

DEPARTMENT OF LABOR & ECONOMIC GROWTH

DIRECTOR'S OFFICE

PREPAID FUNERAL & CEMETERY SALES

Filed with the Secretary of State on
These rules take effect immediately upon filing with the Secretary of State

(By authority conferred on the department of labor & economic growth by 2004 PA 2004 PA 21, MCL 328.227.)

R 339.101, R 339.201, R 339.202, R 339.203, R 339.204, R 339.301, R 339.302, R 339.303, R 339.304, R 339.305, R 339.306, R 339.307, R 339.401, R 339.402, R 339.403, R 339.405, and R 339.407 are added to the Administrative Code as follows:

PART 1. GENERAL PROVISIONS

R 339.101 Definitions.

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

(a) "Act" means 1986 PA 255, MCL 328.211 et seq., as amended, and known as the prepaid funeral and cemetery sales act.

(b) "Change in ownership" means a change in the form of ownership or a change of owners, partners, officers, or directors.

(c) "Department" means the department of labor and economic growth.

(d) "Upgrade" as used in MCL 328.223(4) means the addition of services or increased quality of merchandise, but does not mean a change from cremation to burial.

(e) "Statement" as used in MCL 328.218(1) means a detailed listing of the components required in that section.

(2) The terms defined in sections 3, 4 and 5 of the act have the same meanings when used in these rules.

PART 2. CONTRACTS

R 339.201 Physical Delivery.

Rule 201 (1) "Physical delivery" is considered complete for a marker, urn, memorial or vault permanently inscribed with the beneficiary's name.

(2) Urns, grave memorials, and burial vaults stored until time of need shall be insured against fire and theft in an amount equal to or greater than their total replacement cost.

(3) The portion of a prepaid contract for which physical delivery of merchandise is considered complete shall not be transferred.

(4) An escrow agent shall disburse to the provider all proceeds related to the portion

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of a prepaid contract for which physical delivery of merchandise has been made.

R 339.202 Records.

Rule 202 (1) Copies of all contracts shall be maintained for 36 months after fulfillment of the contract, including those which are not consummated or are cancelled or revoked.

(2) Preprinted contracts shall be numbered in sequential order.

R 339.203 Required language.

Rule 203. Executed contracts shall include a paragraph immediately following the paragraph required by MCL 328.225(4) which shall state, "After the death of the contract beneficiary, the contract buyer or the contract buyer's estate may cancel the prepaid contract only where there are no remains of the deceased; where the remains of the deceased cannot be recovered; or where a prepaid contract was not utilized due to lack of knowledge by the person or persons entitled to make funeral arrangements of the existence of the prepaid contract," and shall specify the refund provisions of MCL 328.225(1) or (2), as appropriate.

R 339.204 Commissions.

Rule 204. (1) If a commission has not been taken by a contract seller or provider pursuant to section 12 of the Act, and a request is made by a person other than the contract seller or provider to transfer a prepaid contract to another licensed provider, a commission may be taken as if the contract had been cancelled in accordance with Sec. 13 (1) of the Act.

(2) A total commission of not more than 10% of the contract price may be taken, regardless of the number of times a prepaid contract is transferred.

PART 3. STANDARDS OF OPERATION

R 339.301 Trusting of funds.

Rule 301. (1) For all contracts entered into on or after January 1, 2005, trusting of cemetery goods and services as provided in Section 12(2) pertains to all funds received by the registrant during each period, regardless of the date of the prepaid contract.

R 339.302 Annual Report Requirements.

Rule 302 (1) Each registrant shall submit an annual report covering January 1 to December 31 of the previous calendar year to the department, on forms required by the department.

(2) Each report must be submitted in sufficient time to insure that the director receives the report by July 15 of the year following the report year.

R 339.303 Extension requests.

Rule 303 A registrant must submit a written request for extension of the due date for annual reports so the director receives it no later than July 1 of the year following the report year. One extension may be granted for not more than 90 days, upon approval by the department.

R 339.304 Reporting Requirements.

Rule 304. (1) A registrant shall report the following to the department:

(A) The sale of a prepaid funeral or cemetery sales business or a change in business structure of a registrant. Not less than 30 days prior to the change, the owner shall file an application for a prepaid funeral and cemetery sales registration with the department.

(B) The death of an owner within 30 days of the death. The department will then determine if a new prepaid funeral and cemetery sales registration is required.

(2) A registrant shall report a change of address to the department within 30 days of the change.

R 339.305 Transfer of contracts upon discontinuance of business.

Rule 305. A registrant who discontinues business or whose license is suspended indefinitely, lapsed or revoked shall:

A) Transfer prepaid contracts to another registrant within 60 days of the event

B) Notify the department and the contract buyers of the transfer within 90 days of the event referred to in subsection (B).

R 339.306 Deposit of funds for non-guaranteed or irrevocable contract.

Rule 306. A registrant receiving funds in connection with a non-guaranteed or irrevocable contract shall deposit those funds in a depository within 30 days of receipt.

R 339.307 Investment of funds.

Rule 307. Investments made in accordance with MCL 328.222(7)(b) shall be made in publicly traded stocks, bonds and mutual funds.

PART 4. RECORD KEEPING

R 339.401 Receipts journal.

Rule 401 A registrant shall maintain a receipts journal that includes the following for funds received exclusively under the act:

A) A chronological sequence in which funds are received from buyers and escrow agents/depositories.

B) The date the funds are received.

C) The amount of contract funds received.

D) The amount of commission funds received.

E) The date the contract funds are deposited.

F) The name of the buyer and beneficiary.

G) The contract number.

R 339.402 Ledger.

Rule 402 (1) A registrant shall maintain a ledger for each prepaid funeral contract sold that includes the following:

- A) The name and address of the buyer.
- B) The name and address of the beneficiaries.
- C) The name and address of the escrow agent.
- (D) The date the funds are received from buyers and escrow agents/depositories.
- (E) The amount of contract funds received from buyers and escrow agents/depositories.
- (F) The amount of commission funds received.
- (G) The date the contract funds are deposited.
- (H) The contract number.
- (I) The type of contract sold, guaranteed or non-guaranteed.
- (J) The contract's total price exclusive of commission.
- (K) The contracts total commission.
- (L) The date the contract is provided, cancelled, or revoked.
- (M) The amount of refund paid to the contract holder if cancelled or revoked, and the date of payment.

(N) The amount, date, purpose, payee, and check number of all disbursements made to buyers, beneficiaries, providers, registrants, and vendors.

(2) Copies of the ledgers are to be maintained separately, in chronological order, or in sequential contract number order.

R 339.403 Registrant Responsibility to provide annual statement.

Rule 403. Unless waived, it shall be the responsibility of the registrant to provide the annual statement to the contract buyer, as provided in MCL328.222(14).

R 339.405 Other requirements for Registrant.

Rule 405. A registrant shall

A) Obtain documentation from an escrow agent with which it contracts that shows when the contract funds were deposited as well as when and to whom they were disbursed.

B) Obtain copies of notices and statements sent to the contract buyers/beneficiaries from the escrow agent.

C) Ensure that such documentation as described in subsections (A) and (B) is produced and copies are retained.

D) Maintain copies of any other notices and statements sent to the buyers/beneficiaries in any capacity.

E) All records shall be maintained in compliance with Section MCL 328.218(1).

R 339.407 Reporting period.

Rule 407. (1) The department may require a registrant to produce a list as described

in MCL 328.218(1) for any period ending it deems necessary for examination, review, or audit.

(2) The registrant shall ensure that adequate provisions are included in any escrow agreement necessary to implement this rule.