



**STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
BURIAL SERVICES SECTION**

DAVY CROCKETT TOWER
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-1145
PHONE (615) 741-5062 FAX (615) 532-1903
<http://funeral.tn.gov>

Language for Pre-Need Merchandise & Services Trust Agreement

Title 46, Chapter 1, Part 2 has specific requirements for Pre-Need Merchandise and Services Trust Accounts. The following is language that Burial Services suggests be included in all cemetery pre-need merchandise and services trust agreements, as these sections concern specific requirements under the cemetery laws of Tennessee. It is highly recommended, however, that each cemetery consult with a private attorney to ensure their compliance with the Code.

DEPOSITS

The Cemetery Company shall deposit with the Trustee an amount equal to the procurement costs of the merchandise and services identified in the sale contract plus twenty percent (20%) of such costs. These costs are defined in Tennessee Code Annotated Section 46-1-207. This payment must be deposited within sixty (60) days after the payment is made unless the merchandise and services are delivered within the sixty (60) days. If the merchandise and services are delivered within sixty (60) days of payment, then no deposit is required. For this agreement, "delivery" is defined by Tennessee Code Annotated Section 46-1-206(b)(2)(A),

If the sales contract provides for payment on an installment or deferred basis, the Cemetery Company may elect to pay into the trust account a pro rata portion for each installment or deferred payment received.

If the contract for the sale of merchandise or services provided for delivery within sixty (60) days, and the Cemetery Company fails inexcusably to deliver such merchandise or services within one hundred twenty (120) days after the receipt of any payment under such contract, the Cemetery Company shall deposit in this account all moneys received under the contract.

The Trustee shall not be required to see that such minimum amounts are paid in. Funds deposited in the trust account shall be identified or earmarked by contract numbers and the name of the purchaser. The Trustee, however, may commingle the deposits in any trust fund for the management and investment of the funds. The trust funds, including the income derived from the funds, shall remain intact after payment of all the appropriate Trustee fees, commissions, and other expenses, until the merchandise is delivered or the services performed as specified in the sales contract or the other agreement between the Cemetery Company and the Purchasers.

DISPOSITION OF TRUST FUNDS

1. DEFAULT ON PRE-NEED SALES CONTRACTS

- A. *Purchaser Default.* In the event the purchaser should be in default in making payments under a sales contract for a period of twelve (12) consecutive months, the Cemetery Company shall have the right to cancel the contract and to withdraw from the trust fund the entire balance to the credit of the defaulting purchaser's account as liquidated damages. In this event, the Trustee shall deliver the balance upon the Cemetery Company's certification of the default. The Trustee may rely upon this certification and shall not be liable to anyone for such reliance.
- B. *Cemetery Company Default.* In the event the Cemetery Company defaults and does not deliver the merchandise and services to the purchaser within a reasonable time upon request, and the purchaser, his heirs, assigns, or authorized representatives provide the merchandise and services, then the purchaser, his heirs, assigns, or authorized representatives shall be entitled to receive the deposit from their sales contract. The Trustee shall release this money upon either written instructions from the Cemetery Company or an affidavit from the purchaser, his heir, assign, or authorized representative stating that the merchandise and services were not provided. The Trustee may rely on the written instructions or affidavit to release the funds. Releasing the funds does not, however, relieve the Cemetery Company from any liability for nonperformance of the sales contract.

2. PERFORMANCE

Upon complete performance of the services and delivery of the merchandise specified in the sales contract, the Cemetery Company shall certify to the Trustee by affidavit that the sales contract has been fully performed. Upon receipt of this certification, the Trustee shall pay to the Cemetery Company the amount of funds in the trust account identified or earmarked for this contract, including any income or interest earned from this contract's funds.

3. ACCUMULATED NET INCOME

The Trustee may pay accumulated net income to the Cemetery Company if the trust assets after the net income disbursement would not have a market value of less than one hundred and twenty percent (120%) of the aggregated procurement costs of all merchandise and services whose contract deposits are held in trust. If this requirement is met, the Cemetery Company can receive this net income by delivering a notarized certification of the procurement costs as of the first day of its current fiscal year.

4. DORMANT CONTRACT FUNDS

Any earmarked funds that have been dormant for seventy-five (75) years since the time of deposit or the last withdrawal against those moneys may be considered closed accounts. The Trustee may pay this money to the Cemetery Company's improvement care trust fund.

TRUSTEE FEES

Tennessee Code Annotated Section 46-1-207(c) requires that the pre-need merchandise and services trust agreement specify the Trustee's fees, if there are any.

TRUST RECORDS & ACCOUNTING

Trustee shall identify or earmark funds deposited in the trust account by contract numbers and the name of the purchaser. The Trustee may, however, commingle the deposits in the trust fund for the management and investment of the funds.

The Trustee shall furnish annually, as required by law, to the Commissioner of Commerce and Insurance of the State of Tennessee a financial report with respect to the trust fund on forms which shall be obtained from the Commissioner, with a copy to the Cemetery Company. The Trustee shall also furnish to the Commissioner any additional reports or information as may be required under the Code or otherwise requested.

CONSTRUCTION

This trust agreement shall be construed and governed in all respects by laws of the State of Tennessee and shall be amended, if necessary, to comply with any subsequent amendments thereto.