

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES, AND COMMERCIAL LICENSING BUREAU

CEMETERY REGULATION

GENERAL RULES

(By authority conferred on the state cemetery commissioner by section 8 of 1968 PA 251, as amended, MCL 456.528, and Executive Reorganization Order Nos. 1991-9, 1996-2, 2003-1, 2008-4, 2011-4, MCL 338.3501, 445.2001, 445.2011, 445.2025, and 445.2030)

PART 1. GENERAL PROVISIONS

R 456.1101 Definitions.

R 101. (1) As used in these rules:

(a) "Act" means the cemetery regulation act, 1968 PA 251, MCL 456.521 to 456.543.

(b) "Encumbrances" means anything restricting title to the land, including, but not limited to, a lease, lien, or mortgage; excluding an easement for a utility.

(2) A term defined in the act has the same meaning when used in these rules.

History: 2015 AACs.

PART 2. APPLICATION

R 456.1201 New cemetery application.

Rule 201. An application for a permit to create, maintain, and operate a new cemetery shall contain the following:

(a) The name and address of the owner or operator and any affiliated persons of the proposed cemetery.

(b) The name and address of the proposed cemetery.

(c) The names and addresses, and relationship to the owner, of all directors, officers, partners, members, or any other person occupying a similar status or performing similar functions, or affiliated persons.

(d) Documentation supporting the community need.

(e) Applicable entity documents, including but not limited to, any of the following:

(i) The bylaws.

(ii) An operating agreement.

(iii) A certificate of assumed name.

(iv) The articles of incorporation.

(v) The articles of organization.

(vi) The articles of association.

(vii) Partnership certificates.

(f) An endowment and perpetual care trust agreement.

- (g) Physical plans.
- (h) The resume of the person designated to run the daily operations of the cemetery.
- (i) A prepaid funeral and cemetery sales registration or application, if applicable.
- (j) A prepaid escrow agreement, if applicable.
- (k) Proof of health department approval required under section 2458 of the public health code, 1978 PA 368, MCL 333.2458, if applicable.
- (l) Copy of permit to install required by part 55 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.5501 to 324.5542, if applicable.

History: 2015 AACCS.

R 456.1202 Proposed change of control application.

Rule 202. In addition to the requirements of MCL 456.532 and R 456.1201, an application for a change of control of a cemetery shall contain all of the following:

- (a) A purchase agreement that identifies clearly the sale and assets disposition.
- (b) Identification of the source, nature, and amount of consideration to be used in the sale or transfer of the cemetery.
- (c) The escrow agreement as required by MCL 456.532(2)(d).

History: 2015 AACCS.

PART 3. REPORTING AND RECORDS

R 456.1301 Records retention; requirements.

Rule 301. (1) Each registrant shall maintain accurate, complete, and legible records of any books, contracts, records, or documents pertaining to, prepared in, or generated by, the cemetery operation including, but not limited to, all of the following:

- (a) Forms.
 - (b) Reports.
 - (c) Accounting records.
 - (d) Ledgers.
 - (e) Internal audit records.
 - (f) Correspondence.
 - (g) Personnel records.
- (2) All records required to be maintained under subrule (1) of this rule shall be kept for at least 7 years from the date of record completion.
- (3) Upon the change of control of a cemetery, the records identified in subrule (1) of this rule shall be transferred to the new registrant, and the cemetery owner shall maintain the transferred records for the time specified in subrule (2) of this rule, less any period of time that elapsed beginning on the date of record completion.

History: 2015 AACCS.

R 456.1302 Receipts journal; requirements.

Rule 302. (1) A registrant shall maintain, in chronological order, a monthly receipts journal that separately lists all proceeds received from the sale of all of the following:

- (a) Internment rights.
- (b) Burial vaults.
- (c) Grave memorials.
- (d) Grave openings and closings.
- (e) Cremations.
- (f) Other sale items.

(2) The journal shall be retained as a record, as required under R 456.1301, and shall include the following:

- (a) The date the proceeds are received.
- (b) The name of the buyer and beneficiary, if there is a beneficiary.
- (c) The contract number.
- (d) The total amount of proceeds received, itemized to indicate the cost of each item by category of sale, and the applicable interest and sales tax, as specified in subrule (1) of this rule.
- (e) Monthly totals by sales category.
- (f) For an interment right provided by the registrant without charge, the journal shall include the name of the recipient, beneficiary, the date the right was given, and an indication in the journal that the interment right was given at no charge.

