



Perpetual Care

Title 1: Secretary of State

Part 12: Regulation and Enforcement – Preneed Funeral Service and Mdse. and Perpetual Care Cemeteries Regulation

Subpart 2: Mississippi Perpetual Care Cemetery Rules

Part 12 Chapter 1: Definitions.

Rule 1.1 Division. As used herein, all references to “Division” or “the Division” shall mean the Regulation and Enforcement Division of the Mississippi Secretary of State’s Office.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Rule 1.2 Establishment. As used herein, all reference to “Establishment” or “Cemetery Establishment” or “Registered Establishment” shall mean the perpetual care cemetery that is required to register with the Mississippi Secretary of State’s Office.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Rule 1.3 Law. As used herein, all reference to “Law” or “the Law” shall mean the “Cemetery Law” and any amendments thereto.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Rule 1.4 Rules. As used herein, all references to “Rules” or “these Rules” shall mean the “Perpetual Care Cemetery Rules.”

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Rule 1.5 Secretary of State. As used herein, all references to “the Secretary of State” or “Secretary of State” shall mean the Mississippi Secretary of State.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Part 12 Chapter 2: Registration

Rule 2.1 Establishment Registration. Any person, partnership, corporation or other organization organized or engaging in business under the laws of the State of Mississippi who owns, maintains, or operates a cemetery, providing lots or other interment space therein for the remains of human bodies, unless exempt, is subject to the Law and said cemetery must be registered with the Secretary of State as a Perpetual Care Cemetery by filing a completed Perpetual Care Cemetery Registration Form (Form 10PC001) with the Division. The form shall be marked in the space designated “New Registration” and shall be accompanied by a registration fee of Twenty Five Dollars (\$25). Every nonexempt cemetery location must register regardless of common ownership. Exemptions from this requirement are addressed in the Law. The only cemeteries that are exempt from this requirement are, as stated in Mississippi Code Annotated Section 41-43-33 “organizations and cemeteries that are affiliated with or owned by churches or religious societies, established fraternal societies, municipalities, other political subdivisions of the State of Mississippi, or family cemeteries or family burial grounds, and community cemeteries that provide burial lots at no charge, or sell burial lots to the public.” **All registrations expire on March 31st of each year and must be renewed.**

Source: *Miss. Code Ann. §41-43-37(7)* (Rev. 2009).

Rule 2.2 Annual Report Filing. Every registered establishment shall annually submit a written report to the Secretary of State containing any sales activity, trust fund information, and any changes in registration information for the prior ending calendar year. This report shall be filed with the Secretary of State on or before March 31st of each year for the calendar year ending the preceding December 31st. Annual reports shall be submitted to the Secretary of State on Form 10PC001 and marked in the space designated “Renewal.” A Twenty Five Dollar (\$25) renewal of license fee shall also accompany the filing and shall be made payable to the Mississippi Secretary of State's Office.

Source: *Miss. Code Ann. §41-43-37(7)* (Rev. 2009).

Rule 2.3 Trustee Annual Report Filing. Every trustee for a perpetual care cemetery trust shall annually submit a written report to the Secretary of State containing the trust activity for the previous ending calendar year. This report shall be filed on or before March 31st of each year for the calendar year ending the preceding December 31st. Trustee Annual Reports shall be submitted on the Annual Trustee Report Form (Form 10PN003) and marked in the space designate “Perpetual Care Cemetery Trust.” No fee shall be submitted with this report.

The report shall be at all times available to inspection and copy by any owner of a burial right in the cemetery, or the family, legal representative, or next of kin of the owner, at the usual place for transacting the regular business of the cemetery.

Source: *Miss. Code Ann. §41-43-37(7)* (Rev. 2009).

Rule 2.4 Change in Establishment Information. Any changes in the information provided by the establishment in a registration shall be supplied to the Secretary of State in writing by

completing the appropriate sections of the Perpetual Care Cemetery Registration Form which should be marked in the space designated “Amendment of Registration.” Notice shall be supplied to the Secretary of State within thirty (30) days after such change has occurred. No payment should be sent.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Rule 2.5 Change in Ownership or Control. Before any sale or transfer of a perpetual care cemetery or a controlling interest of Fifty percent (50%) or greater therein, an independent audit of the perpetual care trust fund shall be performed at the expense of the seller and/or buyer and filed with the Division. The audit shall be current within thirty (30) days of the proposed sale or transfer. No sale or transfer of any perpetual care cemetery shall occur until approved in writing by the Division.

Source: *Miss. Code Ann.* §41-43-37(7) and 38(5) (Rev. 2009).

