

OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
REGULATION AND ENFORCEMENT

IN THE MATTER OF:)	ADMINISTRATIVE
STEWART ENTERPRISES, INC.)	PROCEEDING NUMBER:
1333 S. CLEARVIEW PKWY)	L-11-0178
JEFFERSON, LA 70121)	
)	
LAKWOOD MEMORIAL PARK, INC.)	
6011 CLINTON BLVD.)	
JACKSON, MS 39209)	
PRENEED REGISTRATION:)	
120000013)	

CONSENT AGREEMENT

I. Jurisdiction

Finding it appropriate in the public interest, the Regulation and Enforcement Division of the Office of the Secretary of State of Mississippi (hereafter "Division"), on behalf of the Secretary of State, having the power to administer and to provide for the Mississippi Preneed Cemetery and Funeral Registration Act, Mississippi Code Annotated Sections 75-63-51 to 75-63-75 (2002) (hereafter "Act"), and Respondents do hereby enter into this Consent Agreement (hereafter "Agreement"). This Agreement settles all of the Division's allegations of violations of the Act by the Respondents.

II. Agreement

In consideration of a final resolution of the matters set forth in Paragraph I, and of other considerations set out hereinafter, the Division and Respondents hereby agree, stipulate, and undertake as follows:

1. Respondents admit the jurisdiction of the Division as to all parties and matters herein under the authority of the Act.

2. Stewart Enterprises, Inc., owns Lakewood Memorial Park, Inc., a preneed establishment registered with the Mississippi Secretary of State's office and located at 6011 Clinton Boulevard, Jackson, Mississippi 39209.
3. Respondents hereby decline to contest the following allegations of violation of the Act:
 - a. Lakewood Memorial Park, Inc., violated Mississippi Code Annotated Section 75-63-55(5) (2002), which requires, in pertinent part, that "the contract should clearly indicate any exclusions or limitations of the preneed contract" in the following particulars:
 - i. Lakewood Memorial Park, Inc., breached its duty to its clients by failing to disclose the tax treatment of trust earnings on contributions to fund preneed contracts.
 - ii. Lakewood Memorial Park, Inc., did not utilize an IRS Qualified Preneed Funeral Trust, therefore, the customer is responsible for paying the taxes incurred on the trust's earnings. However, the language used by Lakewood Memorial Park, Inc., in the contract leaves the impression that the trust will be responsible for the reporting and paying taxes on trust earnings, not the customer.
 1. The contract states: "Any interest earned on funds deposited in trust will be retained in the trust to provide for the services and/or merchandise purchased herein and purchaser will not be entitled to any interest earned on the funds deposited in trust. *Reasonable annual trust fees and*

state and federal income taxes may be withheld from the earnings of the trust.” Paragraph 5, Lakewood Memorial Park, Inc., Preneed Contract (Emphasis added).

iii. The language in the contract regarding irrevocability may be construed to imply that Lakewood Memorial Park, Inc., maintains a Qualified Preneed Funeral Trust, as provided in 26 United States Code Section 685 in that irrevocability is the key characteristic for an IRS Qualified Preneed Funeral Trust, in which the trust reports and pays its accrued tax liability. However, customers received Grantor Tax Information Letters, also called K1 Tax Forms, directing customers pay the tax on the customer’s share of trust earnings.

1. The contract states: “Irrevocability: The contract, by its terms, establishes an Irrevocable Preneed Funeral Trust Account. THE TRUST ACCOUNT ESTABLISHED BY THIS CONTRACT IS IRREVOCABLE AND THE FUNDS PAID HEREUNDER ARE NOT REFUNDABLE, EXCEPT AS REQUIRED BY LAW.” Paragraph 6, Lakewood Memorial Park, Inc., Preneed Contract (Emphasis in original).

4. The following contracts sold by Lakewood Memorial Park, Inc., are alleged to be in violation of Mississippi Code Annotated Section 75-63-55(5) (2002) for the

failure to disclose the tax treatment of trust earnings on contributions to fund preneed contracts:

- a. B.N. Graham, Contract No. 3531-03-78336, January 16, 2002.
- b. H.L. Graham, Contract No. 3531-03-78337, January 16, 2002.
- c. M.E. Wall, Contract No. 3531-03-80830, September 29, 2004.
- d. R.E. Wall, Contract No. 3531-03-80831, September 29, 2004.
- e. M.L. Smith, Contract No. 3531-03-83324, May 24, 2007.
- f. E.E. Smith, Contract No. 3531-03-83325, May 24, 2007.

5. As such, Respondents agree to the following:

- a. Pursuant to Mississippi Code Annotated Section 75-63-69(1)(b)(i) (2002), Respondents agree to pay an administrative penalty of One Thousand Dollars (\$1,000) per alleged violation of Mississippi Code Annotated Section 75-63-55(5) (2002), with a statutory limitation for total penalties to not exceed Five Thousand Dollars (\$5,000). The total administrative penalty against Respondents is Five Thousand Dollars (\$5,000).

6. As a result of this Agreement, the Secretary of State agrees not to pursue any further actions against Respondents regarding the aforementioned alleged violation.

7. Nothing contained herein shall be construed as limiting Respondents' rights to contest any finding or determination made by the Division or by a court concerning an alleged failure by Respondents to comply with any of the terms and provisions of this Agreement.

8. Respondents are aware of their right to a hearing on this matter at which they may be represented by counsel, present evidence, and cross-examine witnesses.

Respondents hereby irrevocably waive the right to such a hearing.

9. Respondents understand that the entry of this Agreement represents the settlement of regulatory claims by the Division against the Respondents.

III. Acknowledgement

The parties acknowledge that they have read this Agreement in its entirety and fully understand the rights, terms, and obligation of each contained therein and they have been vested with the express authority to enter into this agreement. The parties further acknowledge that they have not been threatened or otherwise coerced into entering into this Consent Agreement.

The undersigned hereby acknowledge and agree to the terms and conditions of the foregoing Agreement by written consent.

STEWART ENTERPRISES, INC.

BY: 

Title: Senior Vice President and Treasurer

Date: 7/8/2011

LAKEWOOD MEMORIAL PARK, INC.

BY: 

Title: Senior Vice President and Treasurer

Date: 7/8/2011

C. DELBERT HOSEMANN, JR.

SECRETARY OF STATE

In His Official Capacity

BY: 

Dave Scott
Assistant Secretary of State
Regulation and Enforcement

Date: 6-29-2011