

CEMETERY BOARD PROPOSED REGULATIONS

Statement of Basis, Purpose, Substance, Issues and Economic Impact

This statement is prepared and submitted in compliance with the Virginia Administrative Process Act, specifically § 9-6.14:7.1 H of the *Code of Virginia*.

Basis:

Chapter 23.1 of Title 54.1 of the *Code of Virginia* creates the statutory authority for the regulation of Cemetery Operators, Perpetual Care Trust Funds and Preneed Burial Contracts.

Specifically, § 54.1-2313 of the *Code of Virginia* mandates that the Cemetery Board adopt regulations that:

1. Regulate preneed burial contracts;
2. Regulate perpetual care trust fund accounts;
3. Prescribe preneed contract forms;
4. Prescribe disclosure requirements and disclosure forms and require reasonable bonds to insure performance of preneed contracts;
5. Regulate and register sales personnel employed by a cemetery company;
6. Adopt a method for executing, at-need, a preneed burial contract when the licensee has had his license to operate a cemetery revoked or suspended; and
7. Adopt consumer protections, which are consistent with those provisions of the Federal Trade Commission Funeral Rules.

The proposed regulations implement each of the above in a manner believed to be the least burdensome on the regulated industry while providing protection to the public against incompetent or unscrupulous persons engaging in the operation of a cemetery or maintaining the required trust funds.

Purpose:

This is a new regulation to implement an Act of the 1998 Session of the General Assembly. The purpose of the proposed regulations is to create a regulatory framework to protect the public.

Currently, cemeteries are registered by the Department of Agriculture and Consumer Services under the authority of Article 3.2 of Chapter 3 of Title 57 (§ 57-35.11 et seq.) of the *Code of Virginia*. Effective July 1, 2000, the responsibility of licensing cemetery operators and registering sales personnel working for cemetery companies will

become the responsibility of the Cemetery Board at the Department of Professional and Occupational Regulation (DPOR). The authority of this implementation is contained in Chapter 23.1 of Title 54.1 (§ 54.1-2310 et seq.) of the *Code of Virginia*.

These proposed regulations would facilitate the change of the current registration program to a licensure/registration program as prescribed by law.

Substance:

The key provisions of the proposed regulations that make changes to the current status of law are identified and explained as follows:

General: Defines terms used throughout the regulations.

Entry: States the requirement of licensure/registration; establishes entry standards for licensure/registration for both cemetery companies and sales personnel; prohibits transfer of sales personnel registrations; outlines qualifications of preneed and perpetual care trustees; and, lists associated fees for entry.

Renewal and Reinstatement: Establishes standards and requirements for renewal and/or reinstatement of license/registration, including requirement for reinstatement, status of license/registration during reinstatement periods, Board denial discretion and associated fees.

Standards of Practice and Conduct: Outlines grounds for disciplinary action, license/registration maintenance requirements, record keeping requirements, prohibited acts, trust fund requirements, bonding requirements, contract and price list requirements and the authority to appoint a receiver to execute preneed contracts, at-need, in the case of a regulant whose license has been suspended or revoked (per § 54.1-2313.E.1 of the *Code of Virginia*).

Issues:

While it can be argued that there are professional and occupational boards throughout the Commonwealth of Virginia whose regulant population has limited contact with the general population, very few individuals can go throughout their life without direct contact with a cemetery. Generally there are two types contact the public has with a cemetery: at-need and preneed. At-need contact involves the involvement of the cemetery in the business of selling graves, entombment rights, or property (vaults, liners, urns, memorials, markers, etc.) used in connection with interring or disposing the remains of a deceased human being, where delivery of the property is not delayed by more than 120 days. The majority of at-need services are provided within days or weeks of the interment or disposition of the remains of the deceased.

Preneed contracts, however, concern the sale of the rights and property outlined above more than 120 days before their use. The sale of rights and property months or years before they are needed can be very lucrative to a cemetery company. The public may choose to pay in full for the items or they may finance the contract. In either case the cemetery company has control of the funds paid by the public and are expected to deliver the property when needed, which could be years from the date of the sale. Current statutes require a certain percentage of the preneed sale be deposited into a preneed trust fund, which is established and maintained in accordance with Chapter 23.1 of Title 54.1 of the *Code of Virginia*. Funds are invested in accordance with Title 26 of the *Code of Virginia*.

The sale of the rights and property do not terminate the cemetery company's responsibility to the public. It is not unreasonable for individuals who have entrusted the care of their deceased to a cemetery to expect that the facilities of that cemetery maintained to accepted standards. This "perpetual care" would include, but not be limited to, the keeping of the grounds, the maintenance of the roads, the appearance of markers and memorials, and other esthetic areas. This maintenance comes at a cost to the cemetery operator and certain provisions are necessary to ensure that there are funds available to accomplish this task. Current statutes require a certain percentage of the sale of certain rights and/or property be deposited into a perpetual care trust fund, which is established and maintained in accordance with Chapter 23.1 of Title 54.1 of the *Code of Virginia*. Funds are invested in accordance with Title 26 of the *Code of Virginia*.

The costs of regulating cemetery companies and the sales personnel they employ are paid by the regulants. The licensees/registrants must pay a fee to the Department to become licensed/registered and to renew their licenses/registrations. No regulatory costs are paid by the general tax revenues.

These regulations are the most efficient and cost beneficial way to meet the statutory requirements of regulation set forth by the General Assembly and are subsequently the most advantageous to the agency. No disadvantage to the agency is predicted by the promulgation to these regulations.

In summary, the public and those regulated benefit from the protections provided by the regulatory program. Absent these protections there would be no monitoring of trust funds to ensure that there are adequate funds to provide for the perpetual care of a cemetery or the funds available to ensure delivery of rights and property paid for in advance by members of the public. The disadvantage is the fee paid by regulants to become licensed/registered that are necessary to pay government costs to assure compliance with the statutes.

Economic Impact:

The direct economic impact on those regulated is estimated to be \$49, 694 per year to implement and enforce the proposed regulations.

All anticipated costs are expected to be on-going as no significant start-up costs, other than an initial \$458 in Attorney General fees to review the proposed regulations, has been identified.

The proposed regulations will directly affect all those cemetery companies required by the statutes to obtain a license and all those individuals employed by those companies as sales personnel, as defined in the statutes and regulations. It is estimated that the regulant population will consist of 70 individual cemeteries with 112 sites and 500 sales personnel who can operate from different sites for an additional fee. They will be required to pay license/registration fees; furnish the appropriate bond, where required; and pay any required fees to add sites to their license/registration.