

AMENDATORY SECTION (Amending WSR 90-17-148, filed 8/22/90, effective 9/22/90)

WAC 308-49-100 Purpose. The purpose of this chapter is to implement the provisions of RCW 18.39.240 through 18.39.345 (~~and 18.39.360, by establishing~~) and to establish rules for the registration of funeral establishments which enter into prearrangement funeral service contracts and to establish uniform minimum requirements for such contracts and prearrangement trust funds.

AMENDATORY SECTION (Amending WSR 90-17-148, filed 8/22/90, effective 9/22/90)

WAC 308-49-130 Definitions. (~~Unless the text in this chapter clearly states or requires otherwise, definitions shall be as set forth in RCW 18.39.010.~~) (1) "Board" means the funeral and cemetery board created pursuant to RCW 18.39.173.

(2) "Director" means the director of licensing.

(3) "Embalmer" means a person engaged in the profession or business of disinfecting and preserving human remains for transportation or final disposition.

(4) "Funeral director" means a person engaged in the profession or business of providing for the care, shelter, transportation, and arrangements for the disposition of human remains that may include arranging and directing funeral, memorial, or other services.

(5) "Funeral establishment" means a place of business licensed in accordance with RCW 18.39.145, that provides for any aspect of the care, shelter, transportation, embalming, preparation, and arrangements for the disposition of human remains and includes all areas of such entity and all equipment, instruments, and supplies used in the care, shelter, transportation, preparation, and embalming of human remains.

(6) "Funeral merchandise or services" means those services normally performed and merchandise normally provided by funeral establishments, including the sale of burial supplies and equipment, but excluding the sale by a cemetery of lands or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, niches, or vaults.

(7) "Licensee" means any person or entity holding a license, registration, endorsement, or permit under this chapter issued by the director.

(8) "Method of disposition" means burial, entombment, cremation, alkaline hydrolysis, natural organic reduction, anatomical donation or removal from state.

(9) "Prearrangement funeral service contract" means any contract under which, for a specified consideration, a funeral establishment promises, upon the death of the person named or implied in the contract, to furnish funeral merchandise or services.

(10) "Public depository" means a public depository defined by RCW 39.58.010 or a state or federally chartered credit union.

WAC 308-49-140 Registration of establishments. (1) Each funeral establishment entering into prearrangement funeral service contracts in which one or more of the following conditions exist must be registered with the board before entering into such contracts:

(a) The sales price of the contract, using either trust or insurance as a method of funding, guarantees a final price for merchandise and services. The guarantee assures the purchaser that there will be no additional charges for the merchandise and services disclosed within the agreement.

(b) The sales price of the contract using a trust as a method of funding plus accruals will be applied toward the cost of merchandise and services at the time of need. Should the cost of merchandise and services selected at the time of need exceed the sales price of the contract plus accruals, the purchaser will pay the difference. Should the cost of merchandise and services selected at the time of need be less than the sales price of the contract plus accruals, the purchaser will receive a refund for the difference.

~~((c) Insurance is used as a method of funding guaranteeing a final price for merchandise and services. Such guarantee assures the purchaser that there will be no additional charges for merchandise and services disclosed in the agreement.))~~

(2) Before entering into any prearrangement funeral service contracts in this state, a funeral establishment shall first obtain a certificate of registration from the board. To apply for registration, a funeral establishment must file an application on forms approved by the board of funeral directors and embalmers, which includes:

(a) The name, address, and telephone number of the funeral establishment;

(b) A statement of the establishment's current financial condition and an explanation of how the establishment plans to offer, market and service prearrangement contracts including:

(i) The type of business organization which operates the funeral establishment, e.g., sole proprietorship, partnership, or corporation and a list of all officers, directors, partners and managers by name and title, and any person owning more than ten percent of the business;

(ii) ~~((A balance sheet and a profit and loss statement for the most recently concluded fiscal year and/or))~~ Other ((such)) fiscal documents as the board may require ~~((+))~~.

