

Current Tennessee Cemetery & Burial Site Laws
Statutory Laws
(Tennessee Code Annotated)
Title 46. Cemeteries

An Act to Amend SENATE BILL 2601 By Cooper J

(F) Refuse to provide care or maintenance for any portion of a grave site on which a monument has been placed, provided that installation has been in accordance with lawful rules and regulations of the cemetery;
<http://www.legislature.state.tn.us/bills/102/Bill/SB2601.pdf>

Part 1 – General Provisions

Title 46-1-101- Application -- Short title -- Penalty.

(a) This chapter applies to all cemeteries, community and public mausoleums, whether operated for profit or not for profit, within this state, except cemeteries exempt under § 46-1-106. Cemeteries existing on or after January 1, 2007, shall be operated in accordance with this chapter and chapter 2 of this title, which together shall be known and may be cited as the “Cemetery Act of 2006.” The chapter also applies to all contracts executed subsequent to January 1, 2007.

(b) Unless otherwise specified, any person violating this chapter commits a Class A misdemeanor.

History

Acts 1968, ch. 557, § 1; 1973, ch. 272, § 1; T.C.A., § 46-101; Acts 1986, ch. 693, § 3; 1989, ch. 591, § 1; 2006, ch. 1012, § 2.

Title 46-1-101-Chapter Definitions

As used in this chapter and chapter 2 of this title, unless the context otherwise requires:

- (1) “Cemetery” means any land or structure in this state dedicated to and used, or intended to be used, for interment of human remains;
- (2) “Cemetery company” means an individual, partnership, corporation, or association, now or hereafter organized, owning or controlling cemetery lands or property and conducting the business of a cemetery;
- (3) “Cemetery merchandise” means personal property sold by a cemetery company, such as foundations, markers, memorials, memorial bases, monuments, urns, vases, and lawn and mausoleum crypts;
- (4) “Cemetery operator” means any owner, director, principal, manager, member, stockholder with a majority ownership interest, or other person who has any ownership interest in, or has any control over, the financial operations of a cemetery company;
- (5) “Cemetery purposes” means all things requisite or necessary for, or incident or convenient to, the establishment, maintenance, management, operation, improvement and conduct of a cemetery, the preparation of the premises for interment and the interment of the human dead, and the care, preservation and embellishment of cemetery property;

- (6) "Columbarium" means a structure, room or space in a building or structure used, or intended to be used, for the interment of cremated human remains;
- (7) "Commissioner" means the commissioner of commerce and insurance;
- (8) "Commodity" includes, but is not limited to, memorials consisting of permanent monuments or grave markers of marble, granite or bronze, bronze plaques, or bronze vases, and foundations or footings of the memorials. "Commodity" does not include floral arrangements and plants;
- (9) "Consumer price index" means the consumer price index (all items-United States city average), as published by the United States department of labor, bureau of labor statistics;
- (10) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person;
- (11) "General fund" means the sum total of specific funds placed in a single fund;
- (12) "Human remains" or "remains" means the body of a deceased person, including the body in any stage of decomposition, and cremated remains;
- (13) "Improvement care" means the continual maintenance of the cemetery grounds and graves in keeping with a properly maintained cemetery, including cutting of grass, raking and cleaning of cemetery plots at reasonable intervals, and pruning of shrubs and trees; memorial care of commodities; procuring, maintaining and keeping in workable condition the machinery, tools and equipment needed for the shop and replacing the machinery, tools and equipment when necessary; keeping in repair and preserving the drains, water lines, roads, buildings, fences and other structures, including cemetery-owned statues and embellishments of general character applicable to the cemetery as a whole or a particular area; and paying of insurance premiums and maintaining necessary records of lot ownership, burials and other necessary information and making the records available to public authorities and interested persons;
- (14) "Interment" means any lawful disposition of the remains of a deceased person as provided by law;
- (15) "Interment right" means the right to inter human remains in a particular space in a cemetery, including, but not limited to a grave space, mausoleum crypt, niche, memorial bench, or scattering garden;
- (16) "Lawn crypts" means pre-installed, below-the-ground concrete chambers, either single or double depth, covered by earth or sod;
- (17) "Lot" or "grave space" means a space of ground in a cemetery used or intended to be used for interment, the beautification of the ground, or the memorialization of the deceased person;
- (18) "Mausoleum crypts" means chambers contained in a structure or building constructed of reinforced concrete, whether assembled above or below ground;
- (19) "Memorial care" includes, but is not limited to, resetting or straightening tipped commodities, replacing damaged commodities, and providing for the general maintenance of commodities;
- (20) "Niche" means a space in a columbarium used, or intended to be used, for the interment of the cremated remains of one (1) or more deceased persons;
- (21) "Pre-need" means the time prior to death when the use of cemetery merchandise or services is not actually required;
- (22) "Services" means acts performed by a cemetery company on its premises in the final interment of human remains or the installation of cemetery merchandise used in connection with final interment;
- (23) "Specific funds" means funds identified with cemetery merchandise to be delivered, or services to be performed, as specified in a certain contract and earmarked as having been paid by a certain purchaser; and
- (24) "Undeveloped" means real property that is not presently suitable for interment, entombment or inurnment as described in the purchase agreement.

History

Acts 1968, ch. 557, § 1; impl. am. Acts 1971, ch. 137, § 1; Acts 1979, ch. 307, § 2; T.C.A., § 46-102; Acts 1980, ch. 780, §§ 1, 2; 2006, ch. 1012, § 2; 2009, ch. 356, § 6; 2015, ch. 288, § 1; 2016, ch. 911, §§ 15, 16.

46-1-103. Certificate of Registration-Temporary Permit

(a) Except as otherwise provided in this chapter, it is a Class A misdemeanor for any cemetery company to operate a cemetery or separate geographical site of a cemetery in this state without a valid certificate of registration for the cemetery or separate site of the cemetery.

(b) An application for registration shall be submitted on the form prescribed by the commissioner. The applicant shall provide on such form:

(1) The location of the cemetery, or separate site of the cemetery;

(2) The name and address of the cemetery company, and, if a corporation, the date of incorporation;

(3) Proof of having established improvement care and pre-need merchandise and services trust funds in accordance with this chapter;

(4) Proof of a map showing all interment sites that will be available for sale and developed or planned for development upon approval of the application; and

(5) Other information that the commissioner may reasonably require.

(c)

(1) Upon approval of the application and receipt of a filing fee as set by the commissioner, the commissioner shall issue a certificate of registration to the applicant.

(2) No certificate of registration is transferable.

(d)

(1) Upon receipt of a satisfactory application on the prescribed form, the commissioner may issue a temporary permit authorizing operation of a cemetery, if the commissioner determines that:

(A) No cemetery company holds a valid certificate of registration for the cemetery;

(B) No cemetery company has submitted a sufficient application for a certificate of registration for the cemetery; and

(C) Issuance of the temporary permit would be clearly in the public interest.

(2) A temporary permit is subject to the conditions and limitations that the commissioner may set forth.

(3) The commissioner may, upon request, extend the duration of a temporary permit. In no case, however, shall a temporary permit authorize continuous operation of a cemetery for longer than one (1) year.

(4) The commissioner may terminate a temporary permit at any time, by giving written notice to the holder at least ten (10) days before the effective date of the termination.

History

Acts 1968, ch. 557, § 1; impl. am. Acts 1971, ch. 137, § 1; Acts 1973, ch. 272, §§ 2, 3; 1976, ch. 773, § 1; 1979, ch. 307, § 3; T.C.A., § 46-103; Acts 1986, ch. 693, §§ 1, 4; 1989, ch. 591, §§ 1, 6, 113; 1992, ch. 922, § 2; 2006, ch. 1012, § 2.

46-1-104. Renewal of certificate

(a) All certificates of registration issued by the commissioner under this chapter expire at the end of the registrant's fiscal year following issuance of the certificate, and become invalid after that date, unless renewed.

(b) Renewal of a certificate of registration may be effected at any time during the two (2) months preceding the date of expiration, upon submission of an application to the commissioner on the prescribed form, accompanied by a renewal fee as set by the commissioner.

(c) The fee for late renewal for certificates of registration shall be increased by an amount as set by the commissioner for each month or fraction of a month that payment for renewal is delayed. No renewal application will be accepted later than nine (9) months after the expiration date of a certificate.

(d) The fee for reinstatement of a nonrenewed certificate of registration shall be set by the commissioner.

History

Acts 1968, ch. 557, § 1; 1973, ch. 272, § 4; 1979, ch. 307, § 3; T.C.A., § 46-104; Acts 1986, ch. 693, § 5; 1992, ch. 922, §§ 3-5; 2006, ch. 1012, § 2.

46-1-105. Cemetery consumer protection account

(a) There is established within the state general fund a cemetery consumer protection account. All funds received by the commissioner under this section shall be deposited into the account and held solely for the purposes of this section.

(b) Moneys within the account shall be invested by the state treasurer in accordance with § 9-4-603 for the sole benefit of the account.

(c) No renewal of a certificate of registration shall be issued unless the applicant pays, in addition to the renewal fee, a consumer protection fee of twenty dollars (\$20.00) for every pre-need sales contract entered into during the preceding renewal period, except that the applicant shall not have to pay the consumer protection fee on any pre-need sales contract entered into that was subsequently cancelled prior to the applicant's request for renewal of a certificate of registration. If the pre-need sales contract covers both cemetery merchandise and funeral merchandise as defined in § 62-5-403, then the cemetery company shall pay only one (1) consumer protection fee for the contract, which shall be credited to the cemetery consumer protection account.

(d) One-half (½) of the funds received pursuant to this section shall be used to fund the cemetery registration program, and one-half (½) of the funds received pursuant to this section shall be used to fund any receivership action initiated by the commissioner against a cemetery due to a deficiency in the cemetery's improvement care or pre-need merchandise and services trust fund.

History

Acts 2006, ch. 1012, § 2; 2015, ch. 288, § 2; 2016, ch. 911, § 9.

46-1-106. Exemptions.

(a) This chapter and chapter 2 of this title do not apply to:

(1) Cemeteries owned by municipalities;

(2) Cemeteries owned by churches, associations of churches, or church governing bodies;

(3) Cemeteries owned by religious organizations;

(4) Family burial grounds; or

(5) Cemeteries owned by general welfare corporations created by special act of the general assembly; provided, that the cemeteries are not operated for profit and no funds of the cemeteries are used or expended, directly or indirectly, to compensate a sales contractor, sales manager or promoter of the cemetery; provided, that nothing in this subdivision (a)(5) shall prevent a cemetery owned by a church, association of churches or church governing body that has owned the cemetery for a period of five (5) years, and has operated the cemetery for religious purposes and not for profit during the period, from compensating a sales manager, sales contractor or promoter.

(b) The commissioner has the discretion to extend this exemption to community cemeteries, after taking into consideration the intent of this chapter and the following factors, including, but not limited to:

- (1) The age of the cemetery;
- (2) The remaining area for future use;
- (3) The sale of lots over the preceding ten (10) years; and
- (4) The population of the community normally served by the cemetery.

(c) The commissioner may at any time revoke any exemption granted a community cemetery under this authority.

History

Acts 1968, ch. 557, § 1; 1972, ch. 617, § 1; 1973, ch. 272, § 5; 1979, ch. 142, § 1; T.C.A., § 46-106; Acts 1986, ch. 693, §§ 7, 8; 2006, ch. 1012, § 2.

46-1-107. Sale or transfer

(a) No later than thirty (30) days prior to the sale or transfer of any cemetery required to be registered by this chapter, or the sale or transfer of a controlling interest in the cemetery company that owns the cemetery, the transferor shall notify the commissioner in writing, and:

(1) Submit any documentation or records the commissioner may require in order to determine the amount of any indebtedness of the transferor to the pre-need merchandise and services trust account or the improvement care trust fund; and

(2) Disclose any agreements between the transferor and transferee regarding:

(A) Any existing cemetery trust accounts established pursuant to this chapter; and

(B) Assumption or disclaimer of liabilities of the transferor.

(b) Except as provided in subsection (c), the transferee shall not be entitled to a certificate of registration for the cemetery until:

(1) Subsection (a) has been complied with; and

(2) Any indebtedness of the transferor to the pre-need merchandise and services trust account or the improvement care trust fund has been liquidated.

(c) Notwithstanding indebtedness of the transferor to the pre-need merchandise and services trust account or the improvement care trust fund, the commissioner may issue a certificate of registration to the transferee, if the commissioner determines that:

(1) The sale or transfer is in the best interests of the maintenance and continued operation of the cemetery;

(2) The sale or transfer is not designed to circumvent this chapter; and

(3) The transferee has satisfactorily agreed to liquidate the indebtedness to the maximum feasible extent.

(d) The state may, for the benefit of the pre-need merchandise and services trust account or the improvement care trust fund:

(1) Recover from the transferor all sums that the transferor has not properly accounted for and paid into the fund; and

(2) Recover from the transferee all sums that the transferee has not properly accounted for and paid into the fund.

(e) The issuance of a certificate of registration under this section shall not operate to release any person, firm or corporation from any obligations to the pre-need merchandise and services trust account or the improvement care trust fund.

History

Acts 1973, ch. 272, § 6; 1977, ch. 147, § 1; T.C.A., § 46-107; Acts 1986, ch. 693, §§ 2, 9; 2003, ch. 81, §§ 1-5; 2006, ch. 1012, § 2.

46-1-108. Purchase and subdivision of land — Sale of lots — Approval of location for cemetery use — Purchase contract — Attachment or levy of execution.

(a) A cemetery company has the power to purchase land, not exceeding two hundred (200) acres, to be used as a cemetery forever, to lay the land off in suitable avenues or walks and embellish with trees, shrubbery, and flowers, and to subdivide the land into lots suitable for graves, monuments, and vaults, and sell the lots in the manner that the board of directors of the cemetery determines; provided, that any land may be purchased and used as a cemetery at any place within a town or city after the proposed location has been approved by resolution of the governing body of the town or city.

(b) Each contract for the sale of burial space or the conveyance of interment rights shall be executed in duplicate, and an executed copy shall be given to the purchaser.

(c) If a specific interment site is selected by the purchaser at the time the purchase contract is executed, the contract shall contain a detailed description of the location of the interment site purchased. All such contracts must also contain the following or similar notices to the purchaser: “This cemetery is regulated by the State of Tennessee Department of Commerce and Insurance Burial Services Section. The purchaser or the purchaser's designated legal agent has the right upon request to access the cemetery's records relating to the purchaser's interment right or interment site. Within ninety (90) days of the receipt of the final payment on the purchase contract for any interment right, the purchaser shall receive from the cemetery company proof of ownership of that interment right. The purchaser, at the purchaser's own cost, may record a copy of such proof of ownership with the register of deeds for the county in which the cemetery is located.”

