

**§5–701.**

(a) In this subtitle the following words have the meanings indicated.

(b) (1) “Burial space” means land or space in a structure used or to be used for burial.

(2) “Burial space” includes a burial right in the land or space.

(c) “Buyer” means a person who buys preneed goods or preneed services.

(d) “Preneed burial contract” means a written instrument under which preneed goods or preneed services are to be sold and delivered or performed.

(e) (1) “Preneed services” means services that are sold:

(i) before the buyer’s death; and

(ii) in connection with burial or cremation.

(2) “Preneed services” includes opening and closing a grave.

(f) “Seller” means a registered cemeterian, registered crematory operator, registered seller, or any other person who sells preneed goods or preneed services.

(g) “Specific funds” means money that is identified to a specific preneed burial contract.

(h) “Trust account” means a preneed trust account.

**§5–702.**

(a) This subtitle does not apply to:

(1) the sale of burial space;

(2) a preneed contract made by an individual in connection with practicing funeral direction or practicing mortuary science, as those practices are defined in and regulated by the Health Occupations Article; or

(3) the preneed sale of burial goods or services by a private family cemetery that does not conduct public sales of burial goods or services.

(b) This subtitle does not allow a person, directly or indirectly, through an agent or otherwise, to practice funeral direction or practice mortuary science, unless the person is licensed to practice funeral direction or practice mortuary science under the Health Occupations Article.

(c) A preneed burial contract made under this subtitle is not an insurance contract and does not involve the business of insurance.

(d) This subtitle does not require a cemetery to accept goods, perform services, or allow services to be performed if the goods or services are contrary to:

(1) the law concerning burial; or

(2) the rules of the cemetery concerning the quality and kind of goods or services that may be used in connection with burial in the cemetery.

(e) (1) A preneed burial contract made in accordance with § 5-704 of this subtitle may be funded by a life insurance policy or an annuity contract if:

(i) the owner or operator of the cemetery is not the owner of or beneficiary under the life insurance policy or annuity contract;

(ii) an assignment of benefits to the owner or operator of the cemetery may be revoked at any time by the owner of the life insurance policy or annuity contract;

(iii) subject to item (iv) of this paragraph, the owner or operator of the cemetery agrees to accept the benefits payable under the life insurance policy or annuity contract as payment in full for the services and merchandise agreed on in the preneed burial contract; and

(iv) any benefits payable under the life insurance policy or annuity contract in excess of the amount necessary to pay the total price, as determined at the time of death of the insured, of the services and merchandise agreed on in the preneed burial contract are paid to the beneficiary under the life insurance policy or annuity contract.

(2) A preneed burial contract that is funded by a life insurance policy or an annuity contract shall terminate if the assignment of benefits to the owner or operator of a cemetery is revoked by the owner of the life insurance policy or annuity contract.

(3) (i) The offer, sale, or assignment of a life insurance policy or annuity contract to fund a preneed burial contract is not subject to this subtitle.

(ii) A preneed burial contract funded by a life insurance policy or an annuity contract is not subject to § 5-705, § 5-706, § 5-707, § 5-708, or § 5-709 of this subtitle.

**§5–703.**

This subtitle applies only to preneed burial contracts made on or after October 1, 1984.

**§5–704.**

- (a) A preneed burial contract shall contain:
- (1) the name of the buyer;
  - (2) the name of the seller;
  - (3) the name of each individual, other than the buyer, as to whom the preneed goods or preneed services are to be furnished;
  - (4) a description of the preneed goods or preneed services; and
  - (5) the amount of the buyer’s financial obligation.

(b) (1) A preneed burial contract shall be dated and executed in duplicate by the buyer and seller.

(2) The seller shall give the buyer a duplicate original of the preneed burial contract.

(c) (1) A preneed burial contract may provide for delivery of identified preneed goods by providing for the seller to:

- (i) transfer physical possession of the preneed goods to the buyer or designee of the buyer;
- (ii) attach the preneed goods to a designated burial space;
- (iii) pay for and suitably store the preneed goods until needed, at a cemetery or other location of the seller, if the preneed goods are marked with the name of the buyer and the sale is supported by a verifiable record; or
- (iv) have the supplier of the preneed goods:

1. cause title to be transferred to the buyer or designee of the buyer; and
2. agree in writing to ship the preneed goods at the direction of the buyer or designee of the buyer.

