery company, or relatives of the cemetery company's employees, and shall include a description of the transactions, the parties involved, the dates and amounts of the transactions, and the reasons for the transactions.

C. The information required to be filed hereunder with the Board shall be exempt from the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.).

(1998, cc. 708, 721; 2000, c. 36; 2004, c. 247; 2015, c. 344.)

§ 54.1-2334. Inclusion of property and services to be delivered within 120 days.

Nothing in this chapter shall be deemed to prohibit the sale within the preneed burial contract of property or services to be delivered within 120 days after the receipt of the initial payment on account of such sale. Contracts may specify separately the total consideration paid or to be paid for preneed property or services not to be delivered or provided within 120 days after receipt of initial payment. If a contract does not so specify, the seller shall deposit forty percent of the total consideration for the entire contract.

(1998, cc. 708, 721.)

§ 54.1-2335. Breach of contract by seller; trust to be single purpose trust.

If, after a written request, the seller fails to perform its contractual duties, the purchaser, executor or administrator of the estate, or heirs, or assigns or duly authorized representative of the purchaser shall be entitled to maintain a proper legal or equitable action in any court of competent jurisdiction. No other purchaser need be made a party to or receive notice of any proceeding brought pursuant to this section relating to the performance of any other contract.

The trust shall be a single purpose trust, and the trust funds shall not be available to any creditors as assets of the seller.

(1998, cc. 708, 721.)

§ 54.1-2336. Trustee may rely on certifications and affidavits.

The trustee may rely upon all certifications and affidavits made pursuant to or required by the provisions of this chapter and shall not be liable to any person for such reasonable reliance.

(1998, cc. 708, 721.)

§ 54.1-2337. Transfer of trust funds to another trustee.

The seller may, upon notification in writing to the trustee, and upon such other terms and conditions as the agreement between them may specify, transfer its account funds to another trustee qualified under the provisions of this chapter. The trustee may, upon notification in writing to the seller, and upon such other terms and conditions as the agreement between them may specify, transfer the trust funds to another trustee qualified under the provisions of this chapter. No seller's account funds or trustee's trust funds may be transferred to another trustee unless the seller provides written notice at least five days prior to such transfer to the Board.

(1998, cc. 708, 721.)

§ 54.1-2338. Use of trustee's name in advertisements.

No person subject to the provisions of this chapter shall use the name of the trustee in any advertisement or other public solicitation without written permission of the trustee.

(1998, cc. 708, 721.)

§ 54.1-2339. Construction and development of mausoleums and garden crypts.

Within four years after the date of the first sale, a cemetery company or other seller of mausoleums and garden crypts shall be required to start construction or development of

that undeveloped ground or section of a mausoleum or garden crypt in which sales, contracts for sales, or agreements for sales are being made. The construction or development of such undeveloped mausoleum section or garden crypt shall be completed within five years after the date of the first such sale. Completed construction shall be deemed performance for purposes of this chapter.

(1998, cc. 708, 721.)

§ 54.1-2340. Waiver of chapter void.

Any provision of any contract which purports to waive any provision of this chapter shall be void.

(1998, cc. 708, 721.)

§ 54.1-2341. Exemption from levy, garnishment and distress.

Any money, personal property or real property paid, delivered or conveyed subject to § 54.1-2325 shall be exempt from levy, garnishment or distress.

(1998, cc. 708, 721.)

§ 54.1-2342. Penalties.

Any person who violates any of the provisions of this chapter shall be subject to the sanctions provided in Chapter 1 (§ 54.1-100 et seq.) and Chapter 2 (§ 54.1-200 et seq.) and in §§ 54.1-2314, 54.1-2317, and 54.1-2326. Any person who is convicted of willfully violating any of the provisions of this chapter is guilty of a Class 1 misdemeanor. Any person convicted of violating, or failing to comply with, any of the provisions of § 54.1-2317, 54.1-2319, 54.1-2321, 54.1-2322, 54.1-2325 or 54.1-2326 with the intent to defraud is guilty of a Class 6 felony.

For the purposes of this section, "person" includes any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, instrumentality, officer or employee thereof.

(1998, cc. 708, 721; 2005, c. 691.)