(d) All lots sold to purchasers pursuant to subsection (c) shall forever be free from attachment or the levy of an execution.

History

Acts 1875, ch. 142, § 9; 1895, ch. 131, § 1; 1899, ch. 277, § 1; Shan., § 2181; Acts 1919, ch. 195, § 1; Code 1932, § 3919; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), §§ 46-101, 46-102; T.C.A., §§ 46-201, 46-202; Acts 1984, ch. 585, § 1; 1986, ch. 693, § 10; T.C.A. §§ 46-2-101, 46-2-102; Acts 2006, ch. 1012, § 2.

46-1-109. Receiving and holding of grants and bequests.

(a) A cemetery company may hold any grant or bequest in money or other property, and shall faithfully apply the grants or bequests for the improvements of the cemetery, or in the erection or preservation of any tomb or monument, according to the terms of the grant or bequest, except those funds required to be held in trust, or paid into the improvement care trust fund as provided by § 46-1-204.

(b) No cemetery company shall accept any special grant or bequest, unless it is in writing and made a part of the permanent records of the cemetery.

History

Acts 1875, ch. 142, § 9; Shan., § 2184; Code 1932, § 3922; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-103; 1976, ch. 773, § 3; T.C.A., § 46-203; T.C.A. § 46-2-103; Acts 2006, ch. 1012, § 2.

46-1-110. Sale of land not suitable or needed for cemetery purposes.

(a) Cemetery companies owning lands never actually used by them for cemetery purposes, and that are not suitable or adapted to such purpose, or are found by them to be not needful for such purposes, are empowered to sell and convey or otherwise dispose of the lands for secular or general use; provided, that:

(1) No later than thirty (30) days prior to the disposition of the land, the cemetery company notifies the commissioner in writing and obtains written approval of the disposition from the commissioner or the commissioner's designee; and

(2) The commissioner may order the cemetery company disposing of the land to deposit up to one hundred percent (100%) of the net proceeds of the disposition in the cemetery's improvement care trust fund or the cemetery's pre-need merchandise and services trust fund, or both, within thirty (30) days after the disposition, if there is a deficiency in either trust fund. The order may not exceed the actual amount of the deficiency in the improvement care trust fund or the pre-need merchandise and services trust fund, or both.

(b) Nothing in this section shall be construed to authorize cemetery companies to acquire any lands for the purpose of selling the land or to engage in speculation of real estate.

History

Acts 1907, ch. 94, § 1; Shan., § 2185a1; Code 1932, § 3936; Acts 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-104; T.C.A., § 46-204; T.C.A. § 46-2-104; Acts 2006, ch. 1012, § 2.

46-1-111. Records.

(a) A record shall be kept of every burial in the cemetery of the cemetery company, showing the date of burial and name of the person buried, together with the designation of lot or space in which the burial was made. In addition, the cemetery company shall keep records showing the date of the sale, the contract number, the name of the purchaser, and the amount of the sale to be held for inclusion in the improvement care trust fund and the date of the receipt of any payment on the sale, all on a form approved by the commissioner. The cemetery company shall also keep records showing the full amount received for installation of each commodity and the full amount deposited into the improvement care trust fund for memorial care of each commodity, identified by lot owner and decedent occupying the grave space. The identical information is required if deposits to the improvement care trust fund are made on a collection basis. All sales records, trust fund records, accounting records, and all other records of the cemetery company shall be available at its principal place of business or principal office in this state, and shall be readily available at all reasonable times for examination or inspection by the commissioner or the commissioner's authorized representatives.

(b) A record shall be kept of every interment site or interment right sold to a consumer. The record required under this section shall contain a detailed description of the location of the interment site or interment right sold.

(c) Any consumer purchasing an interment site or interment right in a cemetery located in this state shall receive from the cemetery company at the time of purchase a copy of the executed purchase contract. If a specific interment site is selected by the consumer at the time the purchase contract is executed, the contract shall contain a detailed description of the location of the interment site purchased.

(d) After January 1, 2007, all cemetery companies applying for and obtaining a new registration in accordance with § 46-1-103 shall develop and maintain a map of the cemetery detailing the location of interment sites. For all cemetery companies registered January 1, 2007, a map must be developed and maintained for all interment sites newly developed or planned for development before the sites may be made available for sale to consumers.

(e) All records required to be kept under this section shall be considered as part of the cemetery, and shall be included in any sale or transfer of the cemetery. All burial and interment rights records, including copies of contracts for the sale of lots, shall be retained indefinitely. All other records shall be retained for at least ten (10) years, unless the commissioner approves a shorter period of retention.

History

Acts 1927, ch. 75, § 13; mod. Code 1932, § 3935; Acts 1961, ch. 44, § 1; 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-105; Acts 1976, ch. 773, § 4; T.C.A., §§ 46-205, 46-2-105; Acts 1980, ch. 780, § 3; 1986, ch. 693, § 11; T.C.A., § 46-2-201; Acts 2006, ch. 1012, § 2.

46-1-112. Correction of error in interment or in the assignment of an interment right.

(a)

(1) When a cemetery operator has actual knowledge either of an incorrect interment or of an error in the assignment of an interment right, a cemetery operator shall have the right to correct such error pursuant to this section.

(2) For purposes of this section, “interment” and “interment right” mean the same as defined in § 46-1-102.

(b) When a cemetery operator has knowledge that the interment of human remains has occurred in the wrong burial location in the cemetery, the cemetery operator shall make all reasonable efforts to contact and to give notice to any known family or next of kin of the deceased person who has been incorrectly interred. If the cemetery operator reaches a family member or the next of kin, then the cemetery operator shall document the method of reaching that family member in writing and shall document the date, time and substance of the notice to the family member. If the cemetery operator cannot contact the next of kin, the cemetery operator shall make all reasonable efforts to give notice by certified mail, in advance of any corrective action, to any known family or next of kin at the last known address of such family and shall make all reasonable efforts to give notice by certified mail, in advance of any corrective action, to the owner of the burial plot in question. After the cemetery operator sends the certified mail, the cemetery operator shall wait five (5) business days before moving the person wrongfully interred.

(c) Immediately after contacting and notifying a family member or the next of kin or after waiting five (5) business days after mailing notice via certified mail to any known family or next of kin, the cemetery operator:

(1) May disinter the burial container wrongfully interred without a state or local permit;

(2) Shall identify the burial container; and

(3) Shall reinter the burial container in the proper burial space in the same cemetery.

(d) At the time specified for a disinterment and reinterment, the cemetery operator shall allow the nearest known next of kin, and if requested, the owner of the burial space, to witness the disinterment and reinterment.

(e) The cemetery operator shall bear all costs of the disinterment and reinterment.

(f) The cemetery operator shall notify the commissioner of the error, the interment in the wrong location and any evidence supporting the decision that it was a wrongful interment, the steps taken pursuant to this section to remedy the wrongful interment, including, but not limited to, the efforts to reach the next of kin and any other information so required by the department, within three (3) business days after reinterment.

(g) The cemetery operator shall also notify the commissioner of health, on a form prescribed by the commissioner, of the error, the interment in the wrongful location, the disinterment of the deceased person and the steps taken pursuant to this section to remedy the wrongful interment, including, but not limited to, the efforts to reach the next of kin pursuant to this section, within three (3) business days after the reinterment.

(h) When the cemetery operator follows the approved procedures set forth in this section for correcting a wrongful burial due to human error in recording ownership of an interment right, or due to human error in the burial, the cemetery company, its employees and its board of directors

or officers shall be held harmless and not liable for any damages directly related to the disinterment and reinterment of the deceased person who had been interred in the wrong burial location unless the cemetery company, its employees or its board of directors or officers acted intentionally or with malice in the wrongful interment. This hold harmless provision shall not extend to any action other than an action arising out of the disinterment and reinterment governed by this section.

History

Acts 2009, ch. 356, § 1.

46-1-113. [Repealed.]

History

Acts 2016, ch. 997, § 1; repealed by its own terms, effective July 1, 2019.

46-1-201. Purpose of part.

It is the purpose of this part to require cemetery companies in the state to carry at all times a sufficient improvement care trust fund to maintain, keep up and beautify the cemeteries, without commercializing the operation of the cemeteries, and to maintain a pre-need merchandise and services trust fund to ensure that the pre-need sale of cemetery merchandise and services is properly accounted for and administered.

History

Acts 1927, ch. 75, § 11; mod. Code 1932, § 3933; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-117; T.C.A., §§ 46-217, 46-2-117; T.C.A. § 46-2-301; Acts 2006, ch. 1012, § 3; 2016, ch. 911, § 17.

46-1-202. Fidelity bond coverage — Exemptions.

(a) Every cemetery company shall carry fidelity bond coverage of at least one hundred thousand dollars (\$100,000) or a higher amount that the commissioner deems sufficient for officers and employees who handle money and securities.

(b) The annual financial report required by § 46-1-214 to be filed with the commissioner shall indicate the amount of fidelity bond coverage, the classes of employees included, name of carrier and policy number, and the expiration date of coverage.

(c) Cemeteries with combined funds, defined as cash, investments and assets, of less than forty thousand dollars (\$40,000) may apply to the commissioner for an exemption from meeting the requirements of subsections (a) and (b). The commissioner may grant an exemption upon receiving satisfactory documentation demonstrating that all financial transactions, including withdrawals from the pre-need merchandise and services trust fund or operating funds, require the signatures of two (2) or more designated cemetery officials.

(d) If any cemetery that is currently exempt should, at any time in the future, obtain combined funds in excess of forty thousand dollars (\$40,000), the cemetery shall, within sixty (60) days of notification of the commissioner, obtain the fidelity bond required by subsections (a) and (b).

History

History

Acts 2006, ch. 1012, § 3.

46-1-203. Requirements for organization — Improvement care fund deposit.

(a) No person or group of persons shall engage in the business of owning and operating a cemetery company, except as authorized by this chapter and chapter 2 of this title, and without first:

- (1) If an entity required to register with or obtain any form of approval from the secretary of state, obtaining the registration or approval and retaining the registration and approval in an active status as long as the cemetery company is owned and operated by the applicant;
- (2) Entering into a trust agreement in accordance with § 46-1-204; and
- (3) Depositing either cash or a surety bond approved by the commissioner in its improvement care trust fund, in an amount to be determined according to the population of the county in which the cemetery is located, as estimated by the 1960 federal census or any subsequent federal census, as follows:

10,000 or under \$ 40,000

10,001 to 15,000 60,000

15,001 to 20,000 80,000

20,001 to 100,000 100,000

100,001 or more 200,000.

(b) The requirements of this section shall also be applicable to any existing cemetery company that establishes or opens a new cemetery, or an addition to an existing cemetery, on or after January 1, 2007.

History

Acts 1968, ch. 523, § 1 (17.05); 1968, ch. 557, § 1; impl. am. Acts 1971, ch. 137, § 1; 1976, ch. 773, § 2; T.C.A., § 46-105; Acts 1986, ch. 693, §§ 1, 6; T.C.A. § 46-1-105; Acts 2006, ch. 1012, § 3.

46-1-204. Improvement care trust fund.

(a)

(1) Every cemetery company engaged in the business of selling, leasing, or renting lots, grave spaces, crypts, niches, and burial rights in this state shall establish and forever maintain an improvement care trust fund to provide for the improvement, care, and maintenance of the following:

(A) Each separate cemetery;

(B) Each separate geographical location of each cemetery owned and operated by the cemetery company; and

(C) Each separate geographical location of a funeral home, or other individual or entity, that has niches or other areas or devices of interment for sale, lease, or rent.

(2) The trust fund required by this subsection (a) shall be established by executing a written trust agreement with a trust company approved by the commissioner, or with a state or national bank, or with savings and loan associations having insurance of accounts as required by law; provided, that a cemetery company may change the trustee of its trust fund by providing written notice to the commissioner no later than thirty (30) days prior to the change, along with sufficient evidence, as determined by the commissioner, that the trustee will be able to comply with the requirements of this chapter. If the commissioner determines that the evidence submitted is insufficient to ensure that the trustee will be able to comply with the requirements of this chapter, the commissioner may refuse to allow the cemetery company to change the trustee.

(b) The written trust agreement shall specifically state the following:

(1) The nature and extent of care to be furnished;

(2) That the care shall be furnished only to the extent that the net income derived from the amount deposited in the trust permits; and

(3)

(A) That within thirty (30) days of a transaction, not less than the following minimum amounts will be set aside and deposited in trust by the cemetery company:

- (i)** For land, but not including lawn crypts or land donated without charge for the purpose of interring the remains of a deceased person who was under eighteen (18) years of age at the time of death, one dollar (\$1.00) per square foot of the land sold or twenty percent (20%) of the total transaction amount for the land, whichever is greater;
- (ii)** For a lawn crypt, twenty percent (20%) of the total transaction amount for the land excluding the lawn crypt or fifty dollars (\$50.00), whichever is greater;
- (iii)** For a mausoleum, crypt, niche, or any memorial other than a commodity, not less than ten percent (10%) of the total transaction amount for each item;
- (iv)** For the special care of any lot, grave, crypt, or niche or of a family mausoleum, memorial, marker or monument, the full amount received;
- (v)** For a commodity, the full amount received for memorial care; and
- (vi)** For the sale of land for non-cemetery purposes, the commissioner may order the cemetery company disposing of the land to deposit up to one hundred percent (100%) of the net proceeds of the disposition in the cemetery's improvement care trust fund or the cemetery's pre-need merchandise and services trust fund, or both, within thirty (30) days after the disposition, if there is a deficiency in either trust fund. The order may not exceed the actual amount of the deficiency in the improvement care trust fund or the pre-need merchandise and services trust fund, or both;
- (B)** Notwithstanding anything in this chapter to the contrary, any cemetery company depositing more than the required amounts in its improvement care trust fund, in accordance with prior statutory requirements or its charter or contracts, shall be authorized to continue to do so; provided, that deliberate advance payments made to the improvement care fund shall not be credited toward any future liability, except that a cemetery company may credit any payment, which was deposited into the improvement care trust fund from a contract that was subsequently canceled, toward any future liability as long as the credit is applied within twelve (12) months from the date of the cancellation date.
- (c)** Every cemetery company shall be permitted to charge a fee for the memorial care of every commodity installed in the cemetery. The fee shall not exceed twenty-three cents (23¢) per square inch of the ground covered by the commodity. At the end of each calendar year, the cemetery company shall be permitted to increase its fee for the memorial care of commodities by no more than the percentage representing the consumer price index at the end of that calendar year. The fee charged for memorial care of a commodity shall not exceed the fee charged by the cemetery company for installation of the commodity. The charge for memorial care of a commodity shall be the same to all, regardless of the source of the commodity.
- (d)** The setting aside and deposit provided for in subdivision (b)(3)(A) shall be made by the cemetery company not later than thirty (30) days after the close of the month in which the final payment on the purchase price of each lot, grave space, crypt or niche, the final payment for the general or special care of the lot, grave space, crypt or niche, the final payment for the memorial care of a commodity, or the final payment of a family mausoleum, memorial, marker or monument is received. The amounts deposited shall be held by the trustee of the improvement care funds of the cemetery in trust and perpetuity for the specific purposes stated in the written agreement. All deposits with a trustee by a cemetery company under this part shall be in cash only.
- (e)**
 - (1)** As used in this subsection (e), unless the context otherwise requires:
 - (A)** "Net earnings" means:
 - (i)** All net income, excluding capital gains; or
 - (ii)** An amount not exceeding five percent (5%) of the fair market value of the trust as of the last day of the trust fiscal year immediately preceding the distribution year. This amount is not

reduced by taxes or fees, unless the fees exceed two and one-half percent (2.5%) of the market value of the trust as of the last day of the trust fiscal year immediately preceding the distribution year. If any fees exceed two and one-half percent (2.5%) of the market value of the trust as of the last day of the preceding fiscal year, then the amount of the disbursement shall be reduced by the excess; and

(B) “Net income” means the collected dividends, interest and other income of the trust reduced by taxes on income and fees.