(2) If a preneed burial contract does not provide for the manner of delivery of preneed goods, compliance with paragraph (1)(i) or (ii) of this subsection is delivery in accordance with this subtitle.

(d) Notwithstanding any provision in a preneed burial contract, identified preneed services are not considered to have been performed until performance actually occurs.

(e) (1) Except as otherwise provided in this subsection, a preneed burial contract may not provide for interest or a finance charge.

(2) A cemetery that makes a preneed burial contract may impose interest or a finance charge on preneed goods delivered before death or preneed services performed before death.

(3) If a cemetery imposes interest or a finance charge as permitted in paragraph (2) of this subsection, the interest or finance charge shall be at a fixed rate or sum not greater than allowed by the provisions of Title 12 of the Commercial Law Article.

(4) A registered cemeterian or permit holder may sell a preneed burial contract to a commercial lending institution at the financing terms in the contract if the preneed burial contract signed by the original buyer of the preneed goods or preneed services contains the following language in 12-point or larger type:

“Notice to consumers: This contract of sale may be sold to a commercial lending institution. After the sale, the commercial lending institution may impose interest or a finance charge on the remaining balance due”.

(f) A provision of a preneed burial contract that purports to waive any provision of this subtitle is void.

**§5–705.**

(a) (1) Except as provided in subsection (b) of this section, a seller shall put in trust the second 50% of the total preneed burial contract price as the seller receives payments from the buyer.

(2) Within 30 days after receipt of the last payment, the seller shall deposit an additional amount to make the balance in the trust account equal to 55% of the total contract price.

(b) A seller shall put in trust an amount from the payment that is equal to 80% of the selling price of any casket or casket vault sold under the preneed burial contract.

(c) This section does not apply to:

(1) a preneed burial contract under which all preneed goods and preneed services, other than dates, scrolls, and other additions that represent not more than

10% of the total contract price, must be delivered or performed within 120 days after receipt of 50% of the total contract price; or

(2) money that a seller receives for preneed goods or preneed services to be delivered or performed within 120 days after receipt of any payment on account of the sale, if the buyer's obligation for these preneed goods or preneed services is separately itemized.

### §5-706.

(a) Each trust account shall be:

- (1) titled "preneed trust account"; and
- (2) established by the seller in the seller's name.

(b) A trustee appointed under this subtitle must be:

- (1) a national banking association, as defined in the Financial Institutions Article;
- (2) a banking institution, as defined in the Financial Institutions Article;
- (3) any other financial institution allowed by law to engage in the trust business; or
- (4) a person who provides a fidelity bond from a recognized bonding institution in an amount equal to the trust fund and inuring to the benefit of the trust account of the cemetery or burial goods business, or the preneed buyers, or both.

(c) A seller may:

- (1) commingle money from 2 or more preneed burial contracts; and
- (2) establish more than 1 trust account.

(d) (1) A trust account established under this subtitle shall be a single purpose trust.

(2) Money in the trust account is not available to a creditor as an asset of the seller.

(e) Money in the trust account may be withdrawn only on the combined signatures of:

- (1) 2 officers of a corporate seller; or
- (2) at least 2 individuals authorized to withdraw money for an unincorporated seller.

### §5-707.

(a) In this section, "seller's account" means:

- (1) the total of specific funds deposited from all preneed burial contracts of a seller commingled in a single fund; and
- (2) any income derived from investing the money in the fund.

(b) Trust accounts shall be administered as this subtitle provides.

(c) (1) Except as otherwise provided in this subtitle, a trustee appointed under this subtitle is subject to the law that is generally applicable to trustees.

(2) If a trustee appointed under this subtitle is not located in the State, the agreement between the seller and the trustee expressly shall incorporate this subtitle.

(d) A trustee:

- (1) may rely on all certifications made under or required by this subtitle; and
- (2) is not liable to any person for that reliance.