Rule 2.6 Change in Trustee or Trust Institution. The Division must be notified thirty (30) days prior to any change in the trustee or trust institution administering the Perpetual Care Trust Fund of any establishment. Approval of such change must be given in writing by the Division before such change shall occur.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Rule 2.7 Notarization. All registration forms and annual reports must be notarized.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Rule 2.8 Certificate. An establishment shall not be considered registered under the Law until the establishment receives a certificate from the Division stating that it has satisfied the registration requirements of the Law and these Rules.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Rule 2.9 Filing Dates. Any filing required by the Law or these Rules to be filed with the Division is considered timely filed by reference to the postmark when filed along with the appropriate forms, filing fee, and all other documents required by the Law or these Rules.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Rule 2.10 Deficient Filings. Any filing made pursuant to the Law or these Rules may be deemed deficient if any of the following exist:

- A. The application is not on the proper form;
- B. The application is not in compliance with the Law or these Rules;
- C. The application is incomplete;
- D. The application is not signed and notarized; and/or
- E. The associated fee is not submitted.

When a registration application or filing is found to be deficient, the Division shall send a deficiency letter stating the grounds for noncompliance. If following the transmission of a deficiency letter, no communication is received by the Division for a period of thirty (30) days, the application or filing will be deemed abandoned and returned to the applicant.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Rule 2.11 Addresses. For all correspondence to the Division **including payment of fees or penalties**, please mail to this address:

Secretary of State
Regulation and Enforcement Division
Post Office Box 136
Jackson, Mississippi 39205

The physical address is:

Secretary of State
Regulation and Enforcement Division
125 South Congress Street
Jackson, Mississippi 39201

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Part 12 Chapter 3: Examination and Enforcement.

Rule 3.1 Trustee. The perpetual care trustee must be affiliated with an established bank, trust company, other financial institution or financial services company. The trustee must be unrelated to the perpetual care cemetery, the seller, or a member, officer, or director of the cemetery if the cemetery is a corporation or LLC.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Rule 3.2 Pre-Installation of Vaults. No grave space may be opened for the sole purpose of installing a vault. Any vault purchased must be installed in the grave space at the time human remains are interred. Lawn crypts are exempt from this rule.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Rule 3.3 Recordkeeping. Every perpetual care cemetery shall maintain continuously and at all times an up-to-date record of the persons buried in the cemetery or entombed within a mausoleum or columbarium; the date of burial or entombment; a map of the designated lot for burial or entombment as well as a map of lots, burial spaces, mausoleum crypts or columbarium niches that have been sold. The map or plat shall also contain up-to-date designations indicating committed or planned designations of burial lots, crypt, niche, or mausoleum spaces for future

use. Additionally, the Secretary of State may require those maps to be produced to a designated representative at any time. These records and any records regarding the trusting of perpetual care funds shall be maintained on the premises of the establishment and shall be maintained in an auditable format.

Source: *Miss. Code Ann.* §41-43-37(7) and 40 (Rev. 2009).

Rule 3.4 Trusting requirements.

A. The owner of every cemetery, subject to the provisions of Section 41-43-31 et seq., that is organized, begins or continues to do business in the State of Mississippi after July 1, 2009, shall provide for the creation and establishment of an irrevocable perpetual care trust fund, the principal of which shall permanently remain intact except as hereinafter provided and only the income thereof shall be devoted to the perpetual care of the cemetery. The perpetual care trust fund shall not be subject to the claims of the cemetery's creditors and shall not be used as collateral, pledged, encumbered or placed at risk. This fund shall be created and established as follows:

- 1) In respect to a cemetery for earth burials, by the application and payment thereto of an amount equivalent to fifteen percent (15%) of the sale price, or Forty Cents (40¢) per square foot of ground interment rights sold, whichever is greater;
- 2) In respect to an above-ground community or public mausoleum, by the application and payment thereto of an amount equivalent to five percent (5%) of the sale price, or Fifty Dollars (\$50.00) per crypt sold, whichever is greater; and
- 3) In respect to a community columbarium, by the application and payment thereto of an amount equivalent to five percent (5%) of the sale price, or Ten Dollars (\$10.00) per niche sold, whichever is greater.

For any sale of a lot for an earth burial, mausoleum crypt or columbarium niche in which payment is made by the purchaser on an installment basis over time, the percentage required to be trusted shall be paid into the perpetual care trust fund calculated on each payment.

B. From the sale price the owner shall pay to the perpetual care fund an amount in proportion to the requirements in subsection (1) of this section, which payment shall be in cash, check, money order or electronic transfer and shall be deposited with the custodian or trustee of the fund not later than the fifth day of the following month from when funds are received.

Source: *Miss. Code Ann.* §41-43-37(1), (2), and (7) (Rev. 2009).

Rule 3.5 Cemetery Rules and Regulations. The owner of any cemetery may make and enforce reasonable rules and regulations for the use, care control, management, restriction, and protection of such cemetery.

Source: *Miss. Code Ann.* §41-43-37(7) and 40 (Rev. 2009).

Part 12 Chapter 4: Administrative Hearing Procedures.