(2) The net earnings of each improvement care trust fund shall be paid to and shall be used and expended by the owners or officers and directors of the cemetery company, or by the trustee of the improvement care trust fund while the cemetery is not being operated by its owner, for the improvement care, as defined in § 46-1-102, of the cemetery or separate geographical location of the cemetery for which the fund was established and for no other purpose.

(3) While a cemetery for which an improvement care trust has been funded is not being operated by its owner, the trustee may disburse net income from the trust to compensate any responsible person for work performed or expenses incurred in the improvement care of the cemetery. In investing these funds, the trustee shall exercise the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income and capital appreciation as well as the probable safety of their capital. Within the limitations of the standard in this subdivision (e)(3), subject to any express provisions of limitations contained in any particular trust instrument, the trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not limited to, corporate obligations of every kind, and stocks, preferred or common, that persons of prudence, discretion and intelligence acquire for their own accounts.

(4)

(A) A cemetery owner may select a method to calculate the net earnings of a trust for the first fiscal year in which this subsection (e) is effective, by delivering written instructions to the trustee of the fund no later than sixty (60) days prior to the end of that fiscal year.

(B) A cemetery owner may select a method of calculation to be used for any given fiscal year by using either subdivision (e)(1)(A)(i) or (e)(1)(A)(ii). A cemetery owner shall provide the trustee with written instructions of which method of calculation has been chosen no later than the last day of the preceding fiscal year. In the event that the method of calculation chosen by the cemetery owner prior to the start of the fiscal year would result in lower disbursements than would the other calculation, then the cemetery owner may provide the trustee with written instructions no later than sixty (60) days prior to the end of the fiscal year to change the method of calculation.

(C) In the event that the trustee does not receive written instructions for a given fiscal year from the cemetery owner informing the trustee of the method of calculation chosen or the trustee has never received any written instructions of the method of calculation chosen, then the trustee shall calculate and disburse funds in accordance with subdivision (e)(1)(A)(i).

(D)

(i) In order to withdraw up to five percent (5%) of a trust that is already in existence on July 1, 2009, in accordance with subdivision (e)(1)(A)(ii), the current market value of the trust after the withdrawal shall be greater than $.90 \times [MV(T)+C]$. T represents July 1, 2009. MV represents the principal market value of the trust at T. C represents the total contributions made to the trust principal from T to the date that the method of calculation is selected.

(ii) In order to withdraw up to five percent (5%) of a trust that is established after July 1, 2009, in accordance with subdivision (e)(1)(A)(ii), the current market value after the withdrawal shall be greater than $.90 \times [MV(N)+C]$. MV(N) represents the principal market value of the trust that will be determined at the end of the trust's fiscal year. C represents contributions made to the principal after the first completed fiscal year.

(iii) Disbursements from the trust that are calculated pursuant to subdivision (e)(1)(A)(ii) shall be made on a monthly, quarterly, semiannual or annual basis.

(E) In order for a cemetery owner to receive distributions from the trust that are calculated by using either method of calculation in subdivision (e)(1)(A)(i) or (e)(1)(A)(ii), the cemetery owner shall:

(i) Be current on payment of the annual registration fee. The cemetery owner shall certify to the trustee on forms provided by the commissioner that the cemetery is registered with the department; and

(ii) Be current on required deposits to the trust or make payments on any arrearages through special arrangements with the commissioner. At the commissioner's discretion, the commissioner may allow cemetery owners to make payments on arrearages. The cemetery owner shall certify to the trustee on forms provided by the commissioner that the cemetery owner is current on required deposits or is making payments on arrearages.

(f) No cemetery company shall commingle the improvement care funds for the benefit of one (1) cemetery with improvement care funds for the benefit of any other cemetery or with any other funds, and each separate geographical site of a cemetery shall have a separate improvement care fund. However, improvement care funds from more than one (1) cemetery may be commingled by trustees for investment purposes, so long as an accurate accounting is maintained for each individual fund.

(g) The improvement care trust fund shall not be a part of the assets of any cemetery company operating under this part and the improvement care trust fund shall not be subject to the debts of the cemetery company.

(h) For purposes of this section, "cemetery company" includes any individual or entity that leases or rents crypts and niches, even if the individual or entity is not organized, owning, or controlling cemetery lands or property nor conducting the business of a cemetery.

History

Acts 1927, ch. 75, § 1; mod. Code 1932, § 3923; Acts 1953, ch. 44, § 1; 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-110; Acts 1976, ch. 773, § 7; 1978, ch. 605, § 1; 1978, ch. 708, § 6.04; T.C.A., §§ 46-210, 46-2-110; modified; Acts 1980, ch. 780, §§ 5-7; impl. am. Acts 1980, ch. 780, § 1; 1986, ch. 693, §§ 12-17; 1996, ch. 714, §§ 1, 2; 2005, ch. 217, § 1; T.C.A. § 46-2-302; Acts 2006, ch. 1012, § 3; 2009, ch. 356, §§ 3, 4; 2015, ch. 288, §§ 3-6.

46-1-205. Payment of dividends — Restrictions — Recovery.

No dividend, salary or compensation of any description shall be paid to any stockholder of any cemetery company or any cemetery operator until the company has first set up the improvement care trust fund in the manner and amount provided in § 46-1-204, and no dividend, salary or compensation shall be paid to any stockholder of any cemetery company or any cemetery operator while any improvement care trust fund is deficient because of not having received the payments required by § 46-1-204; provided, that a receiver, as provided for in this chapter, may pay the salaries and compensation that the receiver deems necessary to restore the cemetery to a sound financial condition. Any dividend, salary or commission paid in violation of this section shall be recoverable at the suit of the commissioner, any lot owner, or descendant or next of kin

of a lot owner, in the circuit or chancery court, and all stockholders of the cemetery company and cemetery operators receiving the unlawful dividends, salaries or compensation may be joined in the same suit. The proceeds of the suit or claim shall be added to the improvement care trust fund to assist in making the fund current.

History

Acts 1927, ch. 75, § 6; mod. Code 1932, § 3928; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-111; Acts 1976, ch. 773, § 8; T.C.A., §§ 46-211, 46-2-111; T.C.A., § 46-2-305; Acts 2006, ch. 1012, § 3.

46-1-206. Sales of pre-need cemetery merchandise and services.

(a) Except as provided in this section, no cemetery company shall directly or indirectly offer to or enter into a contract for the sale of cemetery merchandise or services to be used or performed in connection with the interment or commemoration of a deceased human being, if delivery of the cemetery merchandise, other than for incidental additions, such as dates, scrolls, or other supplementary matter representing not more than ten percent (10%) of the total contract price, or performance of the services is to be made more than sixty (60) days after the receipt of any payment under the contract of sale. This subsection (a) includes, but is not limited to, the pre-need sales of cemetery merchandise and services.

(b)

(1) If a cemetery company enters into a contract for the sale of cemetery merchandise or services that provides for delivery within sixty (60) days, and the cemetery company fails inexcusably to deliver cemetery merchandise or services within one hundred twenty (120) days after the receipt of any payment under the contract, the cemetery company shall deposit to a pre-need merchandise and services trust account or a pre-need trust account established pursuant to § 46-1-207 all moneys received under the contract.

(2)

(A) For purposes of this part, “delivery” includes physical delivery of the cemetery merchandise to the buyer or the cemetery company has paid its supplier for the cemetery merchandise, the supplier has caused the cemetery merchandise to be manufactured and stored, and has caused certificate of ownership of the cemetery merchandise to be sent to the purchaser, and has agreed to ship the cemetery merchandise upon the purchaser's request of the cemetery company; provided, that the cemetery company set aside funds for the installation of the cemetery merchandise pursuant to § 46-1-207.

(B) For the purposes of this part, no person, firm or corporation will be deemed a supplier to a Tennessee cemetery company, unless it:

(i) Permanently and unalterably identifies all cemetery merchandise with the name of the contract beneficiary;

(ii) Submits, upon request of the commissioner, a report of all cemetery merchandise that has been purchased through a Tennessee cemetery company and has been placed in storage;

(iii) Permits the commissioner or the commissioner's designee, at any time, to examine stored cemetery merchandise that was purchased through a Tennessee cemetery company and to examine any document pertaining to the cemetery merchandise;

(iv) Submits evidence to the cemetery company of a bond insuring the existing and good title of any cemetery merchandise due any contract beneficiary purchased through a Tennessee cemetery company; and

(v) Submits evidence to the cemetery company ensuring that all cemetery merchandise purchased through a Tennessee cemetery company and being stored by the supplier is insured for casualty, theft or other loss.

(c) Except as provided in subsection (d), nothing in this part shall apply to contracts for the sale of funeral merchandise and services, such contracts being regulated under title 62, chapter 5, and other general laws of this state.

(d) A cemetery company may offer a pre-need sales contract that covers funeral merchandise as defined in § 62-5-403, or a pre-need sales contract that covers both cemetery merchandise as defined in § 46-1-102 and funeral merchandise, if:

(1) The cemetery company uses a contract issued by the commissioner for general use. If the commissioner has not issued a contract pursuant to this subdivision (d)(1), then the cemetery company may use a contract that has been approved by the commissioner. To submit a contract for approval, the cemetery company shall submit a request for approval to the commissioner prior to the execution of the contract. If the cemetery company has not received approval from the commissioner within sixty (60) days of submitting the request or receives no disapproval of the contract within the sixty-day period, then the contract shall be deemed approved; provided, that the commissioner may disapprove a previously approved contract if the contract violates this section upon giving notice and an opportunity for a hearing to the pre-need seller;

(2) The cemetery company deposits all moneys received for funeral merchandise as defined in § 62-5-403 under the contract in a pre-need merchandise and services trust account or a pre-need trust account established pursuant to § 46-1-207;

(3) The cemetery company complies with the requirements of selling funeral merchandise as provided in the Tennessee Prepaid Funeral Benefits Act, compiled in title 62, chapter 5, part 4; and

(4) The cemetery company submits a price list to the commissioner for the funeral merchandise as defined in § 62-5-403.

History

Acts 1979, ch. 307, § 4(A); T.C.A., § 46-2-202; Acts 1986, ch. 693, § 20; T.C.A. § 46-2-402; Acts 2006, ch. 1012, § 3; 2016, ch. 911, §§ 5, 6, 16, 18.

46-1-207. Pre-need sales contracts — Pre-need trust accounts.

(a) A sales contract shall be executed in duplicate, and a signed copy given to the purchaser. The contract shall contain the names of the purchaser and the seller and the name of any person, if other than the purchaser, who is to receive the cemetery merchandise or services contracted for, and a description of the cemetery merchandise and services shall appear in the contract.

(b)

(1) A pre-need sales contract shall be enforceable against the purchaser, only if:

(A) The seller is a cemetery company owning or operating a duly registered cemetery under this chapter; and

(B) The seller, by the twentieth day of the month following the month of receipt of any consideration paid pursuant to the contract, deposits an amount equal to the procurement costs of the cemetery merchandise and services identified in the sales contract, plus twenty percent (20%) of the costs, in a special general fund trust account in a state or national bank authorized by law to administer trust funds. Upon finding that a cemetery company has failed to appropriately and timely deposit into any trust, the commissioner may, in addition to or in lieu of any other disciplinary action, require that deposits be made within a shorter time frame, after receipt of the funds, for a period not more than two (2) years after the finding of a violation. If the sales contract provides for payment on an installment or deferred basis, the seller may elect to pay into the trust account the pro rata portion relating to procurement cost of each installment or deferred payment received, or to pay one hundred twenty percent (120%) of the procurement cost computed as of the date of sale.

(2) A separate general trust account shall be established and maintained for each cemetery owned or operated by a cemetery company, and each account shall bear the additional legend, “pre-need merchandise and services trust account.”

(c) All deposits required by this part shall be pursuant to a written trust agreement with the trustee that holds the funds. The trust agreement shall:

(1) State the circumstances under which funds will be deposited and disbursed;

(2) Specify the trustee's fees, if any; and

(3) Provide that the trustee shall furnish the trustor an accounting of general trust balances and earnings at least annually.

(d) Specific funds deposited in the trust account shall be identified or earmarked by contract number and the name of the purchaser. Nothing shall prevent the trustee from commingling the deposits in any trust fund for purposes of the management of the trust fund or the investment of funds in the trust fund. The commissioner has the discretion to audit the records and the sources of the records tendered by the trustee and has full power, including power of subpoena, to inspect the records of the trustor. Failure to comply with the subpoena of the commissioner is a Class A misdemeanor.

(e)

(1) For purposes of this part, procurement costs shall be the costs of the cemetery merchandise and services as of January 1 of the year in which the pre-need sales contract is executed. These costs shall be determined and substantiated by a wholesale price list of a manufacturer or supplier of the cemetery merchandise so sold or by a cost analysis or itemization of the cost of construction of lawn or mausoleum crypts sold by the cemetery company. The procurement costs so determined shall be the basis for the deposits required by subsection (b) and shall be adjusted and verified annually to the commissioner.