History: 2015 AACS.

R 456.1303 Funding and disbursement journals; requirements.

Rule 303. For each trust, a registrant shall maintain, in chronological order, a separate monthly funding and disbursements journal. The journal shall be retained as a record, as required under R 456.1301, and include all of the following:

- (a) For funding, the journal shall include all of the following:
 - (i) The date funds were placed in trust.
 - (ii) The date income was placed in trust.
 - (iii) The amount of funds placed in trust.
 - (iv) The amount of income placed in trust.
 - (v) The month the underlying receipts were received to which the funding relates.
- (b) For disbursements, the journal shall include all of the following:
 - (i) The date funds were disbursed from trust.
 - (ii) The date income was disbursed from trust.
 - (iii) The amount of funds disbursed from trust.
 - (iv) The amount of income disbursed from trust.
 - (v) The purpose of the disbursement.

History: 2015 AACS.

PART 4. ENDOWMENT AND PERPETUAL CARE TRUST AGREEMENTS

R 456.1401 Endowment and perpetual care trust agreement; requirements.

Rule 401. (1) The endowment and perpetual care trust fund agreement shall include reference to all of the following:

(a) No portion of the interest or income of the funds required to be in the trust may be used directly or indirectly for salaries or other payments to the officers, directors, partners, members, or managers of the entity owning the cemetery.

(b) The income and interest from the fund may be paid only to the person in possession, management, operation, and control of the grounds and structures intended to benefit from the fund.

(c) The sole use of the income and interest from the fund shall be for the endowment and perpetual care of the cemetery specifically intended to benefit from the fund.

(d) The trust shall be governed by state law.

(2) If the registrant chooses to direct the trustee in the investment of the funds under section 16 of the act, MCL 456.536(4), the registrant shall provide the commissioner with an acceptable certificate of proof of fiduciary liability insurance every 6 months.

History: 2015 AACCS.

PART 5. MERCHANDISE TRUST FUNDS

R 456.1501 Merchandise trust accounts; required deposits.

Rule 501. (1) For preneed contracts for cemetery merchandise or services executed before January 1, 2005, excluding items or services sold under the agreements for disposition of dead human bodies act, 1954 PA 70, MCL 328.201 to 328.204, a registrant, or an agent authorized by a registrant to act on its behalf, under an agreement or sales contract to sell cemetery merchandise or services; shall deposit the following amounts into a merchandise trust account, and maintain those deposits until the cemetery merchandise or services are installed, delivered, performed, or terminated:

(a) One hundred percent of the cost of each memorial that the registrant is obligated to furnish and install.

(b) The greater amount of either 100% of the proceeds received from the sale of cremations, grave openings and closings or \$100.00 for each cremation, or grave opening and closing that the registrant is obligated to furnish.

(2) Deposits required under this rule shall be deposited no later than the last day of the month following the month of collection.

History: 2015 AACCS.

R 456.1502 Merchandise or service sales before January 1, 2005.

Rule 502. The registrant shall ensure that preneed contracts for cemetery merchandise or services executed before January 1, 2005, regardless of when payments are received, are placed in trust as required under the law and rules in effect before January 1, 2005. The amounts placed in trust shall remain in trust, until the cemetery merchandise or services are installed, delivered, performed, or the contract is terminated. The amounts placed in trust for preneed contracts

executed before January 1, 2005, shall not be removed from the trust and placed with a prepaid funeral and cemetery sales escrow agent, which is required for sales contracts executed on or after January 1, 2005.

History: 2015 AACCS.

R 456.1503 Merchandise trust fund agreements.