(c) The prearrangement funeral service contract forms the establishment proposes to use need not be in final printed form when submitted; however, a copy of the final printed form shall be filed with the board before the form is used;

(d) Identification of the trustee(s) of the prearrangement funeral service trust, including address and telephone number ~~((+))~~; and

(e) A copy of the prearrangement funeral service trust agreement and the prearrangement funeral service trust depository agreement.

(3) Upon review of the application, the board may require additional information or explanation prior to registration or refusing to register the funeral establishment.

(4) The application shall be accompanied by a check payable to the state treasurer in the amount required by the director for issuance of the certificate of registration.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-49-150 Prearrangement funeral service contract form requirements. (1) The terms of prearrangement funeral service contracts are of substantial importance to both consumers and the establishment. Prearrangement funeral service contracts must be approved by the board before being used by a funeral establishment.

(2) Contracts must be written in language that can be easily understood by all parties and printed or typed in easily readable type size and style.

~~((2))~~ (3) Every prearrangement funeral service contract must include the following information:

(a) The name of the purchaser and the beneficiary of the contract;

(b) A description of the services and merchandise to be provided ~~(, if specific merchandise and services are to be furnished, and a statement clearly setting forth whether the purchase price fully pays for such services and merchandise or if the purchase price is to be applied toward the cost of such services and merchandise when they are provided;~~

~~(c) The total purchase price to be paid under the contract and the manner and terms which will govern payment;~~

~~(d) That all funds placed in trust plus net accruals are subject to refund.~~

~~(3))~~;

(c) A statement that if specific merchandise and services are not available, merchandise and services of equal or better value will be furnished;

(d) A statement clearly setting forth whether the purchase price fully pays for such services and merchandise or if the purchase price is to be applied toward the cost of such services and merchandise when they are provided;

(e) The total purchase price to be paid under the contract and the manner and terms which will govern payment;

(f) If funded by a trust, that all funds placed in trust plus net accruals are subject to refund; and

(g) If funded by insurance that the amounts paid for by insurance may not be refundable.

(4) Such contract shall be dated and be executed by the purchaser and by the funeral establishment through its owner, officer or managing agent.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-49-168 Trust fund depository agreement requirements.

(1) Each prearrangement funeral trust shall enter into an agreement with one or more depositories in which the responsibilities of the depository are set forth. The agreement shall contain language which:

(a) Sets forth the terms and conditions under which deposits and withdrawals are made;

(b) States that instruments of deposit shall be an insured account in a public depository or shall be invested in ~~((instruments issued or insured by an agency of the federal government,))~~ accordance with the provisions of RCW 11.100.020 and sets forth the conditions for termination and transfer of the prearrangement trust fund depository agreement.

(2) Prearrangement trust fund depository agreements are an integral part of the prearrangement funeral service contract agreement and shall be approved by the board prior to use. Amendments to or changes in the agreement shall be filed with the board prior to incorporation. The board shall be advised prior to termination of any depository agreement.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-49-170 Annual statement requirements. (1) Each funeral establishment registered to sell funeral prearrangement contracts must file ~~((with the board annually, ninety days after the end of its fiscal year,))~~ a statement of its ~~((financial condition,))~~ transactions and affairs for the preceding fiscal year. The statement is due to the board ninety days after the end of its fiscal year.

~~(2) ((The statement shall include a balance sheet and a profit and loss statement for the preceding fiscal year and/or other such fiscal documents as the board may require.~~

~~(3))~~ The funeral establishment shall list any changes in its officers, directors, managers or partners or any change in ownership greater than ten percent which have occurred in the preceding fiscal year.

~~((4))~~ (3) With respect to each prearrangement funeral service contract trust fund, the following information must be provided:

(a) The name of ~~((the depository))~~ all trust depositories and the account numbers;

~~(b) ((The number of outstanding contracts at the beginning of the fiscal year;~~

~~(c) The total amount paid in by the holders of such contracts pertinent to the trust fund;~~

~~(d) The total amount deposited in the trust account;~~

~~(e))~~ Third-party verification of all prearrangement trust assets;

(c) The total amount deposited in the trust account during the fiscal year;

(d) The number of new contracts ((issued)) and the contract amount sold during the fiscal year;

~~((f) The amount paid in on such new contracts and the amount deposited in the trust fund for such contracts;~~

~~(g))~~ (e) The total amount received for contracts during the fiscal year;

(f) The number of ((withdrawals)) contracts withdrawn from trust and amounts withdrawn from the trust due to contract cancellations and/or instances where the funeral merchandise and services covered by prearrangement contracts have been furnished and delivered. Withdrawals will include principal and earnings;

~~((h))~~ (g) The number of outstanding contracts as of the end of the fiscal year and the amount being held in trust for such contracts.