(2) For the purposes of this part, procurement costs for interment services, including, but not limited to, entombment and inurnment services, shall not be less than the following: one hundred sixty-five dollars (\$165) for interment services, one hundred ten dollars (\$110) for entombment services, and forty-four dollars (\$44.00) for inurnment services. The basis for determining the procurement costs for these interment services shall be provided to the commissioner annually and verified at the time of audit. The commissioner shall increase the minimum costs by the consumer price index of each calendar year beginning on January 1, 2007.

(f) All deposits required by this part shall be in cash only.

(g)

(1) With respect to pre-need sales of mausoleum crypts, the seller may, in lieu of depositing one hundred twenty percent (120%) of procurement costs, elect to set aside a crypt in inventory comparable to each crypt sold prior to construction; provided, that:

(A) The seller establishes and maintains a record of crypts in inventory reduced by the number set aside under this subsection (g); and

(B) The sales contract conveys interment rights or temporary interment rights pending completion of the crypt sold prior to construction.

(2) Subject to the setting aside provided for in subdivision (g)(1), the seller shall at all times maintain its pre-need merchandise and services trust account in the amount required by subsection (b).

(h) The seller shall offer the purchaser the option to pay any applicable sales or use tax on the selected cemetery merchandise or services at the time the contract is entered into. If the purchaser chooses to pay the tax, it shall be remitted to the department by the seller, and shall be considered full payment for the sales or use tax on the selected cemetery merchandise or services despite any changes in tax rate or cost of cemetery merchandise or services that may occur by the

time of actual use. If the purchaser later cancels the pre-need contract, the amount of tax paid shall be refunded by the seller who may then claim that amount as a credit against any sales or use tax then due from the seller.

History

Acts 1979, ch. 307, §§ 4(B), 4(D); T.C.A., § 46-2-203; Acts 1986, ch. 693, §§ 2, 21; 1989, ch. 591, §§ 1, 6; 1996, ch. 958, § 1; 2002, ch. 685, § 1; T.C.A., § 46-2-403; Acts 2006, ch. 1012, § 3; 2016, ch. 911, §§ 8, 16.

46-1-208. Disposition of trust funds.

(a) The pre-need cemetery merchandise and services trust funds, including the income from the trust funds, after payment of any appropriate trustee fees, commissions and costs, shall remain intact until the cemetery merchandise is delivered or the services performed as specified in the sales contract. However, a seller may, upon proper certification to the trustee, withdraw specific funds previously deposited if no deposit was required by § 46-1-207. Upon complete performance of the services or delivery of the cemetery merchandise specified in the sales contract, the seller shall certify the performance of the services or the delivery of the cemetery merchandise to the trustee by affidavit. Upon the receipt of the certification, the amount of specific funds in the trust account identified to the delivered cemetery merchandise or the performed services, including any income or interest earned from the specific funds and not paid pursuant to subsection (b), shall be paid to the seller. The trustee may rely upon all proper certifications required to be made pursuant to this subsection (a), and shall not be liable to anyone for such reliance.

(b) Notwithstanding subsection (a), the trustee shall pay the seller, at the seller's option, the net income accumulated as of the end of any fiscal year; provided, that the trust assets after disbursement of income shall not have a market value of less than one hundred twenty percent (120%) of the aggregate procurement costs of all cemetery merchandise and services for which deposits are held in trust, subject to proration allowed under § 46-1-207. The seller shall exercise its option by delivering to the trustee a notarized certification of the procurement costs as of the first day of the seller's current fiscal year.

(c) Any specified funds held on behalf of a purchaser that have been dormant for a period of seventy-five (75) years since the time of deposit or last withdrawal against those moneys, may be considered to be closed accounts against which no further demand will be made by the purchaser, and the principal amount may be paid by the trustee to the seller's improvement care trust.

History

Acts 1979, ch. 307, § 4(C); T.C.A., § 46-2-204; Acts 1986, ch. 693, § 22; T.C.A. § 46-2-404; Acts 2006, ch. 1012, § 3; 2016, ch. 911, § 16.

46-1-209. Satisfaction of contract — Cancellation of contract — Substitution of cemetery merchandise or services.

(a) If for any reason a cemetery company that has entered into a contract for the sale of cemetery merchandise or services and has made the deposit into the trust funds as required in this part, cannot or does not provide the cemetery merchandise or perform the services called for by the contract within a reasonable time upon request, the purchaser, or the purchaser's heirs or assigns, or duly authorized representatives, shall have the right to provide the cemetery merchandise or services; and, having done so, shall be entitled to receive the deposit to the credit of that

particular contract. Written instructions to the trustee by the cemetery company directing the trustee to refund the amount of money on deposit, or an affidavit by either the purchaser, or one (1) of the purchaser's heirs or assigns, or duly authorized representative, stating that the cemetery merchandise or services were not provided, shall be sufficient authority for the trustee to make refund of the funds on deposit to the person submitting the affidavit. However, nothing in this subsection (a) shall relieve the cemetery company from any liability for nonperformance of the contract.

(b) If the purchaser is in default on making payments under the sales contract for a period of ninety (90) consecutive days, 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 that event, the trustee shall deliver the balance to the cemetery company upon its certification of the default by the purchaser; and upon receiving the certification, the trustee may rely on the certification and shall not be liable to anyone for such reliance.

(c) In the event the purchaser, or the purchaser's heirs or assigns, or authorized representatives, desire to substitute cemetery merchandise or services different from that which is specified in the sales contract because of changed conditions or practices in burial customs, the cemetery company shall give credit to the extent of all moneys already paid toward the payment of the substituted cemetery merchandise or services; provided, that the original sales contract has not been completed.

History

Acts 1979, ch. 307, § 4(E); T.C.A., § 46-2-206; T.C.A., § 46-2-406; Acts 2006, ch. 1012, § 3; 2015, ch. 288, § 7; 2016, ch. 911, § 16.

46-1-210. Waiver invalid.

Any provision of any contract for the sale of cemetery merchandise or the performance of services that purports to waive any of this part shall be null and void.

History

Acts 1979, ch. 307, § 4(G); T.C.A., § 46-2-208; T.C.A., § 46-2-408; Acts 2006, ch. 1012, § 3; 2016, ch. 911, § 16.

46-1-211. Part applicable to mausoleums, crypts and columbariums.

This part also applies to all corporations, persons, or businesses, except those corporations, persons or businesses owning and operating a cemetery that maintains an improvement care trust fund, and in which the mausoleum is to be, is being, or has been constructed, engaged in the construction and/or sale of mausoleums, crypts, columbariums or other structures constructed for public use, space in which is offered to the public by sale, and constructed wholly or partially above the surface of the ground or partly covered with earth or sod, for the purpose of permanently containing the dead or cremated remains of human bodies.

History

Acts 1963, ch. 202, § 1; 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-120; T.C.A., §§ 46-220, 46-2-120; T.C.A., § 46-2-303; Acts 2006, ch. 1012, § 3.

46-1-212. Sale of unconstructed or unfinished mausoleums, crypts and columbariums.

Any corporation, person, or business, except those corporations, persons or businesses owning and operating a cemetery that maintains an improvement care trust fund, and in which the mausoleum is to be, is being, or has been constructed, engaged in the public sale of burial space

in a mausoleum, crypt or columbarium that is not completely constructed at the time of a sale, shall withhold the first seventy-five percent (75%) of the proceeds of the sale, to be placed in trust or invested under this part, until such time as the mausoleum, crypt, or columbarium, space in which was sold, is completed. After completion, the improvement care trust fund provided in § 46-1-204 shall apply to the completed structure.

History

Acts 1963, ch. 202, § 1; 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-121; T.C.A., §§ 46-221, 46-2-121; T.C.A. § 46-2-304; Acts 2006, ch. 1012, § 3.

46-1-213. Construction of crypts.

A cemetery company shall commence construction or development of any undeveloped ground or building in which lawn or mausoleum crypts are to be constructed and in which sales, contracts for sale, or agreements for sales, are being made, within thirty-six (36) months after the date of the first sale. The construction or development of the undeveloped ground or building shall be completed within five (5) years after the date of the first sale. Failure to complete construction, as represented at the time of the first sale, shall entitle any purchaser, on demand, to recover all sums paid on the purchase price, plus interest at the rate of six percent (6%) per annum.

History

Acts 1979, ch. 307, § 4(D); T.C.A., § 46-2-205; T.C.A., § 46-2-405; Acts 2006, ch. 1012, § 3.

46-1-214. Trust account reports required — Inspection of trust account records.

(a)

(1) Not later than seventy-five (75) days after the end of each of its fiscal years, each cemetery company that engages in sales requiring the establishment of a trust account under this part shall file with the commissioner, on the prescribed form, a report containing:

(A) Beginning balances of deposited funds and accumulated earnings in the trust account;

(B) The deposits to the trust account during the year;

(C) The amount of earnings during the year;

(D) The amounts of the withdrawals of deposits and earnings remaining in trust at the end of the year; and

(E) The aggregate procurement costs, including transportation and labor, of all cemetery merchandise and services sold pre-need and yet to be delivered after the report year end; provided, that deferred or installment payments may be prorated to the extent allowed under § 46-1-207.

(2) The commissioner may require a cemetery company to submit reasonably detailed information in support of any report required under this section.

(3) An additional report shall not be required based on the establishment of trusts pursuant to this title and the Tennessee Prepaid Funeral Benefits Act, compiled in title 62, chapter 5, part 4. In such instance, only one (1) report shall be required.

(b) Not later than seventy-five (75) days after the end of the cemetery company's fiscal year, each trustee appointed under this part shall file with the commissioner, on the prescribed form, a report on each trust account established pursuant to this part. However, an additional report shall not be required based on the establishment of trusts pursuant to this title and the Tennessee Prepaid Funeral Benefits Act. In such instance, only one (1) report shall be required. The report shall contain the following information:

(1) The combined beginning balance of deposits and earnings in trust;

- (2) The aggregate amount of deposits received during the report year;
- (3) The amount of the earnings added to the trust account during the year;
- (4) The aggregate amount of deposits and earnings disbursed during the report year; and
- (5) The aggregate amount of the deposits and earnings remaining in trust at the end of the report year.

(c) For late filing of a report required under this section, a cemetery company shall pay a late penalty not to exceed one hundred dollars (\$100) for each month or fraction of a month that the report is late. The commissioner is authorized to establish the amount of the late penalty by promulgating rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commissioner may, in extenuating circumstances, grant an extension of time for filing a report and waive the penalty, on receipt of a written request before the report is overdue.

(d) If, on or before the date that a report would otherwise be due, a cemetery company notifies the commissioner that it has delivered all cemetery merchandise and services due for which a trust account was required, the company need not file a report.

(e) The commissioner shall promulgate and may, from time to time, revise rules and regulations for carrying out the intentions of this part, in accordance with the Uniform Administrative Procedures Act.

(f) The commissioner shall require an audit at least once every two (2) years, or more frequently if the commissioner deems it necessary, to ensure that each person, firm, or corporation that offers or enters into a contract for the sale of cemetery merchandise or services under this chapter will be able to perform its contract with the purchaser.

(g) The necessary expenses for any examination pursuant to this section shall be paid by the cemetery company at a rate set by the commissioner.

History

Acts 1986, ch. 693, § 24; 1992, ch. 922, § 7; 1997, ch. 400, § 4; T.C.A. § 46-2-410; Acts 2006, ch. 1012, § 3; 2016, ch. 911, §§ 11, 12, 16.

46-1-215. Financial reports.

(a) Within seventy-five (75) days after the end of the calendar year or its fiscal year and within seventy-five (75) days on an annual basis thereafter, each cemetery company shall file with the commissioner a report of its condition, on forms provided by the commissioner, which report shall contain the following information:

- (1) The name of the cemetery company, the date of incorporation, if incorporated, and the location of the cemetery or cemeteries owned by the company;
- (2) The amounts of sales of cemetery lots, grave spaces, mausoleum crypts or niches for which payment has been made in full or certificates or deeds of conveyance issued on cemetery lots, grave spaces, crypt or niches during the preceding calendar or fiscal year;
- (3) The amounts received for the special care of any lots, graves, crypts, niches, family mausoleums, memorials, markers or monuments;
- (4) The amounts received for the memorial care of commodities;
- (5) The amounts paid into the permanent improvement care fund, and the income earned from the fund during the preceding fiscal year;
- (6) The number of acres embraced within each cemetery and held by the cemetery company for cemetery purposes;
- (7) The names and addresses of the owners of the cemetery company or the officers and directors of the corporation, and any change of control that has occurred during the past calendar or fiscal year; and

(8) The total of all expenditures of income from the improvement care trust fund.

(b)

(1) Within forty-five (45) days after the end of the calendar or fiscal year of the cemetery company, the trustee of the improvement care fund of the cemetery company shall file with the commissioner a financial report with respect to the trust fund on forms that are obtained from the commissioner. The report shall include, but not be limited to, specific disclosure of the following:

(A) The current value of the assets, on both a book value and market value basis, and liabilities of the trust as of the beginning and end of the fiscal year of the trust;

(B) All sales, exchanges, or leases of any property between the trust and the cemetery company, any owner of an interest in the cemetery company, any officers or directors or managers of the cemetery company, or immediate family of any such person;

(C) Any loans by the trust or fixed income obligations due the trust that are classified as uncollectible or in default as of the close of the fiscal year of the trust;

(D) Whether the trust at any time held twenty percent (20%) or more of its assets in any single security, debt, mortgage, parcel of real estate, or partnership/joint venture interests;

(E) Whether the trust at any time engaged in any transaction or series of related transactions involving twenty percent (20%) or more of the current value of the trust; and

(F) Whether there were any purchases of nonpublicly traded securities by the trust, the value of which was set without an appraisal by an independent third party.

(2) The commissioner may require the trustee to make additional financial reports that the commissioner deems necessary.

(c) For late filing of a report required under this section, a cemetery company shall pay a late penalty not to exceed one hundred dollars (\$100) for each month or fraction thereof that the report is late. The commissioner is authorized to establish the amount of the late penalty by promulgating rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) The commissioner may promulgate rules and regulations that are reasonably necessary to require cemeteries to submit audited financial statements or other financial reports prepared by independent certified public accountants.

