

NOTICE OF INTENT

Office of the Governor Cemetery Board

Cemetery Industry (LAC 46:XIII.103, 701, 707, 709, 1501, 1505, 1507, 1509, 1707, 1711, 1713, and 1909)

The Office of the Governor, Louisiana Cemetery Board proposes to amend LAC 46:XIII.103, 701, 707, 709, 1501, 1505, 1707, 1711, and 1909 and to adopt in their entirety LAC 46:XIII.1507, 1509, and 1713 as authorized by R.S. 8:67. These proposed rules are promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Louisiana Cemetery Board was created by Acts 1974, No. 417. The majority of the rules adopted pursuant to Acts 1974, No. 417, were promulgated in 1975 and 1982, with a complete recodification of the board's rules in 2013. The currently proposed rules are intended to update the existing rules to reflect legislative enactments and amendments and court rulings since the last major promulgation event in 2013. Finally, the proposed rules incorporate existing policies into the rules of the Louisiana Cemetery Board and correct technical and grammatical errors in the original rules.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XIII. Cemetery Industry

Chapter 1. General Provisions

§103. Definitions

A. ...

* * *

Derivative and Hedge Transactions or Investments—an agreement, option or instrument, or any series or combination thereof, to make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or instead to make a cash settlement, or that has a price, yield, level, performance, value, or cash flow which is based primarily on that of one or more underlying interest. The term includes, but is not limited to, options (calls and puts), not otherwise permitted to be held by a trust under the provisions of Title 8 or these rules, and any other substantially similar instruments. The term does not include a collateralized mortgage obligation, another asset-backed security, a principal-protected structured security, a floating rate security, an instrument that a trust is otherwise permitted to invest in or receive by a trust under the provisions of Title 8 and these rules.

* * *

Trust Account—for purposes of R.S. 8:412(B)(1) only and for no other purpose, an escrow account, established by an abandoned cemetery sales and management licensee. The funds contained therein, shall not be the property of the abandoned cemetery sales and management licensee and must be used solely in accordance with R.S. 8:412(B)(1) and for no other purposes.

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AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:519 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2739 (October 2013), LR 43:

Chapter 7. Certificate or License

§701. Applications

A. ...

B. If the applicant fails to submit the necessary documentation needed to complete an application, or the application remains incomplete and pending for a period in excess of 180 days without the applicant applying for and being granted an extension for good cause shown, the application shall be considered void, and any application fees paid in conjunction therewith shall be forfeited by the applicant and shall not be refunded; thereafter a new application for license must be submitted by the applicant, together with the payment of the applicable application fee without credit for any fees previously paid.

C. An application may be approved and certificate issued if the director or the director's designee determines that the applicant, its owners or managerial personnel meet the qualifications for license, has no unresolved or outstanding violations of Title 8 or these rules, and are not subject to any investigation for violations of Title 8 or these rules.

D. If the director or director's designee determines that further investigation is warranted, the director or director's designee may seek additional information from the applicant, from third parties, and may refer all matters to the assistant attorney general for further investigation and inquiry as warranted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:521 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2741 (October 2013), LR 43:

§707. Other Provisions Concerning Certificate or License

[Formerly §705]

A. - B. ...

C. When an application for certificate of authority has been filed, but has not been acted upon by the board, for a change in the ownership or control of an already-licensed cemetery or cemetery authority and the existing certificate of authority expires, the annual regulatory charge due as provided for by the Louisiana Cemetery Act shall nonetheless be paid.

1. Upon payment of the annual regulatory charge, the board or its designee may issue a temporary certificate of authority, not to exceed 180 days without the applicant seeking and being granted an extension by the board or its designee for good cause shown, whose application for the change in the ownership or control of the cemetery or cemetery authority is pending. A temporary certificate of authority issued pursuant to this Subsection may be revoked by the board or its designee with or without cause.