Rule 503. Cemeteries that entered into contracts for merchandise or services after October 30, 1972, and before January 1, 2005, shall establish and maintain a merchandise trust account. A registrant shall submit a copy of the merchandise trust fund agreement to the commissioner. In addition to the requirements specified in section 16 of the act, MCL 456.536 and R 456.1501, a merchandise trust agreement shall provide all of the following:

(a) Deposits made to the merchandise trust account shall be invested by the trustee only as directed in the trust agreement. All trust investments and agreements shall provide for a standard not less than the standard of care in the prudent investor rule. Additionally, funds shall not be invested in any of the following:

- (i) Life insurance policies on any person.
- (ii) A company owned or operated by a registrant or its authorized agent.
- (iii) Loans to any person directly connected with or employed by a registrant or its agents.

(b) Deposits to the merchandise trust account shall be certified by an officer of the registrant or agents authorized by a registrant to act in its behalf.

(c) Withdrawals from the merchandise trust account shall be made on the presentation to the trustee of an affidavit certified by the registrant that the cemetery merchandise or services have been installed, delivered, performed, or terminated. Withdrawals shall not be made in excess of the funds actually held on deposit for the merchandise or services that were delivered or performed. The trustee shall retain the affidavit as a permanent part of the trust records, and the registrant shall keep a copy.

(d) Not less than an annual accounting period shall be established, and that the trustee shall furnish to the registrant an accounting that contains all of the following information:

- (i) A separate listing by cost and fair market value of all assets held with totals.
- (ii) Total deposits made to the trust account during the reporting period and the total to date.

(e) A certification by the registrant to the trustee that the total assets of the merchandise trust account are not less than equal to the total obligations, as determined by the current deposits required by R 456.1501(1).

(f) That the commissioner may inspect the related records of the cemetery, the registrant, and trustee.

History: 2015 AACCS.

PART 6. AUDIT

R 456.1601 Audit fee.

Rule 601. The registrant shall pay the audit invoice within 60 days of the date of the invoice, unless extended in writing by the commissioner.

History: 2015 AACS.

PART 7. ANNUAL REPORT

R 456.1701 Annual reports.

Rule 701. (1) A registrant shall submit an annual report for examination by the commissioner on forms provided by the commissioner that includes all information considered necessary by the commissioner. The report shall be submitted by June 30 unless an extension of not more than 90 days is granted by the commissioner upon written request of the registrant as specified in subrule (2) of this rule.

(2) A registrant shall submit to the commissioner a written request for an extension of the due date for the annual report before June 15 of the year following the report year. The request shall contain the name and address of the cemetery, the registration number, and the length of the extension requested.

History: 2015 AACS.

R 456.1702 Internal controls purpose.

Rule 702. The procedures of the internal control system specified in section 16(12)(d) of the act, MCL 456.536(12)(d), shall be designed to ensure all of the following:

- (a) The trust assets of the cemetery are safeguarded.
- (b) The financial records of the registrant are accurate and reliable.
- (c) The transactions of the registrant are performed only under specific authorization.
- (d) The transactions are recorded adequately.
- (e) Accountability for trust funds is maintained.
- (f) Only authorized personnel have access to trust assets.
- (g) Recorded trust assets are compared with actual trust assets at reasonable intervals, and that appropriate actions are taken with respect to any discrepancies.
- (h) The functions, duties, and responsibilities are appropriately segregated and performed under sound practices by competent, qualified personnel, and that no person is in a position to perpetuate and conceal errors or irregularities in the normal course of his or her duties.

History: 2015 AACS.

PART 8. DISCIPLINARY ACTIONS AND HEARINGS

R 456.1801 Investigation or audit; disciplinary action.

Rule 801 (1) When a written allegation of violation is submitted to the commissioner, the commissioner may conduct an investigation or audit.

(2) If it is determined through an investigation or audit that a person violated the act or rules promulgated under the act, then the commissioner may determine whether to initiate formal

disciplinary proceedings or if another method of resolution is appropriate considering the factual circumstances.

History: 2015 AACCS.

R 456.1802 Response to notice of intent.

Rule 802. A respondent's written response to a notice of intent, as described in section 19 of the act, MCL 456.539, shall be received within 30 days of the date of the notice of intent and shall be signed by the party or the party's attorney of record.

History: 2015 AACCS.

R 456.1803 Formal complaint; compliance conference.

Rule 803. A respondent to a formal complaint may request an informal compliance and settlement conference with the commissioner to show compliance and attempt a settlement of the formal complaint before a formal hearing.

History: 2015 AACCS.