History

Acts 1927, ch. 75, § 3; mod. Code 1932, § 3924; Acts 1961, ch. 44, § 2; 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-106; Acts 1973, ch. 272, § 7; 1976, ch. 773, § 5; T.C.A., §§ 46-206, 46-2-106; Acts 1980, ch. 780, § 4; 1995, ch. 203, § 2; 1995, ch. 485, §§ 1, 6; 1997, ch. 374, § 1; T.C.A., § 46-2-202; Acts 2006, ch. 1012, § 3; 2009, ch. 356, § 5.

46-1-216. Verification of reports — Public records.

The annual reports required to be filed in this part shall be duly verified under oath by the owner of the cemetery company and the annual reports by the trustee of the trust fund. Upon filing, the reports shall become public records.

History

Acts 1927, ch. 75, § 3; mod. Code 1932, § 3925; Acts 1961, ch. 44, § 3; 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-107; T.C.A., §§ 46-207, 46-2-107; Acts 1995, ch. 485, § 2; 1997, ch. 374, § 2; T.C.A., § 46-2-203; Acts 2006, ch. 1012, § 3.

46-1-217. Agreement with owners of real property to conduct improvement care to graves located on property.

Interested persons, as that term is defined in § 46-4-102, may enter into an agreement with the owners of real property that is not designated as a cemetery, but does have human remains with

marked and identifiable graves, to conduct improvement care, as that term is defined in § 46-1-102, to the graves located on the real property. This section shall not be construed to require real property owners to provide the improvement care.

History

Acts 2006, ch. 1012, § 9.

46-1-218. Net earnings of improvement care trust fund sufficient for permanent maintenance and upkeep.

(a) When the improvement care trust fund has become sufficiently large that the net earnings, as defined in § 46-1-204, will ensure the permanent maintenance and upkeep of the cemetery, and the officers and board of directors are of the opinion that it is no longer necessary to continue to set aside twenty percent (20%) to the improvement care trust fund, or any part thereof, for the purpose of maintaining, keeping up and beautifying the cemetery, the board of directors may, in a regular or special meeting, pass a resolution declaring that belief.

(b) The cemetery company shall then be authorized to file a petition in the name of the company in the chancery court of Davidson County stating the passage of the resolution and other pertinent facts as it may desire, and asking that the cemetery company no longer be required to continue to make contributions to the improvement care trust fund or that the contributions be reduced. The petition shall be filed against the commissioner of commerce and insurance. The petition shall be accompanied by an audited balance sheet prepared by a Tennessee certified public accountant showing the financial position of the cemetery company from the date of the petition seeking relief. All financial information submitted shall be kept strictly confidential and shall be subject to a protective order limiting access to the information to the court and the attorney representing the commissioner.

(c) At the final hearing on the petition, the petitioner shall have the burden of proving its entitlement to relief by a preponderance of the evidence. In reaching its decision, the court shall consider at least the following factors, and shall state upon the record its findings:

(1) The financial position of the cemetery company on the date the petition seeking relief was filed;

(2) Whether the net earnings from the improvement care trust fund will be sufficient to provide future maintenance and upkeep of the cemetery for perpetuity; and

(3) The number of lots or grave spaces intended to be used for interment purposes versus the number of lots or grave spaces that have already been sold and the likely impact of the future sale of lots or grave spaces on the cost of maintenance and upkeep.

(d) Upon a final hearing of the issues, the chancery court is authorized to pronounce a decree that, in the opinion of the court from the proof and facts, either refusing any relief whatsoever or granting all of the relief prayed for, or granting any partial relief, that may appear proper to the court. The case shall be kept on the docket of the court, subject to any further orders and decrees that may from time to time appear proper upon any additional showing that may be made under any supplemental petition filed either by the original complainants, on behalf of the state, by any lot owner, or descendant or next of kin of a lot owner who may be entitled to any relief.

(e) In no event shall any relief granted under this part affect the cemetery owner's other obligations under this chapter.

(f) The cost and expenses of the proceeding in subsections (a)-(d) shall be taxed against and paid by the complainant, including reasonable and necessary attorney's fees to the defense attorney, to be determined by the court. The cost and expense shall be paid out of the complainant's general operating account and shall not be paid out of the principal of the improvement care trust fund.

(g) In the event the commissioner determines that any of the following events have occurred, any relief granted by the court to the cemetery company shall immediately terminate and required contributions as set forth in § 46-1-204 shall be resumed without further orders of the court:

(1) A finding by the commissioner that the balance of the improvement care trust fund has decreased by at least fifteen percent (15%) below the fair market value of the trust fund balance as of the date that the petition was filed;

(2) Any sale or transfer that requires notice to the commissioner pursuant to § 46-1-107; or

(3) Purchase of additional land by the cemetery company. The cemetery company shall provide notice of the purchase to the commissioner by certified mail within thirty (30) days of the purchase.

(h) Notice of any event in subsection (g) shall be provided by the commissioner to the cemetery company by certified mail and the cemetery company shall resume its obligation to make contributions to the improvement care trust fund beginning with transactions occurring thirty (30) days following receipt of notice, unless it challenges the accuracy of the determination. Any challenge shall be resolved by the chancery court of Davidson County in accordance with subsection (d), with court costs taxed to the petitioner.

History

Acts 2007, ch. 515, § 1.

46-1-301. Powers and duties of commissioner.

(a) The commissioner is responsible for administering and enforcing this chapter.

(b) The commissioner may promulgate rules and regulations that are reasonably necessary to effectuate the purposes of this chapter. All rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The commissioner may seek relief at law or equity to restrain or enjoin any act or practice in violation of this chapter, or of any rule and regulation promulgated for the administration or enforcement of this chapter. Jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine such a suit. No bond is required for the prosecution of the suit or for the issuance of an injunction.

History

Acts 1992, ch. 922, § 1; 1994, ch. 875, § 1; 2003, ch. 81, § 6; T.C.A. § 46-1-108; Acts 2006, ch. 1012, § 4; 2012, ch. 560, § 2.

46-1-302. Penalty for failure to file report.

(a) Any owner or officer of a cemetery company or officer of the trustee of the respective improvement care fund who willfully fails to make the required report, or to file the report of the trustee, required in this chapter, commits a Class A misdemeanor.

(b) Upon failure to receive an annual report from any cemetery company when due, the commissioner shall be notified, and shall immediately notify the cemetery company, by registered letter sent to the address found on the cemetery company's registration form, that the annual report has not been received. Failure of the cemetery company to file the annual report within fifteen (15) days after the registered letter is mailed shall constitute prima facie evidence of willful failure to file, and the commissioner has the discretion to order a conditional suspension of the certificate of registration and institute proceedings as set forth in §§ 46-1-311 and 46-1-312.

History

Acts 1927, ch. 75, § 5; Code 1932, § 3927; Acts 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-108; Acts 1976, ch. 773, § 6; T.C.A., §§ 46-208, 46-2-108; Acts 1989, ch. 591, §§ 1, 113; 1995, ch. 485, §§ 3, 4; 1997, ch. 374, § 2; T.C.A. § 46-2-204; Acts 2006, ch. 1012, § 4.

46-1-303. Duties and authority of commissioner.

(a) It is the duty of the commissioner or the commissioner's duly authorized representatives to examine the annual reports made by the cemetery companies and the annual reports made by the trustees, which shall be filed and carefully preserved as a part of the permanent records of the office. The commissioner or the commissioner's duly authorized representatives shall audit and examine the books, bank records, cash receipts and any other documents employed in preparing the annual reports of each cemetery company and trustee once every two (2) years. The commissioner or the commissioner's duly authorized representatives are authorized to audit and examine the books, bank records, cash receipts and any other documents employed in preparing the annual reports of each cemetery company and trustee more frequently than once every two (2) years whenever it appears to the commissioner that the cemetery company or trustee has failed to comply with any provisions contained in this chapter. Whenever it appears to the commissioner that any cemetery company has failed to comply with any provision contained in this chapter, the commissioner is authorized to examine the cemetery company, including all books, bank records, cash receipts and any other documents employed in the transaction of the cemetery company's business for the purpose of discovering violations of this chapter.

(b) The necessary expense of any examination made pursuant to this section shall be paid by the cemetery company at a rate set by the commissioner.

(c) The commissioner is further authorized, upon the finding of any irregularity or violation of this chapter to allow, at the commissioner's discretion, a reasonable time for the irregularity or violation to be corrected or to enforce compliance with this chapter through the chancery courts or other courts of the state having jurisdiction.

(d) In the event of an audit of a cemetery company authorized by subsection (a), § 46-1-207, § 46-1-214(f), or § 46-1-306, the commissioner or the commissioner's duly authorized representatives shall provide the cemetery company with the following:

(1) A nonbinding, written exit report containing the initial findings of the audit no more than fourteen (14) days after the conclusion of the field audit on the premises of the cemetery; and

(2) A final written report or a results of examination letter detailing the official findings of the audit no more than sixty (60) days after the conclusion of the audit.

(e) Nothing in this section shall invalidate or in any way lessen any finding of an audit that is not issued within the timeframes described in subsection (d).

History

Acts 1927, ch. 75, § 4; Code 1932, § 3296; Acts 1961, ch. 44, § 4; 1968, ch. 557, § 2; 1968, ch. 627, § 1; T.C.A. (orig. ed.), § 46-109; Acts 1971, ch. 432, § 1; 1973, ch. 272, §§ 8, 9; T.C.A., §§ 46-209, 46-2-109; Acts 1983, ch. 141, § 1; 1992, ch. 922, § 6; 1995, ch. 203, § 1; 1995, ch. 485, § 5; 1997, ch. 374, § 2; T.C.A. § 46-2-205; Acts 2006, ch. 1012, § 4; 2015, ch. 288, § 8.

46-1-304. Standard of cemetery care — Enforcement — Penalty for failure to maintain improvement care fund.

(a) As to matters within its reasonable control, a cemetery company shall maintain its cemeteries so as to reflect respect for the memory of the dead in keeping with the reasonable sensibilities of survivors of those whose remains are interred in the cemeteries.

(b)

(1) The district attorney general in whose district a cemetery is situated may bring an action in chancery court to remedy any violation of this section on the petition of five percent (5%) of, or

ten (10), lot owners and next of kin of lot owners, whichever is fewer; provided, that only one (1) survivor shall be qualified as a petitioner on account of kinship with one (1) deceased person.

(2) Upon finding that the cemetery is not being consistently maintained as provided in this section, the court shall appoint one (1) or more of the petitioners to perform the maintenance that the court finds to have been neglected and assess the costs of the maintenance to the cemetery company.

(3) After compliance with this section has been achieved, the court shall discharge the appointed petitioner or petitioners; provided, that the cemetery company agrees to provide an appropriate level of maintenance henceforth.

(4) If the trustee of the improvement care trust fund for the benefit of the cemetery has been made a defendant in the action, the court may order the trustee to disburse the net income from the trust to the court or the appointed petitioner or petitioners, and allocate the income to the cost of the maintenance approved by the court.

(c) The officers and directors of a cemetery company commit a Class E felony if they fail to set up and maintain the improvement care trust fund provided in § 46-1-204. They may all be jointly indicted in the same indictment. In addition, they shall be jointly liable at the suit of a lot owner, or descendant or next of kin of a lot owner, for the difference between the amount of the improvement care trust fund as set up by the company and what it should be if set up under the terms of § 46-1-204, plus interest from the date the fund should have been set up. Any recovery under this section or § 46-1-205 shall be for the use of the company and shall be paid into the improvement care trust fund, so as to bring it up to the required amount.

History

Acts 1927, ch. 75, § 7; mod. Code 1932, § 3929; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-112; T.C.A., §§ 46-212, 46-2-112; Acts 1986, ch. 693, § 18; 1989, ch. 591, § 113; 2002, ch. 659, § 1; T.C.A. § 46-2-306; Acts 2006, ch. 1012, § 4.

46-1-305. Attorney's fees.

In addition to the liabilities declared in § 46-1-304, the suitor who brings suit and recovers from a stockholder, director or officer of a company shall also recover reasonable attorney's fees, the amount of which shall be fixed and adjudged by the court before whom the case is tried.

History

Acts 1927, ch. 75, § 8; mod. Code 1932, § 3930; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-113; T.C.A., §§ 46-213, 46-2-113; T.C.A., § 46-2-307; Acts 2006, ch. 1012, § 4.

46-1-306. Reasons to refuse to issue or renew, and to revoke or suspend registration — Disciplinary action — Civil penalties — Compliance examination or independent audit — Withholding of earnings and disbursements — Authority to issue citations — Notification and sharing information.

(a) The commissioner may refuse to issue or renew, and may revoke or suspend, the registration of any cemetery registered pursuant to this chapter or corresponding provisions of prior law for any one (1) or more of the following reasons:

(1) Fraud or deceit on the part of a cemetery operator in application for registration;

(2) Cancellation, revocation, suspension or refusal to renew the registration of a cemetery for disciplinary reasons taken against the cemetery operator in any other state for any cause;

(3) Failure on the part of a cemetery operator to maintain compliance with the requirements for issuance or renewal of the registration;

- (4)** Revocation or suspension of the right of any cemetery operator to practice before any state or federal agency;
- (5)** Dishonesty, fraud, or gross negligence on the part of a cemetery company or any cemetery operator in the performance of any services regulated by this chapter or chapter 2 of this title;
- (6)** Violation, on the part of a cemetery operator of any provision of this chapter or chapter 2 of this title, or rule promulgated by the commissioner under this chapter or chapter 2 of this title;
- (7)** Violation, on the part of a cemetery company or any cemetery operator of any rule of professional conduct promulgated by the commissioner;
- (8)** Conviction on the part of a cemetery company or any cemetery operator of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this state, or of any other state or country, if the acts involved would have constituted a crime under the laws of this state;
- (9)** Performance on the part of a cemetery company or any cemetery operator of any fraudulent act while holding an interest in a registered cemetery issued under this chapter or prior law;
- (10)** Failure on the part of a cemetery company or any cemetery operator, or on the part of the trustee or any officer of the trustee, to timely and completely file the reports required by this chapter;
- (11)** Failure on the part of a cemetery company or any cemetery operator to set up and fully fund the improvement care trust fund required by this chapter;
- (12)** Failure on the part of a cemetery company or any cemetery operator to set up and fully fund the pre-need merchandise and services trust fund required by this chapter;
- (13)** Failure on the part of a cemetery company or any cemetery operator to maintain the cemetery grounds as set forth at § 46-1-304, and in any rule promulgated for the administration or enforcement of this chapter;
- (14)** Making any false or misleading statement or verification in support of an application for a registration filed by another;
- (15)** Violation on the part of a cemetery company or any cemetery operator of the terms of any lawful order entered by the commissioner; and
- (16)** Selling an interment site or interment right that the cemetery or cemetery operator knew or should have known had been purchased previously by another consumer. This subdivision (a)(16) shall not be construed to prohibit a cemetery company or cemetery operator from selling an interment site that has been determined to have escheated to the cemetery company pursuant to §§ 46-2-103 - 46-2-105. This subdivision (a)(16) shall not be construed to prohibit a consumer who has purchased an interment site from selling or disposing of the interment site in the discretion of that consumer, if the disposition is otherwise in accordance with applicable law.
 - (b)** In addition to or in lieu of any other lawful disciplinary action, the commissioner may assess civil penalties in an amount not to exceed one thousand dollars (\$1,000) for each separate violation of a law, rule or order pertaining to this chapter. Each day of continued violation constitutes a separate violation.
 - (c)** The commissioner is authorized to assess a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) against the trustee of any trust fund authorized or required by this chapter, for each separate violation of this chapter or of any rule promulgated for the administration or enforcement of this chapter, including, but not limited to, improperly making disbursements from such funds. Each day of continued violation constitutes a separate violation.
 - (d)** In addition to or in lieu of any disciplinary action specifically provided for in subsection (a), (b) or (c), the commissioner may order the following action against any cemetery company found to be in violation of this chapter or any rule promulgated under this chapter:

(1) A compliance examination of the cemetery by the commissioner or the commissioner's duly authorized representatives, to be funded by the cemetery company;

(2) An independent audit of the cemetery performed by a certified public accountant, to be funded by the cemetery company.