Rule 4.1 Hearing Procedure Variance. The Secretary of State may grant variances from these Rules if it is determined that application of the Rules would, in the particular case, be unnecessarily burdensome, and such variance would not be inconsistent with the public policy purposes of the Law.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Rule 4.2 Severability. If any one or more of these Rules, or any part of any Rule is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other Rule or the remaining content of any part of a Rule that is not found to be invalid. Further, if any one or more of these Rules, or any part of any Rule, is superseded, amended, or contradicted by subsequent legislation, such amendment or change by subsequent legislation in no way invalidates any other part of a Rule or any other Rules not addressed or impacted by subsequent legislative action.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Rule 4.3 Oral opinions. Oral or informal opinions by the staff of the Division as to the applicability of the Law and oral or informal representations by the staff of the Division concerning the status of filings made with the Division are not binding upon the Division. Requestors can obtain a written declaratory opinion from the Division by following the procedures described in the Secretary of State's Rule on Declaratory Opinions. A non-refundable fee of One Hundred Fifty Dollars (\$150.00) must accompany each request.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).

Rule 4.4 Administrative Hearing Procedures.

- A. Written notice shall be provided to any establishment or other person against whom the Attorney General or Secretary of State intends to institute an administrative hearing pursuant to the Law or these Rules. At least twenty (20) calendar days of notice shall be given to the establishment or other person prior to the hearing unless the establishment or other person notified consents or the Division has authority to do so under applicable statute. Notice is effective on date of issue.
- B. Such notice shall be by certified mail, return receipt requested, and shall set forth the date, time and place for the administrative hearing.
- C. Any Party wishing to appear or introduce evidence or other testimony at the administrative hearing shall, no later than four (4) business days prior to the hearing date, file with the Hearing Officer and the opposing party a list of witnesses which it intends to call to testify or to otherwise give evidence. The list shall contain for each witness:
 - 1) Name;
 - 2) Residential and business address, if known;
 - 3) Residential and business telephone number, if known;
 - 4) A brief summary statement indicating the substance of the person's expected testimony.

- D. Upon request by any Party, any documents, papers, or tangible things to be introduced by any Party at the hearing shall be made available for inspection and copying by the requesting Party no later than four (4) business days prior to the hearing date.
- E. The Hearing Officer, or his or her designee, shall have the authority to administer oaths and affirmations. Each Party may be represented by an attorney or other authorized representative. The Hearing Officer may clear the hearing room of witnesses not under examination.
- F. The Hearing Officer shall have the authority to maintain the decorum of the hearing and shall take reasonable steps to do so when necessary, including clearing the hearing room of any person who is disruptive.
- G. The hearing shall be informal and technical rules of evidence shall be relaxed. All witnesses who appear and testify under oath shall be subject to cross-examination.
- H. The Hearing Officer shall have the authority to admit into the record any evidence which, in his or her judgment, has a reasonable degree of probative value and trustworthiness. The Hearing Officer shall have the authority to exclude evidence which is irrelevant, immaterial, lacking in probative value, untrustworthy or unduly cumulative.
- I. Documents received into evidence by the Hearing Officer shall be marked by him or her, or under his or her direction, entered into evidence and made a part of the record in the cause.
- J. Rebuttal and surrebuttal evidence may be heard at the discretion of the Hearing Officer.
- K. At the hearing, the Attorney General or the Secretary of State or the Division shall be the first to present evidence.
- L. The Attorney General or the Secretary of State or the Division shall have the burden of proving its allegations by a preponderance of the evidence. Fraud must be proven by clear and convincing evidence.
- M. A record of testimony at the hearing shall be made.
- N. A true and correct copy of said stenographic recording shall be made available to any Party requesting it, provided such Party agrees to pay the expense of such copy.
- O. After all evidence is heard or received and the hearing is completed, the Hearing Officer shall, within a reasonable time thereafter, issue a report and recommendation that details the findings of the hearing officer. All parties (including the Division) shall be served with the Hearing Officer's Report and Recommendations. Within fourteen (14) days following service of the findings, either party may present a written response to these findings to the Secretary of State. The Secretary of State will review the Hearing Officer's Report and Recommendations, all exhibits entered into evidence, all written responses to the Report and Recommendations and, if desired, order a transcript of the hearing. Thereupon, the Secretary may issue a Final Order adopting and accepting the Hearing Officer's Report and Recommendations; or reject the report and recommendations in whole or in part and issue findings of fact and conclusions of law with a Final Order; or, remand the case to the Hearing Officer for additional findings or clarification of key issues. A case is not concluded until issuance of a Final Order by the Secretary of State. All reports and recommendations and final orders shall be sent via certified mail, return receipt requested, to all Parties who appeared at the administrative hearing or their attorney or authorized representative.
- P. Continuances requested by any Party will be granted within the discretion of the Hearing Officer only for good cause shown.

Q. In computing any period of time prescribed or allowed under these Rules, the Hearing Officer and all Parties shall be guided by the Mississippi Rules of Civil Procedure.

Source: *Miss. Code Ann.* §41-43-37(7) (Rev. 2009).