(e) (1) Except as otherwise provided in this subtitle, a trustee may invest money of a trust account in any security that is a lawful investment for a fiduciary, including a time deposit or certificate of deposit issued by the trustee.

(2) Except as otherwise provided in this subtitle, to ensure that money in the trust account is adequate, the trust income, including any realized capital gains, shall:

- (i) remain in the trust account;
- (ii) be reinvested and compounded; and
- (iii) be disbursed only for payment of appropriate trustee's fees, commissions, prorated proportional shares of total realized capital gains attributable to specific funds, and other costs of the trust account.

(f) A trustee may not use any preneed trust funds required to be held in trust in accordance with this subtitle to:

- (1) purchase an interest in any contract or agreement to which the registrant, the permit holder, or any other person subject to the trust requirements of this subtitle, or any entity owned or under the control of a

registrant, a permit holder, or any other person subject to the trust requirements of this subtitle, or a spouse, child, parent, or sibling of a registrant or any other person subject to the trust requirements of this subtitle is a party; or

(2) make any loan or direct or indirect investment of any kind:

(i) to any registrant, permit holder, or any other person subject to the trust requirements of this subtitle or to any spouse, child, parent, or sibling of a registrant or any other person subject to the trust requirements of this subtitle;

(ii) to or in any entity or business operations owned or under the control of a registrant, a permit holder, or any other person subject to the trust requirements of this subtitle, or a spouse, child, parent, or sibling of a registrant or any other person subject to the trust requirements of this subtitle;

(iii) on or in any real property of a cemetery or a crematory or the buildings or structures appurtenant to the property; or

(iv) in any permanent improvements of a cemetery, a crematory, the facilities of a cemetery or crematory, or the buildings or structures appurtenant to a cemetery or crematory.

(g) (1) A seller, on written notice to the trustee and in accordance with the agreement between them, may transfer the seller's account to another trustee.

(2) A trustee, on written notice to the seller and in accordance with the agreement between them, may transfer the seller's account to another trustee.

## **§5-708.**

(a) The trustee may not disburse specific funds until preneed goods are delivered or preneed services are performed as provided in the preneed burial contract or in this subtitle.

(b) On performance of a preneed burial contract:

(1) the seller shall certify to the trustee:

(i) delivery of the preneed goods or performance of the preneed services; and

(ii) the amount of specific funds in the trust account; and

(2) the trustee shall then pay to the seller the specific funds, accrued interest on the specific funds, and a prorated proportional share of total realized capital gains attributable to the specific funds.

(c) (1) In a seller's records, the seller may itemize preneed goods or preneed services to which the trust requirements of this subtitle apply and the consideration paid or to be paid for each item.

(2) If a seller itemizes in accordance with paragraph (1) of this subsection, on performance of that part of a preneed burial contract identified for itemized preneed goods or preneed services:

(i) the seller shall certify to the trustee:

1. delivery of the preneed goods or performance of the preneed services; and

2. the amount of the specific funds identified in the seller's records for those preneed goods or preneed services; and

(ii) the trustee shall then pay to the seller those specific funds, accrued interest on the specific funds, and a prorated proportional share of total realized capital gains attributable to the specific funds.

(d) (1) If a preneed burial contract provides, for 2 or more individuals, preneed goods or preneed services to which the trust requirements of this subtitle apply, a seller may designate in the seller's records the consideration paid for each individual.

(2) On performance of that part of the preneed burial contract identified to a particular individual:

(i) the seller shall certify to the trustee:

1. delivery of the preneed goods or performance of the preneed services; and

2. the amount of the specific funds applicable to that part of the preneed burial contract; and

(ii) the trustee shall then pay to the seller those specific funds, accrued interest on the specific funds, and a prorated proportional share of total realized capital gains attributable to the specific funds.

**§5–709.**

(a) (1) A buyer may cancel a preneed burial contract as to preneed goods not delivered or preneed services not performed if the buyer:

(i) permanently moves more than 75 miles from the cemetery specified in the preneed burial contract; and

(ii) gives to the seller written notice, under oath, of the move and includes the buyer's new permanent address.