(e) In addition to or in lieu of any disciplinary action against a cemetery company found to be in violation of this chapter or any rule promulgated under this chapter, the commissioner may:

(1) Direct the trustee of a cemetery's improvement care trust fund to withhold earnings and disbursements if the fund is not fully funded in accordance with this chapter; and

(2) Direct the trustee of a cemetery's merchandise and services trust fund to withhold earnings and disbursements if the fund is not fully funded in accordance with this chapter.

(f)

(1) The commissioner or the commissioner's duly authorized representatives are authorized to issue citations, following an on-site inspection, against cemetery companies for failure to maintain the cemetery grounds as set forth at § 46-1-304.

(2) Each citation shall be in writing and shall describe with particularity the basis of the citation.

(3) Each citation shall contain an order to cease all violations of this chapter and an assessment of a civil penalty in an amount not to exceed one thousand dollars (\$1,000).

(4) The commissioner shall promulgate rules and regulations to specify those conditions necessary to the issuance of a citation, and the range of penalties for violations of this chapter.

(g) In any proceeding in which discipline provided by subsection (a), (b), (c) or (d) is imposed, the commissioner may also require the respondent cemetery company to pay all costs of the proceeding.

(h) The Uniform Administrative Procedures Act, compiled in title 4, chapter 5, governs all matters and procedures respecting the hearing and judicial review of any contested case arising under this chapter or chapter 2 of this title.

(i) In any case where the commissioner renders a decision imposing discipline against a cemetery company under this section, the commissioner shall examine the commissioner's records to determine whether the cemetery company holds a registration or a permit in any other state. If so, the commissioner shall notify the cemetery regulatory authority of the other state of its decision, by mail, within forty-five (45) days of rendering the decision. The commissioner may also furnish information relating to proceedings resulting in disciplinary action to other public authorities and to private professional organizations having a disciplinary interest in the registrant. Where a petition for review has been filed pursuant to the Uniform Administrative Procedures Act, the notification and furnishing of information provided for in this subsection (i) shall await the resolution of the review and, if resolution is in favor of the cemetery, no notification or furnishing of information shall be made.

History

Acts 2006, ch. 1012, § 4.

46-1-307. Violations — Penalties — Enforcement.

(a) Any cemetery company or seller who, having received any moneys under or in connection with a pre-need sales contract for cemetery merchandise and services, fails to deposit or keep on deposit the moneys as required in this chapter, or who fails to substantially perform the contract described in this chapter, commits a Class E felony.

(b) In addition to other remedies, the commissioner may, upon determining that any deficiency exists in any trust account required under this chapter, order the liquidation of the deficiency upon the terms and conditions that the commissioner determines to be appropriate. If the deficiency has not been liquidated as ordered, the commissioner may bring an action in chancery

court to recover the amount of the trust deficiency. Upon finding that a deficiency exists, the court may appoint a receiver to operate the cemetery or, if necessary, order the seizure and sale of the assets of the cemetery company, to the end that the trust be made whole. The court may also award reasonable attorney's fees for the attorney representing the commissioner in an action brought under this section; provided, that the commissioner may not impose any penalty or bring any action against any person, firm or corporation that purchased a cemetery prior to July 1, 1986, with respect to a deficiency in any trust account required under this chapter related to transactions that occurred prior to July 1, 1986.

History

Acts 1979, ch. 307, § 4(F); T.C.A., § 46-2-207; Acts 1986, ch. 693, § 23; 1989, ch. 591, § 113; T.C.A., § 46-2-407; Acts 2006, ch. 1012, § 4; 2016, ch. 911, § 16.

46-1-308. Fraud as to pre-need sales contract.

In civil actions in which the prevailing party proves fraud relative to a pre-need sales contract for cemetery merchandise and services under this chapter, the prevailing party shall receive treble damages, together with attorney's fees, costs, and interest.

History

Acts 1997, ch. 400, § 3; T.C.A. § 46-2-411; Acts 2006, ch. 1012, § 4.

46-1-309. Revocation of charter or certificate of authority.

Failure to comply with § 46-1-204 or § 46-1-215 shall constitute grounds for the state to revoke the charter or certificate of authority of a corporate cemetery company. The revocation proceeding may be filed in the chancery court of the county where the cemetery is located, and may be brought on relation of the state or district attorney general. The court hearing the proceeding may order the seizure and sale of the cemetery company's assets to the extent necessary to set up the improvement care trust fund as required. If the court revokes the charter or certificate of authority, it may order the sale of the whole company property after the improvement care trust fund has been set up, so that the purchaser of the cemetery may continue to operate and maintain it under the terms of this chapter. The court may also award reasonable attorney's fees for the attorney representing the state in a proceeding brought under this section.

History

Acts 1927, ch. 75, § 9; Code 1932, § 3931; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-114; T.C.A., §§ 46-214, 46-2-114; modified; Acts 1986, ch. 693, § 19; T.C.A. § 46-2-308; Acts 2006, ch. 1012, § 4.

46-1-310. Action by state for recovery of illegally paid dividends.

(a) The state is authorized to recover from stockholders, for the use of the company, dividends illegally paid under § 46-1-205.

(b) The state is also authorized to recover from the officers and directors of the company and the cemetery operators, at any time, for the use of the company, an amount sufficient to bring the improvement care trust fund up to the amount required, together with reasonable attorney's fees for the attorney handling the suit, to be fixed and adjudged by the court trying the case.

History

Acts 1927, ch. 75, § 10; Code 1932, § 3932; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-115; T.C.A., §§ 46-215, 46-2-115; T.C.A. § 46-2-309; Acts 2006, ch. 1012, § 4.

46-1-311. Deficiency in improvement care fund — Failure to file reports — Effect — Orders.

(a) The commissioner may, upon determining that a deficiency exists in the improvement care fund or that a cemetery company has willfully failed to file annual reports, as provided in § 46-1-302, of any cemetery or separate geographical site of a cemetery as required by this chapter, order the correction of the deficiency or failure to file, upon the terms and conditions that the commissioner determines to be appropriate.

(b) While the owner or operator of the cemetery or separate geographical location is in compliance with the terms and conditions of the order, the provisions of § 46-1-205 relative to the payment of dividends, salaries or compensation shall be suspended.

(c)

(1) Upon failure of the owner or operator of the cemetery or separate geographical site of a cemetery to correct the deficiency or failure to file as ordered, the commissioner may issue a conditional suspension of the certificate of registration required by § 46-1-103.

(2) The conditional suspension shall be accompanied by an order to correct the deficiency within a stated time, not less than thirty (30) days after issuance of the order.

(3) A conditional suspension of the registration certificate shall not have the effect of interrupting the operation of the cemetery company. It is the purpose of this chapter to provide for an orderly transition from operation by the owner to operation by a receiver, in cases where trust fund deficiencies cannot otherwise be corrected.

(4) If the deficiency is corrected within the time limit stated, further action on the suspension or receivership shall be terminated; provided, that the termination of a suspension shall not be construed to prohibit further actions toward suspension or receivership if a deficiency is determined to exist at a later time.

(d) The commissioner is authorized, upon determining that a substantial deficiency exists in the improvement care fund, to order the cemetery company to correct the deficiency and also to pay to the improvement care fund an amount equal to ten percent (10%) of the deficiency.

History

Acts 1976, ch. 773, § 9; T.C.A., §§ 46-222, 46-2-122; Acts 1995, ch. 485, § 7; T.C.A., § 46-2-311; Acts 2006, ch. 1012, § 4.

46-1-312. Requirements for appointing a receiver to manage a cemetery.

(a)

(1) The Davidson County chancery court, upon the petition of the commissioner, may appoint the commissioner as receiver to take charge of, control and manage a cemetery registered or required to be registered with the commissioner, upon determining that any of the following grounds exist:

(A) The cemetery has not maintained trust funds in the manner required by this chapter;

(B) The cemetery has allowed its registration to lapse, or the registration has been revoked;

(C) The cemetery is impaired or insolvent;

(D) The cemetery has refused to submit its books, records, accounts, or affairs to examination by the commissioner;

(E) There is reasonable cause to believe that there has been embezzlement, misappropriation, or other wrongful misapplication or use of trust funds or fraud affecting the ability of the cemetery to perform its obligation to perform improvement care or deliver cemetery merchandise or services;

(F) The cemetery has failed to file any report required by this chapter;

(G) The cemetery cannot or will not be able to meet all of its contractual obligations when they come due;

(H) A deficiency exists in the improvement care trust fund of any cemetery or separate geographical site of a cemetery; or

(I) The cemetery is not being operated in compliance with the terms and conditions of an order of the commissioner then in force and effect.

(2) For the purpose of this section, the Davidson County chancery court shall have exclusive jurisdiction over matters brought under this section, and that court is authorized to make all necessary or appropriate orders to carry out the purposes of this part.

(3) Receivership proceedings instituted pursuant to this part shall constitute the sole and exclusive method of liquidating, rehabilitating, or conserving a cemetery, and no court shall entertain a petition for the commencement of the proceedings unless the petition has been filed in the name of the state on the relation of the commissioner.

(4) The commissioner shall commence any such proceeding by application to the court for an order directing the cemetery to show cause why the commissioner should not have the relief prayed for in the application.

(5) On the return of the order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the public may require.

(6) The commissioner may appoint one (1) or more special deputies, who have all the powers and responsibilities of the receiver granted under this section and the commissioner may employ such counsel, clerks and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks and assistants, and all expenses of taking possession of the cemetery and of conducting the proceedings, shall be fixed by the commissioner, with the approval of the Davidson County chancery court, and shall be paid out of the funds or assets of the cemetery. The persons appointed under this subsection (a) shall serve at the pleasure of the commissioner.

(7) The receiver may take such action as the receiver deems necessary or appropriate to reform and revitalize the cemetery. The receiver has all the powers of the owners and directors, whose authority shall be suspended, except as they are redelegated by the receiver. The receiver has full power to direct and manage, to hire and discharge any employees subject to any contractual rights they may have, and to deal with the property and business of the cemetery.

(8) If it appears to the receiver that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the cemetery by any owner, officer, director or other person, the receiver may pursue all appropriate legal remedies on behalf of the cemetery.

(9) If the receiver determines that reorganization, consolidation, conversion, merger or other transformation of the cemetery is appropriate, the receiver shall prepare a plan to effect those changes. Upon application of the receiver for approval of the plan, and after such notice and hearings as the Davidson County chancery court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned, taking into consideration the overall operation of the cemetery, and the interests of the lot owners, next of kin of lot owners, and descendants of lot owners and the general public. If the plan is approved, the receiver shall carry out the plan.

(b) The receiver so appointed may employ the proceeds from the sale of lots, and all other saleable items and the income from the operation of the cemetery, over and above that portion due the improvement care trust fund, and other special care funds, and the amount reasonably necessary for the operation and maintenance of the cemetery business, to reduce the deficiency in the improvement care trust fund, upon the terms and conditions and in the manner deemed appropriate by the chancellor, taking into consideration the overall operation of the cemetery,

and the interests of the lot owners, next of kin of lot owners, and descendants of lot owners and the general public.

(c) If the sole ground for a receivership was a deficiency in the improvement care trust fund, the chancellor shall, upon a showing that the deficiency in the improvement care trust fund has been eliminated, terminate the suspension of the certificate of registration, compensate the receiver, dissolve the receivership, and restore the management of the cemetery to its owner.

(d) Should it appear to the court that it is impossible to correct the deficiency in the improvement care fund, the court may proceed to order the sale of the cemetery as provided in § 46-1-309, or may otherwise order the termination of the use of the land as a cemetery as provided by law.

(e)

(1) For purposes of this subsection (e), Davidson County chancery court has exclusive jurisdiction over matters brought under this subsection (e). In addition, any receiver appointed pursuant to this subsection (e) is authorized to use all remedies available to a receiver pursuant to title 56, chapter 9.

(2) Notwithstanding any provision of this section to the contrary, and in addition to or in lieu of any other authority granted to the commissioner by this chapter, the commissioner may file in the Davidson County chancery court a petition alleging, with respect to a cemetery subject to registration pursuant to this chapter:

(A) That there exists grounds that would justify a court order of a deficiency in either the improvement care or pre-need merchandise and services trust fund of a cemetery;

(B) That the interests of the public will be endangered by delay; and

(C) The contents of an order deemed necessary by the commissioner.

(3) Upon a filing under subdivision (e)(2), the Davidson County chancery court may issue, ex parte and without a hearing, the requested order, which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents and other records of a cemetery, and of the premises occupied by it for transaction of its business, and until further order of the court, enjoin the cemetery and its owners, officers, directors, operators, managers, agents and employees from disposition of its property and from the transaction of its business, except with the written consent of the commissioner.