D. If an applicant fails to submit the necessary documentation needed to complete an application for certificate of authority or license and the application remains pending for a period in excess of 180 days, without the applicant seeking and being granted an extension by the board or its designee for good cause shown, the application will be considered stale dated and the applicant must reapply including the resubmission of all time-sensitive information, documentation, and repayment of the prescribed application fees as provided for by the Louisiana Cemetery Act. Nothing contained herein to the contrary shall prohibit the board from

pursuing regulatory action for an applicant's failure to comply with Title 8 or these rules.

E. Prior to the issuance of a certificate of authority to a newly established cemetery, the board may require the submission of minimum development plans, including, but not limited to, maps and plats and a development schedule for any roads and non-interment structures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2741 (October 2013), LR 43:

§709. Refusal to Grant or Renew Certificate of Authority or License [Formerly §707]

A. If the director or director's designee refuses to grant or renew any certificate of authority to engage in the business of a cemetery, or the applicant has unresolved or outstanding violations of Title 8 or these rules and/or is subject to a pending investigation for violation of Title 8 or these rules, the director or director's designee shall give the applicant written notice of the decision and all of his or her reasons therefor. The applicant shall have 30 days after receipt of notice of the decision in which to initiate an adjudication proceeding before the board in accordance with §1101 et seq. If no such proceeding is initiated, the action shall be deemed a final decision of the board.

B. If the director or director's designee refuses to grant or renew any license to engage in the business of a cemetery sales organization or a cemetery management organization, or the applicant has unresolved or outstanding violations of Title 8 or these rules and/or is subject to a pending investigation for violation of Title 8 or these rules, the director or director's designee shall give the applicant written notice of the decision and all of his or her reasons therefor. The applicant shall have 30 days after receipt of notice of the decision in which to initiate an adjudication proceeding before the board in accordance with §1101 et seq. If no such proceeding is initiated, the action shall be deemed a final decision of the board.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 1:522 (December 1975), amended by the Office of the Governor, Cemetery Board, LR 39:2741 (October 2013), LR 43:

Chapter 15. Cemetery Care Fund

§1501. Payments to Perpetual Care Trust Fund [Formerly §1301]

A. - E. ...

F. In the event of a documented deposit overfunding error or when a contract for a cemetery space or interment right is cancelled, terminated, upgraded, or traded, the cemetery authority shall be entitled to a credit for the amount deposited and attributable to such space, provided that the cemetery authority can provide sufficient documentation, acceptable to the board, of the credit due.

G. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Cemetery Board, LR 8:467 (September 1982),

amended by the Office of the Governor, Cemetery Board, LR 39:2748 (October 2013), LR 43:

§1505. Annual Reports Required

A. ...

B. All trustees of perpetual or endowed care trust funds shall submit a report to the board, on the forms prescribed by the board, within 5 months after the close of the cemetery authority's tax reporting year, or within 60 days from resignation as trustee. The assets of the trust shall be reported on a cost basis.

1. All trustees of perpetual or endowed care trust funds shall amortize bond premiums and discounts and adjust the cost value accordingly over the life of the bond to ensure the cost of the bond will be equivalent to the value of the bond at acquisition.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2748 (October 2013), amended LR 43:

§1507. Administration and Investment of Perpetual Care Trust Funds

A. The trustee of a perpetual care trust fund shall administer the trust assets in a prudent manner that takes into consideration of the long-term safety, stability and growth of the trust. Engaging in speculative investments for any reason, including for the purpose of generating distributable income, is strictly prohibited. It shall be unlawful for a trustee or an investment advisor acting on behalf of a trustee of a perpetual care trust fund to:

1. engage in derivative and hedge transactions or investments including, but not limited to, the buying and selling of options (calls and puts) with trust assets;

2. place a margin loan, pledge or other lien against any of the securities or assets held in a trust;

3. churn or excessively trade trust assets for the purpose of generating commissions or fees for the trustee and/or investment advisor. A series of transactions, even if suitable when viewed in isolation, may be considered excessive and unsuitable for the trust when taken together in consideration of the long-term safety, stability and growth of the trust.

B. Mutual funds which are listed on a national exchange are permissible investments under the Louisiana Cemetery Act or these rules.