(2) In that event:

(i) the seller shall certify to the trustee:

1. the cancellation of the preneed burial contract;
2. the amount of the remaining specific funds applicable to the preneed burial contract; and
3. the name and address of the buyer; and

(ii) the trustee shall then pay to the buyer the remaining specific funds, accrued interest on the specific funds, and a prorated proportional share of total realized capital gains attributable to the specific funds.

(b) (1) Notwithstanding subsection (a) of this section, by written notice, a buyer may cancel the purchase of a casket or casket vault under a preneed burial contract at any time prior to the time the buyer needs the casket or casket vault for burial.

(2) In that event:

(i) the seller shall certify to the trustee:

1. the cancellation of the purchase of the casket or casket vault under the preneed burial contract;
2. the amount of the specific funds applicable to the casket or casket vault under the preneed burial contract; and
3. the name and address of the buyer;

(ii) the trustee shall pay to the buyer the specific funds, interest accrued on the specific funds, and a prorated proportional share of total realized capital gains attributable to the specific funds; and

(iii) in addition to the refund paid by the trustee, the seller shall pay to the buyer an amount of money necessary to provide the buyer with a refund of

100% of the money paid for the casket or casket vault under the preneed burial contract.

(c) If a buyer fails to provide written notice of cancellation and defaults on a preneed burial contract and, as a result, the seller terminates the preneed burial contract:

(1) the seller shall certify to the trustee:

- (i) the default and termination of the preneed burial contract;
- (ii) the amount of the specific funds; and
- (iii) the reasonable expenses of the seller; and

(2) the trustee shall then pay:

- (i) to the buyer, those specific funds, accrued interest on the specific funds, and a prorated proportional share of total realized capital gains attributable to the specific funds, less the reasonable expenses of the seller; and
- (ii) to the seller, the reasonable expenses of the seller.

(d) If specific funds on deposit in a trust account have been dormant for at least 50 years since the date of the last deposit or disbursement and the seller cannot locate the buyer:

(1) the seller shall certify to the trustee:

- (i) that the trust account is dormant and the buyer cannot be located; and
- (ii) the amount of the specific funds; and

(2) the trustee shall then pay to the seller those specific funds, accrued interest on the specific funds, and a prorated proportional share of total realized capital gains attributable to the specific funds.

**§5–710.**

(a) (1) Each seller shall keep detailed records of all preneed burial contracts and specific funds.

(2) The records of each seller and of each trustee appointed by the seller are subject to examination by:

- (i) the Director;
- (ii) the Attorney General or an authorized representative of the Attorney General; and

(iii) the State’s Attorney for the county where the seller does business.

(b) (1) Each seller subject to the trust requirements of this subtitle shall submit a report to the Director within 150 days after the close of each calendar or other fiscal year chosen by the seller.

(2) The report shall:

- (i) be on the form that the Director requires;
- (ii) be certified by a certified public accountant retained by the seller;
- (iii) be accompanied by a trustee’s annual summary statement of assets from the trustee for the reporting period which includes:

- 1. the amount of money in the preneed trust fund at the beginning of the reporting period;
- 2. an investment portfolio summary describing the asset and the market value for each investment class;
- 3. a transaction summary of the preneed trust fund containing:
  - A. trust account earnings;
  - B. money deposited;
  - C. total receipts;
  - D. administrative expenses;
  - E. withdrawals from the trust account for canceled contracts;
  - F. withdrawals from the trust account for delivery of merchandise for use or storage, and for services performed, including the principal and earnings;
  - G. other disbursements; and
  - H. total disbursements; and
- 4. the amount of money in the preneed trust fund at the end of the reporting period;

- (iv) be accompanied by a fee of \$25; and
- (v) include:

- 1. the name of the seller;
- 2. each location of the seller;
- 3. the amount of money that the seller received during that year that is subject to the trust requirements of this subtitle;
- 4. the amount of money actually deposited into trust accounts in that year;
- 5. the amount of money required to be disbursed from the trust accounts in that year;

- 6. the amount of money actually disbursed from the trust accounts in that year; and
- 7. the name and address of the trustee.