(4) The Davidson County chancery court shall specify in the order what its duration shall be, which shall be such time as the court deems necessary for the commissioner to ascertain the condition of the cemetery. On motion of either party or on its own motion, the court may, from time to time, hold such hearings as it deems desirable after notice as it deems appropriate, and may extend, shorten or modify the terms of the seizure order. The court shall vacate the seizure order, if the commissioner fails to commence a contested case proceeding to impose any appropriate, lawful disciplinary action against the cemetery after having had a reasonable opportunity to do so. An order of the commissioner pursuant to a contested case proceeding under this chapter shall ipso facto vacate the seizure order.

(5) Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the cemetery.

(6)

(A) The commissioner may appoint one (1) or more special deputies, who have all the powers and responsibilities of the receiver granted under this section and the commissioner may employ such counsel, clerks and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks and assistants, and all expenses of taking possession of the cemetery company and of conducting the proceedings, shall be fixed by the commissioner, with the approval of the Davidson County chancery court, and shall be paid out of the funds or assets of the cemetery. The persons appointed under this section shall serve at the pleasure of the commissioner.

(B) In the event that the property of the cemetery or its owners, officers, directors or operators does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs incurred out of any appropriation for the maintenance of the department of commerce and insurance. Any amounts advanced for expenses of administration shall be repaid to the commissioner for the use of the department out of the first available money of the cemetery.

(7) The receiver may take such action as the receiver deems necessary or appropriate to reform and revitalize the cemetery. The receiver has all the powers of the owners, directors and operators, whose authority shall be suspended, except as they are redelegated by the receiver. The receiver has full power to direct and manage, to hire and discharge any employees subject to any contractual rights they may have, and to deal with the property and business of the cemetery.

(8) If it appears to the receiver that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the cemetery by any owner, officer, director, operator or other person, the receiver may pursue all appropriate legal remedies on behalf of the cemetery.

(9) If the receiver determines that reorganization, consolidation, conversion, merger or other transformation of the cemetery is appropriate, the receiver shall prepare a plan to effect those changes. Upon application of the receiver of approval of the plan, and after such notice and hearings as the Davidson County chancery court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the receiver shall carry out the plan.

History

Acts 1976, ch. 773, § 10; T.C.A., §§ 46-223, 46-2-123; T.C.A., § 46-2-312; Acts 2006, ch. 1012, § 4; 2010, ch. 665, § 1; 2014, ch. 560, §§ 1, 2; 2016, ch. 911, § 16.

46-1-313. Trespass on or injury to cemetery property — Interference with processions or religious exercises — Penalty.

(a) No person shall willfully destroy, deface, or injure any monument, tomb, gravestone, or other structure placed in the cemetery, or any roadway, walk, fence or enclosure in or around the cemetery, or injure any tree, plant or shrub, or hunt or shoot, play at any game or amusement, or loiter for lascivious or lewd purposes in the cemetery, or interfere, by words or actions, with any funeral procession or any religious exercises.

(b)

(1) A violation of this section is a Class E felony.

(2) Following conviction of a person for violating subsection (a), evidence of damages sustained as a result of the violation shall be presented to the jury, which shall ascertain the total amount of the damages. The court shall then render judgment in that amount against the offender in favor of the cemetery and/or the other aggrieved parties and shall order the offender to make full restitution for the damages. Execution of the judgment shall issue as in other civil cases. The order of restitution shall be in addition to other sanctions imposed pursuant to subdivision (b)(1).

History

Acts 1875, ch. 142, § 9; Shan., § 2182; Code 1932, § 3920; Acts 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-118; Acts 1976, ch. 708, § 2; T.C.A., §§ 46-218, 46-2-118; Acts 1989, ch. 591, § 40; 1995, ch. 134, § 1; T.C.A. § 46-2-105; Acts 2006, ch. 1012, § 4.

46-2-101. Cemetery rules and regulations.

(a)

(1) The owner of every cemetery may make, adopt, and enforce, and from time to time may amend, add to, revise, change, modify, or abolish, reasonable rules and regulations for:

- (A)** The use, care, control, management, restriction, and protection of the cemetery, and of all parts and subdivisions of the cemetery;
- (B)** Restricting, limiting, and regulating the use of all property within the cemetery;
- (C)** Regulating and preventing the introduction and care of plants or shrubs within the grounds;
- (D)** Regulating the conduct of persons and preventing improper assemblages in the cemetery; and
- (E)** All other purposes deemed necessary by the owner of the cemetery for the proper conduct of the business of the cemetery and the protection or safeguarding of the premises and the principles, plans, and ideas on which the cemetery was organized.

(2) The owner of the cemetery may prescribe penalties for the violation of any rule or regulation. These penalties may be recovered by the owner of the cemetery in a civil action.

(3) The rules and regulations shall be plainly printed or typewritten, posted conspicuously and maintained, subject to inspection and copying, at the usual place for transacting the regular business of the cemetery; provided, that no cemetery to which chapter 1 of this title is applicable has the power to adopt any rule or regulation in conflict with chapter 1 of this title or in derogation of the contract rights of lot owners.

(b)

(1) The owner of every cemetery has the further right to establish reasonable rules and regulations regarding the type, material, design, composition, finish, and specifications of all commodities to be used or installed in the cemetery. The rules and regulations shall be posted conspicuously and maintained, subject to inspection and copying, at the usual place for transacting the regular business of the cemetery. No cemetery owner has the right to prevent the use of any commodity purchased by a lot owner, or the owner's representative, agent, or heirs or assigns from any source; provided, that the use meets the rules.

(2) A cemetery owner shall be permitted to prohibit the installation of a commodity by non-cemetery personnel; provided, that the fee charged by the cemetery owner for installation of the commodity does not exceed twenty-six cents (26¢) per square inch of the ground covered by the commodity. At the end of each calendar year, the cemetery owner shall be permitted to increase the fee for the installation of commodities by no more than the percentage representing the consumer price index at the end of that calendar year. The charge for installation of a commodity by the cemetery owner shall be the same to all persons, regardless of the source of the commodity. The cemetery owner shall install all commodities furnished from sources other than the cemetery within thirty (30) days of the receipt of the commodity, weather permitting.

(3) If the fee charged by a cemetery owner for installation of a commodity exceeds the fee scale described in subdivision (b)(2), then the cemetery owner shall permit installation of the commodity by non-cemetery personnel, if requested by the lot owner, or the owner's representative, agent, or heirs or assigns. If non-cemetery personnel are permitted to install a commodity, they shall not be denied reasonable access to the lot or grave space for the purpose of installing or servicing the commodity. The cemetery owner shall not deny information pertinent to the place of burial and respective grave location or installation location of the commodity. The information shall be furnished within a reasonable period of time, not to exceed fourteen (14) days after receipt of the request for information. The cemetery owner shall not charge for furnishing the information necessary for the proper installation of the commodity.

(c) The cemetery owner shall not charge for any service not performed. The cemetery owner shall be allowed to charge an administrative, processing, or documentation fee; provided, however, that the fee is an equal amount charged to all cemetery customers and that the fee shall

not exceed one hundred dollars (\$100) per agreement or transaction, including, but not limited to, allowing non-cemetery personnel to install or have installed a commodity or monument. The cemetery owner shall not charge any fees on any transaction in addition to the cost of the merchandise or services other than the administrative, processing, or documentation fee.

(d) All cemetery owners shall have a full and complete schedule of all charges for services provided by the cemetery plainly printed or typewritten, posted conspicuously and maintained, subject to inspection and copying, at the usual place for transacting the regular business of the cemetery. Any cemetery company that sells funeral merchandise must maintain a price list for that funeral merchandise that shall be provided to any person who inquires about funeral merchandise or the price of such merchandise.

History

Acts 1873, ch. 94, § 4; Shan., § 3053; mod. Code 1932, § 5372; Acts 1968, ch. 557, § 3; T.C.A., § 46-302; Acts 1980, ch. 780, §§ 8, 9; T.C.A., 46-3-102; T.C.A., 46-3-103; Acts 2006, ch. 1012, § 5; 2016, ch. 838, § 1.

46-2-102. Action of trespass for damage.

All offenders shall be liable in an action of trespass in the name of the managers or trustees, to pay all damages that have been occasioned by their unlawful acts, which money, when recovered, shall be applied by the managers or trustees to the reparation of the property injured or destroyed.

History

Acts 1873, ch. 94, § 6; Shan., § 3059; Code 1932, § 5379; T.C.A. (orig. ed.), § 46-308; T.C.A. § 46-3-108; T.C.A. § 46-3-109; Acts 2006, ch. 1012, § 5.

46-2-103. Escheat of lots to cemetery owner.

In order to facilitate a more efficient and economical system for caring for and maintaining and improving cemeteries owned and operated by municipalities, corporations and associations within this state, it is provided that after March 21, 1955, all vacant cemetery lots and grave spaces owned by any person dying intestate without issue and leaving no known relatives entitled by the law of descent to the cemetery lots and grave spaces shall escheat to the municipalities, corporations, associations or other owners of a cemetery where vacant lots and grave spaces exist, owned by any person dying testate without devising the vacant cemetery lots or grave spaces, and leaving no lawful heirs, as the case may be, entitled by law to take the vacant cemetery lots or grave spaces, or where the devisees or heirs are incapable of taking the vacant cemetery lots or grave spaces and where there are no lawful heirs, as the case may be.

History

Acts 1955, ch. 279, § 1; T.C.A., § 46-309; T.C.A., § 46-3-109; T.C.A., § 46-3-110; Acts 2006, ch. 1012, § 5.

46-2-104. Suit for escheat — Notice — Parties.

In all cases where municipalities, corporations, associations or other owners of cemeteries have a good right to believe any vacant cemetery lots or grave spaces have escheated to it, the municipalities, corporations, associations or other owners are empowered to bring suit for the escheated property and shall make defendants to its bill filed in the cause the personal representative of the deceased, if known, and all other persons who are in possession or in any manner or way claim any interest in or to the vacant cemetery lots or grave spaces. If the parties are residents of the state, they shall be served with process; if the parties are nonresidents of the state, they shall be made parties by publication, according to law. In addition to the defendants

named pursuant to this section under the bill, there shall be publication made for thirty (30) days in a newspaper in the county in which the bill is filed, or if no newspaper is published in the county, then in the nearest newspaper so published, calling upon unknown heirs of the deceased person claiming under the deceased person, in any manner or way, whatever, to enter an appearance as defendants to the bill or suit, and all persons having an interest in the bill or suit may come into court and defend the bill or suit according to the rule of the court.

History

Acts 1955, ch. 279, § 2; T.C.A., § 46-310; T.C.A., § 46-3-110; T.C.A., § 46-3-111; Acts 2006, ch. 1012, § 5.

46-2-105. Hearing and decree of escheat.

In determining the escheat of any vacant cemetery lots or grave spaces to any municipalities, corporations, associations or other owners of cemeteries, the court shall hear proof, and if satisfied that it would be best for the vacant cemetery lots or grave spaces to escheat, shall decree accordingly.

History

Acts 1955, ch. 279, § 3; T.C.A., § 46-311; T.C.A., § 46-3-111; T.C.A., § 46-3-112; Acts 2006, ch. 1012, § 5.

46-2-106. Contracts for the sale of commodities.

(a)

(1) A contract for the sale of a commodity shall be executed in duplicate and a signed copy given to the purchaser. The contract shall fully and conspicuously disclose in simple and readily understood language the terms and conditions of the contract.

(2) The contract shall specifically state the purchase price of the commodity, the installation fee, and any charge for memorial care of the commodity made pursuant to § 46-1-204.

(b) This section does not apply to cemeteries described in § 46-1-105; provided, that the cemeteries do not engage in the sale of memorials consisting of permanent monuments or gravemarkers of marble, granite, or bronze, bronze plaques, or bronze vases.

History

Acts 1980, ch. 780, § 11; T.C.A., § 46-3-112; T.C.A., § 46-3-113; Acts 2006, ch. 1012, § 5.

46-2-107. Funds to maintain cemeteries.

(a) Notwithstanding any law to the contrary, upon a majority vote of the legislative body of the local government, the local government may draw upon its general fund and may solicit, receive, and utilize funds from all other sources, public or nonpublic, for the purpose of rehabilitating or maintaining dilapidated or abandoned cemeteries, or portions of cemeteries, subject to the limitations imposed by subsection (b). The maintenance may include:

(1) Clearing vegetation or debris as appropriate, planting and otherwise improving the premises, cutting the grass and raking and cleaning cemetery plots at reasonable intervals;

(2) Repairing and preserving the drains, water lines, roads, fences, statues, fountains and other structures;

(3) Securing, maintaining or reconstructing the necessary records of lot ownership and burials;

(4) Resetting or straightening tipped gravemarkers, monuments or memorials; or

(5) Replacing damaged gravemarkers, monuments or memorials.

(b) This section shall not be construed to authorize any local government to utilize funds to maintain cemeteries or portions of cemeteries that are presently maintained adequately or that maintain a sufficient improvement care trust fund pursuant to this chapter and chapter 1 of this title.

(c) As used in this section, “local government” means any county, municipality, city, or other political subdivision of this state.

History

Acts 1980, ch. 814, § 1; T.C.A., § 46-3-114; Acts 2006, ch. 1012, § 5; 2016, ch. 924, §§ 1-3.

Tit. 46, Ch. 3 Note

46-4-101. Grounds affected — Facts that justify termination of use.

This chapter, which is enacted for the public welfare in the exercise of the police powers of the state of Tennessee, applies to any burial ground in this state, including any land owned or controlled by cemetery companies, that the court to which jurisdiction is given by this chapter finds, for any of the reasons stated in this chapter, is unsuitable for its use as such and as a resting place for the dead whose remains are buried in the burial ground, or the further use of which for those purposes the court finds, for any of such reasons, is inconsistent with due and proper reverence or respect for the memory of the dead or otherwise unsuitable for those purposes, the reasons being:

(1) The burial ground is abandoned; or

(2) The burial ground is in a neglected or abandoned condition; or

(3) The existence of any conditions or activities about or near the burial ground that the court finds render the further use of the burial ground for the purposes mentioned in this section that are inconsistent with due and proper reverence or respect for the memory of the dead, or for any other reason unsuitable for those purposes.

History

Acts 1949, ch. 15, § 1; C. Supp. 1950, §§ 3936.1, 5379.1 (Williams, § 9720.1); modified; T.C.A. (orig. ed.), § 46-401.

46-4-102. “Interested persons” defined.

As used in this chapter, unless the context otherwise requires, “interested persons” means any and all persons who have any right or easement or other right in, or incident or appurtenant to, a burial ground as such, including the surviving spouse and children, or if no surviving spouse or children, the nearest relative or relatives by consanguinity of any one (1) or more deceased persons whose remains are buried in any burial ground.