1. If a mutual fund is not listed on a national exchange but all of its underlying assets are listed on a national exchange and otherwise comply with the Louisiana Cemetery Act or these rules, the mutual fund may be considered compliant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 43:

§1509. Investment Advisors

A. Nothing in these rules shall be construed as prohibiting the trustee or cemetery authority from utilizing the services of an investment advisor. However, the use of an investment advisor does not relieve the trustee of its obligations and fiduciary responsibilities to administer the trust under the provisions of the Louisiana Cemetery Act or these rules including, but not limited to, directing and oversight of all trust assets. At all times the assets of the trust must be held by the trustee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 43:

Chapter 17. Merchandise Trust Funds

§1707. Annual Reports Required

A. ...

B. All trustees of merchandise trust funds shall submit a report to the board, on the forms prescribed by the board, within 90 days after the close of the cemetery's or other entity's tax reporting year, or within 60 days from resignation as trustee. The assets of the trust shall be reported on a cost basis.

1. All trustees of merchandise trust funds shall amortize bond premiums and discounts and adjust the cost value accordingly over the life of the bond to ensure the cost of the bond will be equivalent to the value of the bond at acquisition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013), amended LR 43:

§1711. General Storage Requirements

A. Stored merchandise must be comprised of materials that are designed to withstand prolonged storage without adversely affecting the structural integrity or aesthetic characteristics of such merchandise.

1. Personal property delivery pursuant to R.S. 8:502.1(2) and (3) shall not apply to merchandise comprised of materials subject to deterioration including, but not limited to caskets and urns, which is not delivered within 120 days after entering into such contract, and shall not be stored by the cemetery.

B. All storage of merchandise pursuant to Title 8 shall be stored in accordance with the following requirements:

1. merchandise shall be stored in an organized and accessible manner in order to allow for expedient verification of compliance with Title 8 and these rules; and

2. merchandise shall be stored in an environment so as to ensure the preservation of the merchandise.

C. If any merchandise is determined to be damaged and unusable, the cemetery or other entity shall replace the merchandise with an item of like kind and quality. Any cemetery or other entity with such damaged or unusable merchandise shall not be in compliance with Title 8 or these rules until such time as the damaged or unusable items are replaced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2750 (October 2013), amended LR 43:

§1713. Administration and Investment of Merchandise Trust Funds

A. As provided for by R.S. 8:509, merchandise trust funds shall be administered and invested in conformity with the perpetual care provisions of the Louisiana Cemetery Act and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 43:

Chapter 19. On-Site Inspections and Examinations

§1909. Examination Fees

A. The board shall assess the cemetery or other entity the costs associated with the expenses of the examination for each trust fund according to the following schedule:

1. if the examination takes two hours or less, there will be no fee charged;

2. if the examination takes more than two hours, but less than three hours, the fee will be \$125 per cemetery, per examiner;

3. if the examination takes three hours or more, the fee will be \$250 per cemetery, per examiner, per day, up to two days; and

4. if the examination takes more than two days, the cost shall be paid by the cemetery authority in an amount not to exceed a total of \$500, unless irregularities are found, in which case, the cemetery authority shall pay the full cost of the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 8:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2751 (October 2013), amended LR 43:

Family Impact Statement

In compliance with Acts 1999, No. 1183, the impact of these proposed rules on the family has been considered. The proposed rules have no known impact on family functioning, formation, stability, or autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Acts 2012, No. 854, the impact of these proposed rules on poverty has been considered. The proposed rules have no known impact on poverty as described in R.S. 49:973.

Small Business Analysis

In compliance with Acts 2008, No. 820, the Regulatory Flexibility Act, the impact of these proposed rules on small businesses has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses.

Provider Impact Statement

The proposed Rule has no known impact on providers as described in HCR 170 of 2014 Regular Legislative Session.

Public Comments

Interested persons may submit written comments to Lucy L. McCann, Louisiana Cemetery Board, 3445 North Causeway Boulevard, Suite 509, Metairie, LA 70002. She is responsible for responding to inquiries regarding the proposed Rule. The deadline for submitting written comments is 4:30 p.m., September 30, 2017.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be in writing and received by the board within 20 days of the date of the publication of this notice.

Lucy L. McCann
Director