

## Chapter 17. Merchandise Trust Funds

### §1701. Payments to the Merchandise Trust Fund

A. All contracts for the sale of cemetery related merchandise or personal property that are not delivered within 120 days after entering into such contract, shall, after establishment of the merchandise trust fund when and as required by Title 8, deposit into the trust fund a minimum of 70 percent of the price charged, less sales taxes, for each item of personal property contracted for, contracted for at a discount, or contracted for without charge or 125 percent of the wholesale cost, whichever is greater.

1. For deposits made at 125 percent of the wholesale cost, documentation to support wholesale cost must be maintained by the cemetery or other entity in the contract file of the customer and must be reviewable and verifiable by the board.

B. All contracts for the sale of cemetery related services that are not delivered within 120 days after entering into such contract, shall, after establishment of the merchandise trust fund when and as required by Title 8, deposit into the trust fund a minimum of 70 percent of the price charged for such service.

1. For each service contracted for at a discount or contracted for without charge, the deposit shall in no event be less than 70 percent of the highest price charged for such service during the preceding 12 months. Any and all documentation to support 70 percent of the highest price charged for such services during the preceding 12 months must be maintained by the cemetery or other entity in the contract file of the customer and must be reviewable and verifiable by the board.

C. All deposits due on merchandise and services shall be delivered to the trustee not later than the twentieth day after the close of the month in which the contract is made. However, if the contract is financed by the seller and payments are made pursuant to an installment contract and the delivery of the merchandise and services is not to be made until the contract is paid in full or more than 120 days after entering into such contract, then payments to the trust fund must be deposited either:

1. not later than the twentieth day of the close of the month in which the contract is made; or
2. proportionally over the term of the contract, provided that the seller maintains adequate accounting records of the installment payments and the proportionate amounts due the trust fund.

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).

### §1703. Delinquent Payments to Merchandise Trust Fund

A. If a deposit is not timely made, the board may require, in its sole discretion, that the deposit be 70 percent of the highest price charged in the 12 months preceding the deposit or 125 percent of the wholesale cost at the time the deposit is made, whichever is greater.

B. In the event that a cemetery or other entity converts previously stored merchandise to trusting, the board may require, in its sole discretion, that the deposit be 70 percent of the highest price charged in the 12 months preceding the conversion or 125 percent of the wholesale cost at the time of conversion, whichever is greater.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2749 (October 2013).

### §1705. Withdrawals from Merchandise Trust Fund

A. The merchandise trust funds shall be held in trust both as to principal and income earned thereon, and shall remain intact, except that the costs of operation of the trust may be deducted from the income earned thereon, until delivery of the personal property is made or the services are performed. A cemetery, cemetery authority, or other entity required to establish and maintain a merchandise trust fund may not charge the income of the trust for its administrative costs for the operation of the cemetery, cemetery authority, other entity, or trust funds. Within a merchandise trust fund, realized capital gains and losses shall be allocated in the same manner as income.

B. At the time of withdrawal, if a cemetery or other entity has not allocated the income earned to each separate account, as required by the Louisiana Cemetery Act, only the funds on deposit for such account shall be withdrawn. Upon satisfactory proof to the board that such income has been allocated to a particular account, the board may, in its discretion, authorize the withdrawal of such funds.

C. Prior to a withdrawal, if the cemetery or other entity is delinquent in its deposits to the merchandise trust fund, the board may require verification that all deposits on the pending withdrawals are current before such withdrawals can be made.

D. Upon satisfactory proof to the board that there has been an error or overfunding of the trust the board may, in its sole discretion, authorize the withdrawal or credit of such funds from the trust.

E. In the event that a cemetery or other entity converts accounts previously trusted to storage and presents satisfactory proof to the board that the merchandise to be stored is the same product selected by the customer and satisfactory proof of compliance with all storage requirements, the board may, at its discretion, authorize the withdrawal consistent with the requirements contained in the Louisiana Cemetery Act and the rules of the board. If the cemetery or other entity intends to substitute the product previously selected by the customer, a certification of acceptance of the substituted product must be obtained from the customer and retained by the cemetery or other entity in the contract file of the customer prior to the approval of the withdrawal by the board.

F. For the purposes of withdrawal, certification of delivery shall include:

1. for services:

- a. a copy of the death certificate; or
- b. a copy of the burial transit permit; or
- c. a copy of the published obituary;

2. for merchandise:

- a. if the merchandise is delivered prior to the death of the contract beneficiary, such certification shall include:
  - i. a written statement certifying delivery of the merchandise or personal property and signed by an authorized representative of the cemetery or other entity; or
  - ii. a photograph of the merchandise or personal property as installed on the cemetery space; or
  - iii. a copy of the paid-in-full invoice;
- b. if the merchandise is delivered after the death of the contract beneficiary, such certification shall include:
  - i. at least one of the items listed in Paragraph 1, above; and
  - ii. at least one of the items listed in Subparagraph 2.a, above;

3. all certification documents to support such withdrawals must be maintained by the cemetery or other entity in the contract file of the customer and must be reviewable and verifiable by the board.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Cemetery Board, LR 39:2749 (October 2013).

#### **§1707. Annual Reports Required**

A. All cemeteries and other entities shall submit a report and the report filing fee to the board, on the forms prescribed by the board, within six months after the close of the cemetery's or other entity's tax reporting year.

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 43:2151 (November 2017).

### **§1709. Trust Reconciliation**

A. In the event of a change of ownership or control of a cemetery, cemetery authority, or other entity, documentation that demonstrates that the existing merchandise trust fund complies with Title 8 and these rules shall be submitted to the board.

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).

### **§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 43:2151 (November 2017).

### **§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 43:2151 (November 2017).