History

Acts 1949, ch. 15, § 2; C. Supp. 1950, § 5379.2 (Williams, § 9720.2); T.C.A. (orig. ed.), § 46-402.

46-4-103. Suits for termination of use of land, removal and reinterment and for disposal of land — Municipal authority extended.

(a) Any interested person or persons, and/or any county in this state in which a burial ground is situated, and/or any municipality in this state if the burial ground is situated in the municipality or within one (1) mile of the lawful corporate limits of the municipality and not beyond the limits of the county in which any part of the municipality is situated and not within the lawful corporate limits of any other municipality in Tennessee, may bring or join in a suit in the chancery court of the county in which the burial ground is situated, for the following purpose or purposes:

(1) To have the remains of all deceased persons buried in the burial ground removed from the burial ground and reburied in a suitable repository to be obtained for that purpose before their removal from the burial ground;

(2) To terminate the use of, and all rights and easements to use, the ground as a burial ground, and all rights and easements incident or appurtenant to the ground as a burial ground; and

(3) Thereupon, to partition or sell for partition the ground if the court finds that it belongs to two (2) or more persons and if any one (1) or more of the owners applies for partition. The authority of all municipalities in this state is extended, for the sole purpose of bringing or joining in the suit by the municipality, but for no other purpose, to a distance of one (1) mile from the lawful corporate limits of the municipality but not beyond the limits of the county in which any part of the municipality is situated and not so as to come within the lawful corporate limits of any other municipality of this state.

(b) In the suit, all interested persons who are not complainants shall be made defendants, and the owner or owners of the land or of any right of reversion or other right or interest in the land, if the owner or owners shall be or include other than the interested persons, shall also be made defendants. Interested persons who are minors or otherwise incompetent or under disability may become complainants by guardian or next friend. All known defendants who are minors or otherwise incompetent or under disability shall be represented by guardian ad litem. Nonresident and unknown defendants may be proceeded against by order of publication, and publication, in the manner provided by law.

(c)

(1) At least thirty (30) days prior to any hearing on a suit initiated pursuant to this section, the complainant shall file notice with the Tennessee historical commission. The notice shall include the approximate age of the burial ground and either:

(A) The name of the complainant, the location of the burial ground, and, if discernable, the name of any person interred at the burial ground; or

(B) An exact copy of the complaint filed in the chancery court.

(2) The Tennessee historical commission shall post filed notices on its website. Notices shall be posted in chronological order by county and updated at least monthly. The Tennessee historical commission may archive notices annually.

(3) Notwithstanding subdivisions (c)(1) and (2), any notice concerning the removal of Native American Indian human remains shall be filed according to title 11, chapter 6, and must not be posted on the website of the commission.

History

Acts 1949, ch. 15, § 3; mod. C. Supp. 1950, § 5379.3 (Williams, § 9720.3); T.C.A. (orig. ed.), § 46-403; Acts 2018, ch. 1032, § 1.

46-4-104. Granting of relief — Provisions for reinterment.

Such removal and reinterment, and other relief described in § 46-4-103, including partition or sale for partition if prayed for and if the court finds the conditions for partition exist as provided in § 46-4-103, shall be granted, authorized, decreed and ordered by the court upon the court finding, upon the hearing of the cause upon the entire record, including the pleadings and proof, that any one (1) or more of the reasons specified in § 46-4-101 exist, and that, due to the same, the burial ground is unsuitable for use as a burial ground and as a resting place for the dead whose remains are buried therein, or that the further use thereof for those purposes is inconsistent with due and proper reverence or respect for the memory of the dead, or for any other reason unsuitable for those purposes; but the removal and reinterment and such other relief shall be granted, authorized, ordered and decreed only upon it being shown to the satisfaction of the court that definite arrangements have been made, or before the removal will be made, for reinterment

of all of the remains in a place found by the court to be suitable for reinterment; that for that purpose there have been obtained, or before the removal there will be obtained, either the fee simple title to the place of reinterment or adequate permanent right and easement to use the place of reinterment for reinterment, and adequate permanent right and easement of access to the place of reinterment for visitation; that the removal and reinterment of all the remains will be done with due care and decency, and that suitable memorial or memorials will be erected at the place of reinterment.

History

Acts 1949, ch. 15, § 4; C. Supp. 1950, § 5379.4 (Williams, § 9720.4); T.C.A. (orig. ed.), § 46-404.

Tit. 46, Ch. 5 Note

46-6-101. Establishment.

- (a) The department of veterans services shall provide for Tennessee veterans' cemeteries.
- (b) It is the legislative intent that the department, in consultation with the department of finance and administration and other appropriate state departments and agencies, shall, within existing state resources, identify any available state-owned real property and other available financial resources to establish a veterans' cemetery in each of the three (3) grand divisions.
- (c) The department of veterans services is authorized to establish additional veterans' cemeteries, as needed, by using state resources in accordance with the planning criteria of the United States department of veterans' affairs (USDVA) and the national cemetery administration (NCA) in order to receive federal grant funding to assist with establishment of additional veterans' cemeteries.

History

Acts 1987, ch. 309, § 1; 2013, ch. 73, §§ 1, 2; 2015, ch. 24, § 7.

46-6-102. Acceptance and use of funds.

- (a) The department of veterans services is authorized to accept any private or public funds, including appropriations, to effectuate the purposes of this chapter.
- (b) The department is further authorized to use any funds or other assistance made available to the department to effectuate the purposes of this chapter.
- (c) Any person working for or representing the department shall not:
 - (1) Solicit contributions, donations, or gifts from the public for the benefit of state veterans' cemeteries; or
 - (2) Authorize the use of the person's name or the name of the department by an individual or organization engaged in any campaign raising money for state veterans' cemeteries.
- (d) Any offer of donation or gift to or for the benefit of state veterans' cemeteries shall be unconditional and made in writing in accordance with a procedure established by the department.

History

Acts 1987, ch. 309, § 1; 2015, ch. 24, § 7; 2016, ch. 715, § 1.

46-6-103. Application for federal grant.

In establishing Tennessee veterans' memorial cemeteries, it is the intention of the general assembly that the state shall apply for a grant from the United States administrator of veterans' affairs pursuant to Public Law 95-476, 92 Stat. 1504, and the department of veterans services is authorized to submit the application on behalf of the state.

History

Acts 1987, ch. 309, § 2; 2015, ch. 24, § 7.

46-6-104. Construction — Expenditure of funds.

This chapter shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this chapter unless the funds are specifically appropriated by the general appropriations act or otherwise made available in accordance with § 46-6-101.

History

Acts 1987, ch. 309, § 3.

46-6-105. Eligibility for interment.

Eligibility for interment in a state veterans' cemetery shall be determined under 38 U.S.C. § 2402.

History

Acts 2016, ch. 715, § 2.

46-6-106. Commissioner of veterans services — Promulgation of rules.

The commissioner of veterans services is authorized to promulgate rules to effectuate the purposes of this chapter. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

History

Acts 2016, ch. 715, § 3.

46-6-107. Fees.

(a) The department of veterans services shall not charge a fee for the interment of a veteran who is eligible for interment in a Tennessee veterans' cemetery under the department's guidelines.

(b) The department may charge a fee not to exceed three hundred dollars (\$300) for the interment of an eligible veteran's spouse; provided, that the department shall not charge a fee for the interment of the eligible veteran's most recent spouse.

History

Acts 2016, ch. 915, § 1; 2018, ch. 1017, § 1; 2019, ch. 513, § 1.

6-7-101. Legislative intent.

(a) The general assembly recognizes that the operation of a cemetery is a public purpose and further recognizes that the proper maintenance of a cemetery or burial grounds, whether private or public, is in the interest of the public health and safety serving a valid public purpose.

(b) A trust created for the perpetual care or improvement of a cemetery or graves lessens the burden of government and, therefore, is found and declared to be a charitable trust. To that end, the general assembly declares its support for the establishment and formation of a trust corporation to act as trustee of a charitable trust for the perpetual care of private cemeteries.

History

Acts 1989, ch. 222, § 1.

46-7-102. Cemetery trust corporation — Purpose, powers, exemptions — Charter and capital stock.

(a)

(1) A trust corporation, which shall be chartered as a not-for-profit general welfare corporation under the laws of Tennessee, may be formed for the sole purpose of administering and providing

fiduciary services for a trust created for the perpetual care of a private cemetery, thereby benefiting all the citizens of this state.

(2) The services performed by a trust corporation formed under this chapter are necessarily services not otherwise generally available for such purposes, and the commissioner of financial institutions shall exempt the corporation from any requirement of title 45, chapters 1 and 2, or the rules of the department of financial institutions, that would threaten the viability of the corporation, including, but not limited to, capitalization requirements, fees, and procedures that are not essential to the protection of the interests of the trust beneficiaries.

(3) The trust corporation shall file its charter with the secretary of state and shall also record its charter in the office of the register of deeds in the county in which its principal office is located. The trust corporation's existence shall continue until terminated by law.

(4) It is not the purpose of the corporation to engage in commercial banking activity or private fiduciary activity, except to the limited extent of acting in a fiduciary capacity for a person who creates a trust for the perpetual care of a private cemetery and specifically designates a trust corporation formed under this chapter to serve in the capacity as trustee.

(5) A trust corporation formed under this chapter must use the word "cemetery" in its corporate title and may not advertise its services in such a manner as to represent that the corporation is a general fiduciary trust company.

(b) In addition to the general duties and powers of corporations formed under the laws of Tennessee, a trust corporation formed under this chapter is authorized to:

(1) Accept funds and gifts of land for the benefit of the trust;

(2) Enter into contracts, trust agreements, and other fiduciary instruments;

(3) Adopt, use and display a corporate seal;

(4) Adopt and amend bylaws, rules and regulations for carrying out the purpose of this chapter;

(5) Manage and invest money and other property for the benefit of the trust;

(6) Act in a fiduciary capacity for a person creating a trust for the perpetual care of a private cemetery who specifically designates the trust corporation to act as trustee; and

(7) Have such powers as are necessary and convenient to carry out the purpose for which the trust corporation is organized, including, but not limited to, any necessary and appropriate actions to associate with or participate in transactions through the federal reserve system.

(c) As the trust corporation is formed for a valid public purpose and will exercise its powers for the benefit of the state, the trust corporation, its capital stock, all properties at any time owned or held by it in a fiduciary capacity, and income derived from the trust funds shall be exempt from taxation by the state or any local unit, or subdivision or instrumentality of the state.

(d) Any capital stock of the trust corporation shall be held by the members of the board of directors and their successors in office, by virtue of their incumbency in office.

History

Acts 1989, ch. 222, § 2; 2011, ch. 490, § 1.

46-7-103. Board of directors — Administration — Investments.

(a) The trust corporation shall have a board of directors as provided in the document that creates the trust to be administered by the corporation. The board shall also serve as trustee of the trust. The directors and their successors shall be appointed in the manner provided in the document.

(b) The trust document shall also provide for the administration and maintenance of the trust funds and the manner in which funds are received and invested by the board acting as trustees for the trust, as well as the manner in which the real property may be conveyed to the trust for burial purposes to be irrevocably committed to the use for which it is conveyed. Unless the trust

document otherwise provides, investments of the trust funds shall be essentially the same as those authorized for the investment of trust funds in accordance with title 35, chapter 3.

History

Acts 1989, ch. 222, § 3.

46-7-104. Purpose of trust — Expenditures for perpetual care.

(a) Any trust created for the perpetual care of a private cemetery to be administered by a trust corporation formed under this chapter shall be a charitable trust for the general welfare of the citizens of the state. The board of directors of the trust corporation shall establish guidelines for disbursement that are not inconsistent with this chapter or the trust document under which it operates as trustee for the trust.

(b) The corpus and income from the investment of the trust for the perpetual care of a private cemetery shall be expended solely for the purpose of providing perpetual care in accordance with this chapter and the respective trust agreement, except that reasonable expenses for administration of the trust may be deducted from the income.

History

Acts 1989, ch. 222, § 4.

46-7-105. Contributions — Gifts of land.

Any person, association, or corporation may make contributions to the trust corporation for the benefit of the trust pursuant to this chapter, and the trust corporation is authorized to accept funds and deposit the funds in the trust. In addition, the trust corporation is authorized to accept gifts of land for the benefit of the trust as provided in this chapter. Gifts of land shall be made in the name of the trust corporation with appropriate language of limitation.

History

Acts 1989, ch. 222, § 5.

46-8-101. Short title — Legislative intent.

This chapter shall be known and may be cited as the “Family Burial Grounds Protection Act.” This chapter is intended to provide notice to buyers of property with known burial grounds and gravesites. It does not remove any protection to those sites under existing law.

History

Acts 1996, ch. 921, § 1.

46-8-102. Definitions.

As used in this part, unless the context otherwise requires:

- (1) “Crypt” has the same meaning as used in § 46-1-102;
- (2) “Gravesite” means a space of ground used for lawful interment of a deceased person; and
- (3) “Human remains” or “remains” has the same meaning as used in § 46-1-102.

History

Acts 1996, ch. 921, § 2.

46-8-103. Duty to protect graves or crypt — Disturbances prohibited — Transfer of remains.

(a) A deed for real property that indicates the presence of a gravesite or crypt containing human remains on the property conveyed obligates the immediate and future buyer or buyers of the property to protect the gravesite or crypt from disturbance. The owner of real property has the responsibility for taking appropriate action, prior to conveying the property, to ensure that the deed reflects the presence of the gravesite or crypt on the property.

(b) Real property that has a deed that reflects the presence of human remains on the property is protected from disturbance or development as follows:

(1) A gravesite may not be disturbed in the area of ten feet (10') surrounding the perimeter of the gravesite; and

(2) A crypt may not be disturbed in the area of five feet (5') surrounding the perimeter of the crypt.

(c) The owner of real property that has a deed that reflects the presence of human remains on the property has the option of transferring the remains, at the owner's expense, pursuant to the procedure for termination of use as a cemetery in chapter 4 of this title. However, prior to filing any action in chancery court to transfer the remains located in a gravesite or crypt, the proponent of the action shall first publish a notice in a newspaper of general circulation within the county in which the gravesite or crypt is located. The notice shall include the name of the proponent of the action, the location of the property where the remains are located and any name that can be discerned from the site of any person there interred. Upon complete transfer of all human remains from the property that are properly described on the deed, the buyer has the right to the use of the area previously containing the remains as is consistent for the remainder of the property.

History

Acts 1996, ch. 921, § 3; 2008, ch. 1147, § 1.

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