

PART I

GENERAL

18 VAC 47-20-10. Definitions.

The following words and terms, when used in this chapter 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 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.

“Change in ownership” means a change in 50% or more of the stockholders and/or partnership interest of a cemetery company.

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

“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 monies 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.

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“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.

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 of Title 54.1 of the Code of Virginia. All sales personnel must be registered with the board.

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

A. Every ~~legal business entity~~ 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 ~~firm~~ 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 paragraph. 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.

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 their name, address, the license number of the cemetery company they will be employed by or affiliated with, and the address of each cemetery for which they 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 there from 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 paragraph.

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 to [of] a sales personnel application in accordance with § 54.1-2314 of the Code of Virginia.

18 VAC 47-20-50. [~~Transfer of sales personnel registration prohibited; c Concurrent registration permitted; transfer of sales personnel registration prohibited.~~]

A. [~~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. 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. [~~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. A sales personnel registration shall 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.~~]

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

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.

A. 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.

B. Each trustee and/or trust firm shall provide information for the ten 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 ten years, been adjudicated a bankrupt or has any proceeding for the relief of debtors, such fact or facts shall be stated. [~~The trust firm and the principals of the firm shall submit information on any outstanding judgments or defaults on bonds directly related to the management of a trust.~~]

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C. 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.

D. The trustee must meet the bonding requirements set forth in § 54.1-2317 and § 54.1-2326 as applicable.

E. 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

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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.

18 VAC 47-20-70. Application Fees

Application fees are nonrefundable.

Cemetery company license \$600 per cemetery

Addition of cemetery \$600 per cemetery

Sales personnel registration \$50 per cemetery

Dishonored check fee \$25

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.

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 18 VAC 47-20-140.

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

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renew. The renewal application shall be completed in full prior to renewal of the license or registration.

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 thirty 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 this 18 VAC 47-20-140.

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/unregistered activity and be subject to prosecution under Chapter 1 of Title 54.1 of the Code of Virginia.

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

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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.

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.

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

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, reinstatement or must reapply as a new applicant.

<u>Renewal of cemetery company license</u>	<u>\$600 per cemetery</u>
<u>Renewal of sales personnel registration</u>	<u>\$50 per cemetery</u>
<u>Reinstatement of cemetery company license</u>	<u>\$100 per cemetery</u>
<u>Reinstatement of sales personnel registration</u>	<u>\$50</u>
<u>Dishonored Check Fee</u>	<u>\$25</u>

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 license or registrant has been found to have violated or cooperated with others in violating any provision of Chapter 23.1 of Title 54.1 of the Code of Virginia, or any regulation of the board.

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.

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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 18 VAC 47-20-70. 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 18 VAC 47-20-30. Sales personnel of the new cemetery will be required to register in accordance with 18 VAC 47-20-40.

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.

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

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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.

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.

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, failure Failure] 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

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business in Virginia of the licensed cemetery company.

3. Failure 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. Failure 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.

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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. Failure to reasonably maintain the buildings, grounds, and facilities of a cemetery licensed to a cemetery company.
12. Failure to file any report required by Chapter 23, Title 54.1 of the Code of Virginia.
13. Engaging in negligent, improper, fraudulent, or dishonest conduct.

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

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accordance with § 54.1.2316.

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.

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

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

D. 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.

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

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

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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.

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;

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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

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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 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**

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 accordance with § 54.1-2332, of the Code of Virginia.

18 VAC 47-20-240. Execution of contracts for licensees whose licenses have been

[suspended] or revoked.

In the event a license has been suspended or revoked and the licensee is a party to a preneed burial contract, which must be executed at-need, the board may file a petition for

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appointment of a receiver with any court of record having equity jurisdiction over the licensee.

The petition shall be necessary to ensure execution of the contract including the appointment of a

receiver. If a receiver is appointed, the licensee, as determined by the court, shall pay his

expenses and a reasonable fee.