~~((5))~~ (4) The annual report form must include a ~~((year-end statement from the depository as to))~~ copy of the depository(ies) statement(s) to verify the amount of money held in funeral prearrangement trust ((as of the reporting date)) as well as the monthly deposit and withdrawal activity during the fiscal year.

(5) If the funeral establishment sells funeral prearrangement contracts funded with insurance that guarantees the final price of merchandise and services, the funeral establishment will:

(a) Report the number of insurance funded contracts sold during the fiscal year;

(b) Report the total number of insurance funded contracts;

(c) Report the total current face amount of all outstanding insurance funded contracts at the end of the fiscal year; and

(d) Provide a statement from the insurance provider(s) to verify the total face amount of all active insurance policies at the end of the fiscal year.

NEW SECTION

WAC 308-49-175 Trust fund deposit requirements. All payments received must be deposited directly into the appropriate trust fund and may not be offset by the amounts due from the trust prior to deposit. Such deposits must be made on or before the 20th day of the month following receipt of each payment due.

NEW SECTION

WAC 308-49-185 Inability to provide method of disposition. If human remains do not meet the reduction facility criteria for the method of disposition specified on a prearrangement funeral service contract, an alternate method of disposition shall be determined by the person(s) having the right to direct disposition per RCW 68.50.160.

NEW SECTION

WAC 308-49-190 Changing funeral establishments. Authorizing agents or persons having the right to direct disposition may change funeral establishments without conflict to the "place and method of disposition," as defined in RCW 68.50.160 (1) and (2). Licensees must permit the release of human remains to another funeral establishment if requested by the authorizing agent or person(s) having the right to direct disposition, even when a prearrangement contract exists.

Prearrangement contract trust or insurance funds must be made available to the funeral establishment designated by the authorizing agent.

WAC 308-49-200 Telephone solicitation. (1) The use of telephones for solicitation of prearrangements is prevalent. This form of communication offers unique benefits, but entails special risks and poses potential for abuse. The board finds that any impropriety in telephone solicitation is a matter vitally affecting the public interest. For the general welfare of the public and in order to protect the integrity of the funeral industry, the use of telephones in solicitation of prearrangements must be defined by the board.

(2) Definitions:

(a) "Telephone solicitor" means any person who engages in telephone solicitation on behalf of a holder of an establishment license.

(b) "Telephone solicitation" means an unsolicited telephone call to a person and conversation for the purpose of inducing the person to make funeral prearrangements made without previous invitation, expressed or implied, by the person called.

(3) Time limits:

(a) No licensee may knowingly cause a telephone solicitation to be made to any person more often than once in every six months.

(b) A telephone solicitor shall not place calls which will be received before 8:00 a.m. or after 9:00 p.m.

(4) Unfair/deceptive practices. A telephone solicitor may not engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the telephone call.

(5) Identification. Within the first thirty seconds of the telephone call, a telephone solicitor or salesperson shall:

(a) Identify (~~(himself or herself)~~) themselves, the company on whose behalf the solicitation is being made, the property, goods, or services being represented; and

(b) Terminate the telephone call within ten seconds if the purchaser indicates (~~(he or she does)~~) they do not wish to continue the conversation.

(6) Termination of contact. If at any time during the telephone contact, the purchaser states or indicates that (~~(he or she does)~~) they do not wish to be called again by the telephone solicitor or wants to have (~~(his or her)~~) their name and individual telephone number removed from the telephone lists used by the telephone solicitor, the telephone solicitor shall not make any additional telephone solicitation of the called party at that telephone number within a period of at least one year.

(7) Enforcement. In the event that the board discerns a pattern of violation of these standards the board may act against the registrant's prearrangement registration as provided by chapter 18.39 RCW.