(3) If the Director determines, after a review of the report and annual summary statement of assets required by this subsection, that additional documentation is required, a seller subject to the trust requirements of this subtitle shall provide the additional documentation to the Director.

(4) (i) A seller of preneed goods or preneed services that sells its business, files a petition in bankruptcy, or ceases to operate shall provide written notice within 15 days:

- 1. to the Director, detailing the changes and the arrangements the seller has made for carrying out the preneed burial contracts and the disbursement of any money held in an escrow or trust account; and
- 2. to each buyer of a preneed burial contract, advising the buyer of the buyer’s options under State law in regard to the preneed contract.

(ii) Nothing in this paragraph exempts a seller of preneed goods or services that sells its business, files a petition in bankruptcy, or ceases to operate from filing the annual report required under this section.

(c) A seller of a preneed burial contract shall provide each buyer or prospective buyer with a general price list for the buyer or prospective buyer to keep which shall include:

- (1) specific prices for:
  - (i) ground opening and closing;
  - (ii) extra depth interment;
  - (iii) interment of cremated remains; and
  - (iv) mausoleum entombment; and

(2) general price ranges for burial space or preneed goods.

(d) A seller of a preneed burial contract shall disclose to the buyer:

- (1) all goods and services that are reasonably expected to be required at the time of need that are not included in the preneed burial contract;

- (2) the buyer’s cancellation and refund rights under § 5–709 of this subtitle;
- (3) the person responsible for installation of the goods sold and any warranties for the goods sold; and
- (4) if the preneed contract provides for goods or services to be delivered or performed before death:
  - (i) that interest or finance charges may be imposed;
  - (ii) that interest or finance charges are not allowed on other preneed burial contracts that do not provide for goods or services to be delivered or performed before death;
  - (iii) the manner of delivery of goods including where the goods are stored; and
  - (iv) the buyer’s remedy if delivered goods are damaged or destroyed.
- (e) The Director may require a seller to correct any underfunding, including interest, due to the preneed trust account.
- (f) The Director may adopt regulations:

- (1) to administer this section; and
- (2) for determining whether sellers are complying with this subtitle.

**§5–711.**

- (a) If the Director finds that a seller has violated this subtitle or a regulation adopted under this subtitle, the Director may refer the matter to:
  - (1) the Attorney General for civil enforcement; or
  - (2) the appropriate State’s Attorney for criminal prosecution.
- (b) The Attorney General may sue for and a court may grant:

- (1) injunctive or other equitable relief;
- (2) imposition of a civil penalty not exceeding \$5,000; or
- (3) both.

**§5–712.**

- (a) A seller may not fail to deposit, as required by this subtitle, money received under or in connection with a preneed burial contract.
- (b) (1) Except as otherwise provided in subsection (c) of this section, a person who violates this section is

guilty of a misdemeanor and, on conviction, is subject to:

- (i) for a first violation, a fine not exceeding \$10,000 or imprisonment not exceeding 1 year or both;
- (ii) for a second violation, a fine not exceeding \$15,000 or imprisonment not exceeding 2 years or both; and
- (iii) for a third or subsequent violation, a fine not exceeding \$20,000 or imprisonment not exceeding 3 years or both.

(2) Except as otherwise provided in subsection (c) of this section, if a corporation violates this section, each officer responsible for the violation is guilty of a misdemeanor and, on conviction, is subject to:

- (i) for a first violation, a fine not exceeding \$10,000 or imprisonment not exceeding 1 year or both;
- (ii) for a second violation, a fine not exceeding \$15,000 or imprisonment not exceeding 2 years or both; and
- (iii) for a third or subsequent violation, a fine not exceeding \$20,000 or imprisonment not exceeding 3 years or both.

(c) A person who willfully misappropriates or intentionally and fraudulently converts preneed trust funds in excess of \$100 to that person’s own use is guilty of a felony and, on conviction, is subject to a fine not exceeding \$25,000 or imprisonment not exceeding 10 years or both.